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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 77 Friday,

No. 52 March 16, 2012

Pages 15555–15932

OFFICE OF THE FEDERAL REGISTER

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

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RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Chapter LXXXIII and Part 9301

RIN 3460–AA00

Freedom of Information Act and Privacy Act Procedures

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974. These procedures will facilitate public interaction with SIGAR.

DATES: This interim final rule is effective March 16, 2012. Written comments may be submitted by April 16, 2012.

ADDRESSES: You may submit comments, identified by RIN 3460–AA00 in the subject line to Mr. Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3940, email: *hugo.teufel.civ@mail.mil*, phone (703) 545–5990, fax (703) 601–3804.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, at (703) 545–5993, email: *mary.k.gastner.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). In order to establish procedures to facilitate public interaction with SIGAR, the agency is issuing interim final regulations under the FOIA and the Privacy Act.

II. The Interim Final Rule

This interim final rule establishes procedures for SIGAR necessary to implement the FOIA (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). The provisions of this subpart shall apply to all components of SIGAR.

The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions within the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by SIGAR.

III. Procedural Requirements

These regulations establish procedures under the FOIA and the Privacy Act to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, ''Transparency and Openness,'' 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Interim Final Rule parallels the procedures currently used by other agencies to implement the FOIA and the Privacy Act. SIGAR has determined that good cause exists to publish these regulations as an interim final rule. These rules establish procedures to facilitate SIGAR's interactions with the public and the public's right to gain access to information about SIGAR and about themselves that SIGAR maintains. The absence of Privacy Act regulations could impair the confidentiality and privacy rights of those who submit sensitive information to SIGAR as well as the ability of SIGAR to use that information to carry out its statutory mission. SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth above, SIGAR establishes 5 CFR Chapter LXXXIII, consisting of part 9301 to read as set forth below.

Title 5—Administrative Personnel

CHAPTER LXXXIII—SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

PART 9301—DISCLOSURE OF RECORDS AND INFORMATION

Sec.

Subpart A—Freedom of Information Act

Procedures for Disclosure of Materials or Information

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9301.19 Schedule of fees.

Subpart A—Freedom of Information Act

Authority: 5 U.S.C. 552; Pub. L. No. 110–175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., pp. 216–200.

Procedures for Disclosure of Records Under the Freedom of Information Act

§ 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA.

§ 9301.2 Authority and functions.

Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, established the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR's mission under Sections 1229 and 842 of Public Law 110–181, is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness.

§ 9301.3 Organization.

SIGAR maintains its headquarters in Arlington, Virginia, and field offices in Kabul and elsewhere in Afghanistan.

Procedures

§ 9301.4 Availability of records.

SIGAR's publicly accessible records are available through SIGAR's Electronic Reading Room on its Web site. SIGAR also provides records to individual requesters in response to FOIA requests. SIGAR generally withholds predecisional, deliberative documents, investigatory materials and sensitive policy documents under 5 U.S.C. 552(b).

§ 9301.5 Accessing records without request.

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases and other public issuances, are available electronically from SIGAR's homepage at *http://www.sigar.mil.*_ *SIGAR* encourages requesters to visit its Web site before making a request for records under § 9301.6.

§ 9301.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 9301.5, requesters wishing to obtain information from SIGAR should submit a written request to SIGAR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.foia@mail.mil.*

(b) *Contents of requests.* Requests should be as specific as possible and should reasonably specify the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or describe it, and include information such as the date, title or name, author, recipient, and subject matter of the record, where possible. The request should also include a statement of the requester's willingness to pay fees, or request a fee waiver. The words ''FOIA REQUEST'' or ''REQUEST FOR RECORDS'' should be clearly marked on the cover letter, letter, and/or envelope.

(c) *Response to requests*—(1) *Processing.* The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, which shall state that it is true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose a threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about Government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten calendar days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, SIGAR shall act expeditiously on any appeal of that denial.

(3) Extension for unusual circumstances—(i) In general. If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the

FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601–3804 or email to *sigar.pentagon.gen-coun.mbx.foia@mail.mil.* An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions.* The Appellate Authority shall ordinarily decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§ 9301.8 through 9301.10.

Costs

§ 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR may assess charges for time spent searching for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§ 9301.9 through 9301.11:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.10 per page. For other types of copies such as disks or audio visual tapes, SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 9301.6(c)(1) shall be deemed to begin when the FOIA Officer receives the revised request.

(e) *Advance payments required.* (1) The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed $250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 9301.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* SIGAR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) SIGAR fails to comply with any time limit under the FOIA for responding to a request for records where no unusual or exceptional circumstances apply.

§ 9301.9 Fees for categories of requesters.

SIGAR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, SIGAR shall assess fees that recover the full direct costs of searching for, reviewing and duplicating records.

(b) *Educational institutions.* SIGAR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* SIGAR shall provide records to requesters in this category for the cost

of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* SIGAR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 9301.10 Other charges.

SIGAR may apply other charges, including the following:

(a) *Special charges.* SIGAR shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that SIGAR elects to provide them.

(b) *Interest charges.* SIGAR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 9301.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§ 9301.8 through 9301.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Subpart B—Privacy Act

Authority: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f).

§ 9301.12 Purpose and scope.

The purpose of this subpart is to provide certain safeguards for an individual against the invasion of his or her personal privacy by SIGAR. This subpart is promulgated pursuant to the requirements applicable to all federal agencies contained in 5 U.S.C. 552a(f).

§ 9301.13 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by SIGAR contains a record pertaining to them should address their inquiries to the Privacy Officer, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil.* The written inquiry should contain a specific reference to the system of records maintained by the SIGAR listed in the SIGAR Notice of Systems of Records, or it should describe the type of record in sufficient detail reasonably to identify the system of records. Notice of SIGAR systems of records subject to the Privacy Act will be published in the **Federal Register**, posted on the SIGAR public facing Web site, and copies of the notices will be available upon request to the Privacy Officer when so published. A compilation of such notices will also be made and published by the Office of the Federal Register, in accordance with 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow SIGAR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the requester's identification is insufficient to ensure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, SIGAR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Privacy Officer will inform the person making the request the reasons for the delay and the date on which a response may be anticipated.

§ 9301.14 Requests for access.

(a) *Requirement for written requests.* An individual desiring to gain access to a record pertaining to him or her in a system of records maintained by SIGAR must submit his or her request in writing in accordance with the procedures set forth in paragraph (b) of this section. Individuals employed by the SIGAR may make their requests on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9 a.m. and 5:30 p.m. Such requests for access by individuals employed by SIGAR need not be made in writing.

(b) *Procedures*—(1) *Content of the request.* The request for access to a record in a system of records shall be addressed to the Privacy Officer at the address cited above, and shall name the system of records or contain a concise description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by SIGAR in a system of records, the request will be considered under both the Privacy Act of 1974 and the Freedom of Information Act, depending on which would allow greater access to the records requested. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (*e.g.,* maiden name, dates of employment, etc.) as well as any other identifying information contained in and required

by the SIGAR Notice of Systems of Records.

(i) If the request for access follows a prior request under § 9301.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the SIGAR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under § 9301.4.

(ii) [Reserved]

(2) *SIGAR action on request.* A request for access will ordinarily be answered within 10 days, except when the Privacy Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the systems of records maintained by SIGAR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the Privacy Officer;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Privacy Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§ 9301.6 and 9301.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SIGAR official having operational control over the record; and

(vi) The documentation required by SIGAR to verify the identity of the person making the request. At a minimum, SIGAR verification standards include the following:

(A) *Current or former SIGAR Employees.* Current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SIGAR employee cannot be so identified by the official having operational control over the records, identification documentation will be required. The employee's common access card, annuitant identification, driver licenses, or the ''employee copy'' of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former SIGAR employees.* Individuals other than current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system of records notices published by SIGAR pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Privacy Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to a person making a request of information under the FOIA, 5 U.S.C. 552. When, in the opinion of the Privacy Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; *e.g.,* statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by SIGAR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) Granting access when accompanied by another individual. When an individual requesting access to his or her record in a system of records maintained by SIGAR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Granting access to individuals other than the subject of the record.* SIGAR will not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, pursuant to the Privacy Act of 1974.

(H) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by SIGAR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Privacy Officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Privacy Officer shall direct. When SIGAR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, SIGAR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of litigation.

§ 9301.15 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 9301.14.

§ 9301.16 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 9301.14. (See also § 9301.19 for rules regarding fees.)

§ 9301.17 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by SIGAR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SIGAR.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Privacy Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth in this paragraph, copies of previous correspondence between the individual and SIGAR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 9301.14(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, SIGAR may require identification validation as described in § 9301.14(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Privacy Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the desired proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit SIGAR to understand the basis for the request and to make an appropriate amendment to the record.

(iv) The request should also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SIGAR of personal information merely to permit verification of records, the burden of persuading SIGAR to amend a record will be upon the individual. The individual must furnish sufficient facts or credible documentation to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *SIGAR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. In the event a decision cannot be made within this timeframe, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of SIGAR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within SIGAR (see § 9301.18).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 9301.18 Request for review.

(a) Individuals wishing to request a review of the decision by SIGAR with regard to an initial request to amend a record in accordance with the provisions of § 9301.17, should submit the request for review in writing and, to the extent possible, include the information specified in § 9301.17(a). Individuals desiring assistance in the preparation of their request for review should contact the Privacy Officer at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SIGAR in which the request to amend was denied, and also should state the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 9301.17, set forth by SIGAR in its decision denying the amendment. In order to avoid the unnecessary retention of personal information, SIGAR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by SIGAR within 180 days of the mailing by SIGAR of its decision upon an initial request. A request for review received after the 180-day period may, at the discretion of the Privacy Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Appellate Authority, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil.*

(d) Final determinations on requests for reviews within SIGAR will be made by the Appellate Authority. Additional information may be requested by the Appellate Authority from the person requesting a review if necessary to make a determination.

(e) The Appellate Authority will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays and legal Federal holidays) from the date of receipt by SIGAR of the individual's request for review, unless the Appellate Authority extends the 30-day period for good cause. The extension and the reasons therefore will be sent by SIGAR to the individual within the initial 30-day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with SIGAR setting forth the individual's reasons for his disagreement with the decision upon the request for review. The SIGAR Privacy Officer has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the

information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if SIGAR chooses to file such a statement. A copy of the individual's statement, and if it chooses, SIGAR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§ 9301.19 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Privacy Officer may, at no charge, provide copies of a record if it is determined that the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records. Records will be duplicated at a rate of $.10 per page for copying of 4 pages or more. There is no charge for copying fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, the person making the request shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Privacy Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Privacy Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

(5) A receipt for fees paid will be given upon request.

Dated: March 12, 2012.

Steven J Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

[FR Doc. 2012–6335 Filed 3–15–12; 8:45 am]

BILLING CODE 3710–L9–P

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 Part 9302

RIN 3460–AA02

Requests for Testimony or the Production of Records in a Court or Other Proceedings in Which the United States Is Not a Party

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain the production or disclosure of information and documents of Special Inspector General for Afghanistan Reconstruction (SIGAR) in connection with legal proceedings in which neither the United States nor the SIGAR is a party. It sets forth the procedures used when determining whether SIGAR employees will be permitted to testify or provide records relating to their official duties when they are subpoenaed or otherwise requested to testify. The rule also specifies the criteria that SIGAR officials are to use when deciding whether to allow an employee to testify or provide records.

DATES: This interim final rule is effective March 16, 2012. Written comments may be submitted by April 16, 2012.

ADDRESSES: Submit written comments to Hugo Teufel, Acting General Counsel, email: *hugo.teufel.civ@mail.mil,* Special Inspector General for Afghanistan Reconstruction, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel, Acting General Counsel, at (703) 703–545–5990, email: *hugo.teufel.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. Many departments and agencies have promulgated such regulations to provide procedures for the disclosure of official records and information.

Generally, these are termed *Touhy* regulations, after the Supreme Court's decision in *United States ex rel. Touhy* v. *Regan, 340 U.S. 462 (1951).* In that case, the Supreme Court held that an agency employee could not be held in contempt for refusing to disclose agency records or information when following instructions of his or her supervisor regarding the disclosure that were issued pursuant to agency regulations. As such, an agency's *Touhy* regulations are the instructions agency employees are to follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

SIGAR's proposed *Touhy* regulations provide generally that employees of SIGAR may not disclose documents or information in response to a demand or order of a court or any other authority without first being authorized by the agency to do so. The purpose of these regulations is to conserve valuable agency resources, protect SIGAR employees from becoming enmeshed in litigation, and to protect sensitive Government information and decision making processes within the confines of the law. In order to establish procedures to facilitate public interaction with SIGAR, SIGAR is issuing proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes procedures governing the disclosure of information and records in connection with court litigation and certain other types of proceedings.

III. Procedural Requirements

This interim final rule is generally similar to the *Touhy* procedures concerning the disclosure of information in litigation that have been adopted by other agencies. Further, this rule relates to agency management and personnel. Accordingly, SIGAR has determined that notice and public procedure thereon are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C.

553(d)(3). Nevertheless, SIGAR will consider any public comments on this interim final rule before issuing its final rule.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 5 CFR Part 9302

Courts, Government employees, Freedom of information, Government employees.

Authority and Issuance

■ For the reasons set forth above, 5 CFR chapter LXXXIII is amended to add part 9302 to read as follows:

PART 9302—REQUESTS FOR TESTIMONY OR THE PRODUCTION OF RECORDS IN A COURT OR OTHER PROCEEDINGS IN WHICH THE UNITED STATES IS NOT A PARTY

Authority: Pub. L. 110–181 (Jan. 28, 2008), Section 1229 (122 Stat. 378–85), as amended, and Section 842 (122 Stat. 234–36), 10 U.S.C. 2302 note; and 5 U.S.C. 301.

§ 9302.1 SIGAR Touhy regulations.

(a) *Applicability.* (1) This section sets forth the policies and procedures of the Special Inspector General for Afghanistan Reconstruction (SIGAR or the agency) regarding the testimony of employees and former employees as witnesses and the production or disclosure of SIGAR documents or information for use in legal proceedings in which the United States is not a party and where the demand is pursuant to a subpoena, order or request (collectively referred to in this section as a ''demand'').

(2) This section does not apply to any legal proceeding in which an employee is to testify while on leave status regarding facts or events that are unrelated to the official business of SIGAR.

(3)(i) Nothing in this section affects the rights and procedures governing public access to agency records pursuant to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(ii) Demands in legal proceedings in which the United States is not a party for the production of SIGAR records or information, or for the testimony of SIGAR employees, regarding information or documents that are protected by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905) or other statutes, must satisfy the requirements for disclosure set forth in those statutes and the applicable regulations of this part, before the records may be provided or testimony given.

(4) This section is intended to provide guidance for the internal operations of SIGAR and to inform the public about SIGAR procedures concerning service of process upon SIGAR and its responses to demands. The procedures specified in this section, or the failure of any SIGAR employee to follow the procedures specified in this section, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

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

Agency counsel means: SIGAR's General Counsel or his or her designee.

Demand means a subpoena, order or request for testimony, documents or information related to, or for possible use in, a legal proceeding in which the United States is not a party.

Document means any record or other property, no matter what media, and including copies thereof, held by SIGAR, including without limitation, letters, Emails, telegrams, memoranda, facsimiles, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

Employee means all employees or officers of SIGAR, including (for the purpose of this section only) contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of SIGAR. The procedures established within this subpart also apply to former employees of SIGAR where specifically stated in this section.

General Counsel means the General Counsel of SIGAR.

Legal proceeding means all pretrial, trial and post-trial stages of all judicial or administrative actions, hearings, investigations, arbitrations or similar proceedings before courts, commissions, boards, grand juries, or other tribunals, foreign or domestic. This term includes all phases of discovery as well as responses to informal requests by attorneys or others involved in legal proceedings seeking interviews or the like.

Official business means the authorized business of SIGAR as stated in the ''National Defense Authorization Act for Fiscal Year 2008,'' Pub. L. 110–181 (Jan. 28, 2008), Section 1229 (122 Stat. 378–85), as amended, and Section 842 (122 Stat. 234–36), 10 U.S.C. 2302 note.

Testimony means an employee's statement in any form, including testifying before a court or other tribunal or board, giving depositions, interviews, telephonic, televised, videoconference or videotaped statements, and providing written responses to interrogatories, admission requests or other discovery.

(c) *SIGAR policy.* (1) SIGAR was established by Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (January 28, 2008), as a wartime or overseas contingency operation oversight agency of the United States Government's Executive Branch. SIGAR's Inspector General is appointed by the President of the United States. See Pub. L. 110–181, Section 1229(c). SIGAR performs oversight of Afghanistan reconstruction and security programs, operations and contracts to prevent and detect waste, fraud and abuse pursuant to Sections 1229 and 842 of Public Law 110–181. The records of an inspector general frequently contain sensitive law enforcement information that is protected from disclosure or obtained under guarantees of confidentiality.

(2) In appropriate cases, the agency counsel shall notify the United States Department of Justice (DOJ) of the demand and coordinate with the DOJ to file any appropriate motions or other pleadings.

(3) No current or former employee shall, in response to a demand, produce any SIGAR documents, provide testimony regarding any information relating to or based upon SIGAR documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, in a legal proceeding in which the United States is not a party, without the prior written authorization of the General Counsel. *See United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951); and 5 U.S.C. 301 (''The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.'')

(d) *Procedures for demand for testimony or production of documents.*

(1) A written demand directed to SIGAR for the testimony of a SIGAR employee or for the production of documents shall be served in accordance with the requirements of the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedures, as appropriate. If the demand is served by the U.S. mails, it should be addressed to the General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3940. If the demand is served by overnight delivery service or courier, it should be directed to the General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3940. SIGAR's acceptance of a demand shall not constitute an admission or waiver of any objection with respect to the propriety of jurisdiction, service of process, venue, or any other defense in law or equity available under applicable law.

(2) A subpoena or other demand for testimony directed to an employee or former employee shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable State procedure; and a copy of the subpoena or demand shall be delivered to the General Counsel.

(3)(i) *Touhy* Request. In court cases in which the United States or SIGAR is not a party, where the giving of testimony or the production of documents by SIGAR, or a current or former employee is desired, a verified statement (declaration under penalty of perjury) by the litigant or his counsel, setting forth the information with respect to which the testimony or production is desired (''*Touhy* Request''), must be submitted in order to obtain a decision concerning whether such testimony or production will be authorized by SIGAR. The *Touhy* Request should include: the title of the legal proceeding, the court or other forum, the requesting party's interest in the legal proceeding, a statement whether other evidence reasonably suited to the requester's needs is not otherwise available, and, if testimony is requested, the subject matter and intended use of the testimony, a statement whether document(s) could be provided in lieu of testimony to satisfy the request, and a statement that the requester will submit a check for costs of duplication at commercially reasonable rates to SIGAR if the request is granted. The purpose of these requirements is to assist the General Counsel in making a fair and informed decision under governing law regarding whether testimony or the production of document should be authorized and under what conditions, if any. Permission to testify or produce documents will be limited to the areas of proposed testimony described in the *Touhy* Request.

(ii) Agency counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or to obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the requester to cooperate in good faith to enable the General Counsel to make an informed determination under this subpart may serve as a basis for denying the *Touhy* Request.

(iii) A determination under this section to comply or not to comply with the *Touhy* Request is without prejudice to the agency's assertion of privilege, lack of relevance, technical deficiency, or any other objection to the demand.

(4)(i) Employees shall immediately refer all inquiries and demands made to SIGAR or its employees to the General Counsel.

(ii) An employee who receives a demand shall forward the demand to the General Counsel, who will determine the agency's response to the demand under this section.

(e) *Factors to be considered by the General Counsel with respect to a Touhy Request.* (1) In deciding whether to authorize the release of official information or the testimony of SIGAR personnel concerning official information (hereafter referred to as the ''disclosure''), the General Counsel shall consider the following factors:

(i) Whether the demand is unduly burdensome to the agency or otherwise inappropriate under the applicable rules of discovery, evidence and procedure governing the litigation in which the demand arose, balanced against the need for the specific testimony or documents sought;

(ii) Whether the demand is appropriate under the relevant substantive law of privilege and disclosure of Government information, or seeks information or documents protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b), the Privacy Act, 5 U.S.C. 552a, or the Inspector General Act of 1978, as amended, 5 U.S.C. App.;

(iii) Whether the demand would interfere with SIGAR's statutory mandate stated in the ''National Defense Authorization Act for Fiscal Year 2008,'' Pub. L. 110–181 (Jan. 28, 2008), Section 1229 (122 Stat. 378–85), as amended; Pub. L. 110–181, Section 842 (122 Stat. 234–36), 10 U.S.C. 2302 note; or the Inspector General Act of 1978, as amended, 5 U.S.C. App.;

(iv) Whether the demand would be in the public interest;

(v) The extent to which the time of employees for conducting official agency business would be compromised;

(vi) Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in scope; and

(vii) Whether other similar requests are likely to have a deleterious cumulative effect on the expenditure of agency time and resources.

(2) Among those demands and requests in response to which compliance will ordinarily not be authorized are those with respect to which any of the following factors exists:

(i) The requested disclosure elicits information or documents protected by a statute, Executive Order or regulation, including but not limited to Section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 7(b), or other prohibition from disclosure;

(ii) The requested disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source, confidential informant or undercover agent, or disclose trade secrets or similar confidential commercial or financial information.

(iii) The integrity of the administrative and deliberative processes of SIGAR would be jeopardized;

(iv) The requested disclosure would not be appropriate under the rules of procedure governing the pending litigation or matter in which the demand arose;

(v) The requested disclosure is not appropriate under the relevant substantive law concerning privilege; or

(vi) The requested disclosure, except when production is in camera, would reveal information properly classified or other matters exempt from unrestricted disclosure.

(3) All decisions granting or denying a *Touhy* Request must be in writing and, if a denial, provide the grounds for the decision in summary form based on one or more of the factors listed above.

(f) *Requests for opinion or expert testimony.* (1) Pursuant to 5 CFR 2635.805, an employee shall not provide, with or without compensation, opinion or expert testimony in any

proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances, the General Counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify.

(3) Any expert or opinion testimony by a former employee of SIGAR shall be excepted from the restriction under 5 CFR 2635.805 where the testimony involves only general expertise gained while employed at SIGAR.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, agency counsel will so inform the employee and the requesting party who submitted the demand.

(2) If, despite the determination of the agency counsel that testimony should not be given or documents not be produced, a court of competent jurisdiction or other tribunal orders the employee or former employee to testify and/or produce documents, the employee shall promptly notify the General Counsel of such Order.

(i) If agency counsel determines that no further legal review of, appeal from, or challenge to, the Order will be sought, agency counsel shall promptly inform the employee or former employee of said determination.

(ii) If SIGAR determines to challenge an Order directing testimony or the production of documents in litigation in which the United States is not a party, the employee should not comply with the Order. The employee should appear at the time and place as commanded in the order or subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this section and respectfully inform the Court or other legal tribunal that he/she has been advised by the General Counsel not to provide the requested testimony or documents pursuant to the decision of the United States Supreme Court in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), and this section. Agency counsel will coordinate with the DOJ to file such motions or other pleadings that may be deemed appropriate in the circumstances, such as, for example, a notice to remove the case from state court to Federal court, or a motion to quash or modify the subpoena, or a motion for a protective order.

(h) *Fees.* In the event that a Touhy Request is granted, SIGAR may charge reasonable fees to parties seeking official information or records. Such fees are calculated to reimburse the Government for the expense of providing such information or records, and may include the costs of time expended by SIGAR employees to process and respond to the request; attorney time for reviewing the request and any responsive records and for related legal work in connection with the request; and reasonable expenses generated by materials and equipment used to search for, produce, and copy the responsive information or records.

Dated: March 12, 2012.

Steven J Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

[FR Doc. 2012–6306 Filed 3–15–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AC24

Expansion of 911 Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Rural Utilities Service (RUS) is adopting as a final rule, without change, an interim rule to implement the Expansion of 911 as authorized by Section 315 of the Rural Electrification Act of 1936 (RE Act) as provided for in Section 6107 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The interim rule codified the Secretary's authority to make loans in five areas of eligibility to expand or improve 911 access and integrated emergency communications systems in rural areas for the Telecommunications Loan Program.

DATES: Effective on March 16, 2012, we are adopting as a final rule the interim rule published at 76 FR 56091–56094 on September 12, 2011.

FOR FURTHER INFORMATION CONTACT: David Villano, Assistant Administrator, Telecommunications Program, USDA—Rural Utilities Service, 1400 Independence Avenue SW., STOP 1590, Room 5151–S, Washington, DC 20250–1590. Telephone number: (202) 720–9554, Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Background

A. Introduction

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America and modern emergency communications capabilities are critical to the safety and security of all Americans. The Agency is committed to ensuring that rural America will have access to affordable, reliable, telecommunications and broadband services and to provide a healthy, safe, and prosperous place to live and work.

B. Regulatory History

Following the September 11, 2001, attacks on the United States, significant Congressional attention was placed on weaknesses in the nation's emergency communications capabilities. The ability of rural communities, carriers and emergency responders to keep up with changing communications technologies was and continues to be a concern of emergency response professionals. Interoperability; or the ability of emergency responders from various agencies and jurisdictions to communicate with each other is also a pressing national need.

In 2002, the Congress gave the RUS statutory authority to ''to expand or improve 911 access and integrated emergency communications systems in rural areas'' in section 315 of the RE Act (6102 of the 2002 Farm Security and Rural Investment Act of 2002). No

regulations were ever proposed to implement that section.

In 2008, the Congress re-authorized section 315 of the RE Act and added language to further define eligible loan purposes. It also clarified that projects could be funded from appropriations made to the RUS telecommunications program.

In 2011, the President launched a major initiative to use wireless 4G technology to create a nation-wide interoperable emergency communications network. The plan contemplates using dual-use 4G wireless technologies in rural areas to address public safety and private sector communications needs.

Rural areas face significant challenges in deploying emergency communications systems. The 911 Program Office housed within the National Transportation Safety Administration specifically noted that ''(r)ural and tribal 911 centers face special challenges. They typically serve areas that are large geographically but less-densely populated than urban areas. Because it may take first responders longer to reach the scene of an emergency, call-takers in public safety answering points (PSAPs) serving rural areas may be required to stay on the phone longer with callers or provide more extensive emergency instruction to callers until help arrives. And in medical emergencies, hospitals are often farther away which results in extended transport times, making the ambulance unavailable for other calls in its response area—in areas that may have very limited coverage to begin with. The limited responder resources typical of rural areas can be more quickly overwhelmed in disasters or large-scale incidents.'' The program office went on to observe that ''supporting rural PSAPs is vitally important, particularly because it may take longer for help to arrive in rural areas, and the call-taker may make an even bigger difference in the outcome of an emergency situation.'' (see *http://www.911.gov/911-issues/challenges.html*).

The sixty-minute period immediately following a traumatic injury, like an injury resulting from a car crash is known as the ''golden hour.'' The risks of death or permanent injury increase dramatically if medical attention is not given within that first hour. In rural America, distance and sparse population work against the quick discovery and treatment of injuries resulting from an individual or mass emergency. In rural areas the ability to reach a person in distress can be the difference between life and death or recovery and disability.

Congress twice enacted section 315 to give the RUS flexible financial tools to help rural communities, service providers and governmental entities address their emergency communications needs. By giving clear loan authority to the agency, RUS would have the tools to leverage public and private resources to speed the rural deployment of a dual-use public safety/commercial wireless network, address homeland security communications needs along America's rural international borders; finance enhanced 911 capabilities for carriers and communities to precisely locate a rural wireless call to 911 or to finance next-gen 911 upgrades which would allow citizens to contact 911 via text message or send to emergency responders cell phone photos or short videos of a crime scene or accident location. E911 location accuracy requirements pose unique challenges for rural wireless carriers. The new authority would give the agency clear authority to finance wireless upgrades which relate to public safety and security, even if it does not finance the entire wireless communications systems.

Without this authority, RUS would be very limited in its ability to make financing available to address specific rural emergency communications needs. Without this authority, the RUS telecommunications statute would generally prohibit the agency from financing municipal investments.

As a loan program which must meet the rigorous financial and engineering feasibility requirements, the agency expects no impact on its subsidy rate.

RUS has conducted extensive tribal consultations in 2010 and 2011 related to implementation of new authorities for substantially underserved trust areas. Through those consultations, the agency had discussions with tribal leaders on the entire portfolio of RUS programs. This authority could be useful in addressing some of the emergency communications needs raised by tribal leaders in some of those discussions. Tribal areas are among the regions of the United States with the least connectivity to 911 and other emergency communications systems.

The regulation would simply codify the authority contained in section 315 of the RE Act.

C. Rule Changes

The amendment to 7 CFR part 1735 implements Section 315 of the Rural Electrification Act of 1936 (RE Act) as provided in Section 6107 of the Food, Conservation, and Energy Act of 2008 by clarifying that the expansion of 911 access & integrated interoperable emergency communications systems are eligible purposes of the RE Act.

Section 6107 of the Food, Conservation, and Energy Act of 2008 added Section 315 of RE Act to clearly authorize the RUS to make loans for the following purposes:

(1) 911 access;

(2) Integrated interoperable emergency communications, including multiuse networks that provide commercial or transportation information services in addition to emergency communications services;

(3) Homeland security communications;

(4) Transportation safety communications; or

(5) Location technologies used outside an urbanized area.

The provision also clarified that the Agency could consider State or local 911 fees to be security for a loan under this section and that loans may be made in certain circumstances to an emergency communication equipment provider to accomplish the purposes of this section where a State or municipality may be prohibited from incurring debt.

Comments on the interim rule were required to be received on or before November 14, 2011. We received one comment supporting the amendments to 7 CFR part 1735 by that date. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 1735 and that was published at 76 FR 56091 on September 12, 2011.

Dated: February 24, 2012.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2012–6420 Filed 3–15–12; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1228

RIN 2590–AA41

Private Transfer Fees

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule to restrict the regulated entities—the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and the Federal Home Loan Banks (Banks)—from dealing in mortgages on properties encumbered by certain types of private transfer fee covenants and in certain related securities. This final rule is intended to protect the regulated entities from exposure to mortgages with certain features that may impair their value and increase risk to the financial safety and soundness of the entities. FHFA intends that the regulated entities develop reasonable means and appropriate methods to implement the rule in consultation with FHFA.

DATES: This final rule is effective July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mark D. Laponsky, Deputy General Counsel, (202) 649–3054 or Christopher T. Curtis, Senior Deputy General Counsel, (202) 649–3051 (not toll-free numbers), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Establishment of FHFA

FHFA is an independent agency of the federal government and was established by the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, to regulate and oversee the regulated entities.[1] HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (''Safety and Soundness Act'') and the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) (Bank Act) to enhance the authorities and responsibilities of the new agency.

FHFA's regulatory mission is to ensure, among other things, that each of the regulated entities ''operates in a safe and sound manner'' and that their ''operations and activities * * * foster liquid, efficient, competitive, and resilient national housing finance markets.'' (12 U.S.C. 4513(a)(1)(B)). HERA authorizes FHFA to ''issue any regulations * * * necessary to carry out'' that mission and ''to ensure that the purposes of this chapter and the authorizing statutes are accomplished.'' (12 U.S.C. 4526(a)). This same grant of rulemaking authority also enables FHFA to draw on its cease-and-desist powers (12 U.S.C. 4631) to prohibit by general rule the same types of unsafe and unsound practices it would be empowered to address through case-by-case adjudications.[2]

Private Transfer Fee Covenants and FHFA's Proposed Guidance

On August 16, 2010, FHFA published for comment a notice of proposed guidance that would have advised the Enterprises and the Banks not to purchase, or accept as collateral for advances, mortgages on property subject to any private transfer fee covenants. (75 FR 49932).

As described in the proposed guidance, private transfer fee covenants may be attached to real property by the owner or another private party—frequently, the property developer—and provide for a transfer fee to be paid to an identified third party—such as the developer or its trustee—upon each resale of the property. The fee typically is stated as a fixed amount or as a percentage, such as one percent of the property's sales price, and often exists for a period of 99 years.

Many states have enacted legislation to address private transfer fee covenants. State legislative solutions are diverse and include permitting the covenants subject to recordation and disclosure requirements[3] and prohibiting them when fees are paid to private third parties, with exceptions for homeowners' associations, condominiums, cooperatives, and similar organizations that use the fees to directly benefit the properties encumbered by the covenants.[4]

In the proposed guidance and the proposed rule that followed, FHFA expressed concerns that private transfer fees may be used to fund purely private continuous streams of income for select market participants either directly or through securitized investment vehicles, may not benefit homeowners or the properties involved, and, therefore, could impair the safety and soundness of the regulated entities that invest in or purchase mortgages secured by such properties as collateral. Another concern expressed about private transfer fees is the adequacy of disclosure of these covenants which, in turn, may impede the marketability and valuation of the encumbered property. Consumers may also be unaware that a fee applies even if the resale price of their home drops below the original purchase price.

History of the Rule

FHFA's proposed rule grew out of its consideration of over 4,200 comments received on the proposed guidance. Commenters included the Community Associations Institute (CAI), American Land Title Association (ALTA), National Association of Realtors (NAR), Freehold Capital Partners (Freehold), American College of Real Estate Lawyers, Institute of Real Estate Management, Coalition to Stop Wall Street Home Resale Fees, Sierra Club numerous state and regional real estate agent associations, real estate companies, numerous homeowners', cooperative, and condominium associations and individuals living within such associations, community associations and other nonprofit organizations, conservation funds and land trusts and foundations, housing and conservation boards, state housing and community development agencies, state natural resources agencies, developers, builders, appraisers, accountants, title companies, several Federal Home Loan Banks, members of the U.S. House of Representatives, State Governors, law firms (writing on their own behalf and on behalf of their clients), and other individuals and organizations who wrote to express a wide range of views on private transfer fee covenants. After receiving and reviewing the comments, FHFA

[1] *See* Division A, titled the Federal Housing Finance Regulatory Reform Act of 2008, Title I, section 1101 *et seq.* of HERA.

[2] *See Lincoln Savings & Loan Ass'n* v. *Federal Home Loan Bank Board,* 856 F.2d 1558, 1562–63 (D.C. Cir. 1988) (upholding FHLBB regulation prohibiting certain unsafe and unsound practices based on cease-and-desist powers); *Independent Bankers Ass'n of America* v. *Heimann,* 613 F.2d 1164, 1168–69 (D.C. Cir. 1980) (upholding OCC regulation prohibiting certain unsafe and unsound practices based on cease-and-desist powers). As further discussed below, FHFA has found that it constitutes an unsafe and unsound practice to participate in any market for mortgages on property encumbered by certain private transfer fees. To allow full public participation and for the sake of efficiency, FHFA has elected to require the regulated entities to cease and desist from these practices by issuing a rule of general applicability rather than by instituting individual proceedings.

[3] *E.g.,* Cal. Civ. Code §§ 1098 and 1098.5 (2010).

[4] *E.g.,* Del. Code Ann. Tit. 25, § 319 (2010); Minn. Stat. §§ 513.73 to 513.76 (2010); N.C. Gen. Stat. §§ 39A–1 to 39A–3 (2010).

determined to address the subject through regulation rather than through guidance.

On February 8, 2011, FHFA published a Notice of Proposed Rulemaking (76 FR 6702) inviting comments on a proposal that incorporated a number of changes to the substance of the former proposed guidance. The proposed rule reflected a narrower focus than the guidance and limited the private transfer fees to which it would be applicable. Among other things, the proposed rule sought comment on an approach to refine the definition of transfer fees eligible for regulated entity investment to include those that provided a direct benefit to the property of the homeowner through maintenance or enhancement of common areas or the structures of multifamily units or the property of the homeowner through support, for instance, of homeowners' or community associations. FHFA also proposed to make the rule prospective in effect, and apply it only to private transfer fee covenants created after the publication date of the proposed rule (February 8, 2011). FHFA proposed further to allow an implementation period of 120 days for the regulated entities within which they might use reasonable means to achieve compliance. FHFA received over one thousand comments on the proposed rule, discussed in more detail below.

In developing the final rule, FHFA reviewed the comments received on the proposed rule as well as, again, the comments received on the previously proposed guidance. In addition to making the intuitive objection that it is wrong to impose a fee on homeowners for exercising the right to sell their own homes, commenters criticized private transfer fees for many reasons in both rounds of comment:

(1) That the impact of transfer fees on property values is uncertain and potentially adverse because of uncertainty over how often the property will be sold during the duration of the covenant; and that, for that reason as well as because property values go up and down, and therefore the fee as well (in the majority of cases in which it is a percentage of property value), the fees paid are likely to not be aligned with the value received in return, if any.

(2) That there is no price transparency because buyers are not offered a choice between a property encumbered by the transfer fee covenant and the same property at a different price without the covenant, or between comparable properties with and without the covenant.

(3) That in many cases the transfer fee is not assessed on the first buyer, making the covenant less likely to be reflected in the initial sale price but more likely to be a surprise upon attempted resale. Similarly, that it is difficult for a buyer to predict the effect of the covenant on the property's value upon resale to subsequent buyers.

(4) That private transfer fees exploit the lack of transparency of complex real estate transactions; further, that they are not normally discoverable until well after the sale contract is executed, when a title search is performed prior to closing, with unpredictable effects on whether the sale will close or whether the price will be renegotiated.

(5) That private transfer fee covenants present questions of legal enforceability, especially if they are not associated with provision of a direct benefit to the burdened property.

These criticisms contribute to FHFA's concerns about the reliability with which properties subject to such encumbrances may be valued, posing safety and soundness risk to FHFA's regulated entities. Many of these concerns are lessened when the fees provide a direct benefit to the burdened properties, and, as described in more detail below, the final rule follows the approach of the proposed rule in excepting defined classes of fee covenants that are associated with a direct benefit.

This rule does not prohibit any private transfer fees. Rather, pursuant to FHFA's safety and soundness authorities under the Safety and Soundness Act and the Bank Act, as augmented with respect to the Enterprises by its additional plenary powers as Conservator, it prospectively instructs the regulated entities that participating in any market for mortgages on property encumbered by certain private transfer fees is an unsafe and unsound practice in which they shall not engage. The rule also identifies the types of private transfer fee covenants that will not disqualify a mortgage for investment.

II. Public Comments on the Proposed Rule

The public comment period on the proposed rule closed on April 11, 2011. FHFA received over 1,000 comments on all aspects of the proposed rule. Many of the organizations and constituencies that commented on the proposed guidance also commented on the proposed rule. However, the comments differed from those received on the proposed guidance. A very small minority of commenters preferred the more restrictive approach in the proposed guidance. The majority of comments supported the proposed rule because, unlike the guidance, it would not apply to existing transfer fees and because those fees that directly benefit the property on which they are assessed would not disqualify a mortgage for regulated entity investment.

Most comments centered on refinements to the proposed rule to assure it would not inadvertently disqualify certain fee arrangements through omission from the definitions in the proposed rule; on changes to expand parties and activities covered by the ''direct benefit'' test; and on objections to the proposed rule either because it deviated from the original proposal to disqualify mortgages on property encumbered by any private transfer fee covenant or because it continued to make ineligible for investment mortgages encumbered by fees affecting certain interest groups or business entities.

The comments can be generally characterized as falling into four categories: (1) Comments endorsing the proposed rule; (2) comments generally supporting the proposal, but suggesting specific changes; (3) comments opposed to core elements of the proposed rule; and, (4) comments asserting that the rule lacks prerequisites to proper promulgation. FHFA has accepted suggestions from a number of commenters and made adjustments to the rule to address these comments.

III. Discussion of Public Comments

Supporting the Rule as Proposed

Commenters such as ALTA, the Coalition to Stop Wall Street Home Resale Fees, and the Conference of State Bank Supervisors (CSBS) endorsed the proposed rule's ban on investing in mortgages encumbered with private transfer fee covenants and FHFA's adoption of a ''direct benefit'' test for permissible covenants. ALTA did note that how the regulated entities would enforce the rule would be of interest, as the title search and examination process would occur late in the home-buying process and that transfer fees often are difficult to detect, if not recorded.

With respect to implementation, ALTA's concern was echoed by other commenters, including the Federal Home Loan Banks as regulated entities. FHFA intends that the regulated entities develop reasonable means for implementation of the regulation in consultation with FHFA. Possible methods include incorporating appropriate restrictions in the seller-servicer guides of the Enterprises; using representations and warranties; or, in the case of the Federal Home Loan Banks, perhaps requiring mortgages to

conform to Enterprise purchase standards. The regulated entities have a great deal of experience in developing methods of segregating mortgages in which investment is permissible and those in which investment is not.

The CSBS supported the proposed rule as establishing a ''regulatory floor'' for the regulated entities. CSBS stated that this ''floor'' will ensure that the states can continue to enact practical regulations affecting private transfer fees; and that state level supervision of these fees ensures that the regulators are accessible to those they regulate, understand the applicable state laws and are in tune with the local economy. The Joint Editorial Board for Uniform Real Property Acts (JEBURPA) and CSBS were among the commenters urging FHFA to respect state law and avoid preemption of state laws regulating these fees. FHFA believes that § 1228.4 of the final rule adequately addresses this issue.

Support With Modifications

Many commenters expressed support for the proposed rule, but requested modifications primarily to definitions that would clarify its application.

One Thousand Yards

Hyatt & Stubblefield (H&S) and Sproul Trost (Sproul), two real estate law firms, along with CAI, the National Association of Homebuilders (NAHB), the Mortgage Bankers' Association (MBA), JEBURPA, and others criticized the proposal's ''adjacent or contiguous property'' requirement as ambiguous when considered with other definitions, unworkable, and too restrictive, particularly the requirement that property be located within 1,000 yards of the burdened community in order to be considered ''adjacent or contiguous.'' As described below, FHFA has decided to delete the 1,000-yard limitation. The rule does address the issue of properties that may not be adjacent or contiguous, but with a test of direct benefit rather than location.

Breadth of ''Direct Benefit,'' ''Private Transfer Fees,'' and Exceptions

A significant number of commenters, including NAHB, echoed the CAI comment to broaden the definition of ''direct benefit'' to embrace all duties and responsibilities that residents ordinarily expect, or choose to require, community or homeowner associations to fulfill. FHFA intends to encompass routine functions of property management and ordinary obligations of governing associations. However, to automatically include any activity that such associations may engage in as a ''direct benefit'' may not meet the prudential need that the financial burden of such fees be balanced by value actually added to the encumbered property.

Similarly, JEBURPA, noting that the proposed definition of ''private transfer fee'' contains only four exclusions (fees imposed by court decree; fees payable to the Federal government or a State or local government; fees arising out of a mechanic's lien; and fees arising from an option to purchase land), suggested that the definition should be expanded to exclude loan assumption fees; loan prepayment fees; and deferred purchase price payments or appreciation sharing contracts. Other comments also sought various expansions to the definition, and FHFA has reviewed these comments and state laws with diverse exceptions. CAI recommended using the term ''community transfer fee covenant'' rather than ''excepted transfer fee covenant.'' CAI stated that this would more clearly define the fees that FHFA seeks to disqualify by specifically outlining fees FHFA does not seek to restrict.

Patton Boggs, a law firm writing on behalf of its client, Associations, Inc. (Associa), explained that Associa's members support property owners by providing various services, including closing services, to homeowners' associations. While Associa believed these services fall outside the scope of the proposed rule, Patton Boggs suggested adding a fifth exclusion to the private transfer fee definition to codify its understanding. The H&S law firm stated its general support for the proposed rule as an improvement over the proposed guidance, but also objected to the definition of ''direct benefit.'' H&S argued alternatively that the definition should be expanded to include a number of additional qualifying uses or deleted in favor of revising the definition of ''excepted transfer fee covenant'' to be more inclusive.

FHFA has made changes in the proposed rule, described below, in response to these comments.

Internal Revenue Code and Sections 501(c)(3) and 501(c)(4) Charitable Status

Among others, the Natural Resources Defense Council (NRDC), Coalition to Save Community Benefits (CSCB), the Sierra Club, H&S, Sproul, Endangered Habitats League (EHL), and Shute, Mihaly & Weinberger, LLP, a law firm writing on behalf of several environmental groups, objected to the requirement for covenants to directly and exclusively benefit encumbered property, and the reference to usage fee charges in the event of general public use, as well as the limited definition of ''covered association.'' The principal theme common to these objections is an assertion that the definitions taken together, and particularly in view of requirements for exclusivity of benefits and possible charges for public use, are too restrictive to benefit charitable organizations. These commenters urge a broader exception for not-for-profit organizations that allows their covenants special treatment, asserting that FHFA's proposal is inconsistent with charitable purposes, which require non-exclusivity of benefits in order to meet the public purposes requirement for tax exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code (IRC).

The California Building Industry Association (CBIA) proposed a revision that embraced the concept of a ''community benefits covenant'' approach to accommodate nonprofit organizations that administer transfer fees. According to CBIA, this approach would allow non-profits to meet the Internal Revenue Service requirements for nonprofit organizations to engage in charitable and public purposes.

In response to the comments questioning the consistency between the direct benefit requirement and requirements for certain types of tax-exempt status under the IRC, FHFA has made certain changes to the section of the rule on direct benefit that may address some concerns expressed in the comments. FHFA takes no position, however, with respect to potential tax consequences for a nonprofit organization that may result from the administration of transfer fees or that otherwise may be associated with the encumbrance of a property with a private transfer fee covenant.

Recording, Disclosures, and Implementation

Recording and pre-purchase and pre-foreclosure disclosure requirements were among significant suggestions offered by many commenters including MBA, EHL, CSCB, and the Consumer Mortgage Coalition. Commenters recommended recording and disclosure of private transfer fee covenants as additional measures to protect homebuyers and consumers; as ameliorating implementation difficulties for the regulated entities; and a complete alternative to the rule's method of identifying fees that disqualify mortgages for investment. FHFA views recording and disclosure as valuable adjuncts to consumer and lender awareness of fees and perhaps a ''best practice'' that might be considered

by appropriate state or federal authorities. However, adopting such requirements for real estate transactions potentially injects FHFA into issues of state policy and matters of consumer protection. FHFA's core role is as prudential and mission supervisor of its regulated entities, not as a general regulator of real estate markets and practices. The provisions of the rule focus on those aspects of private transfer fee practice that may affect the value of property underlying mortgages held by the regulated entities. FHFA recognizes that future action might be required to revise the rule. FHFA will assess the effectiveness of this rule, deferring consideration of specific transaction requirements to allow state or other federal policymakers to address these issues in the first instance.

With respect to implementation, although recording and disclosure may make it easier for the regulated entities, FHFA does not intend to establish by rule detailed instructions for how regulated entities will implement the rule. However, all regulated entities have experience in establishing controls to segregate mortgages in which they can invest from those which are disqualified. As stated by FHFA when publishing the proposed rule, acceptable compliance with the final rule may be achieved through a Federal Home Loan Bank's quality control review process or through the Banks' collateral review process, coupled with appropriate direction to their members, as well as robust representations, warranties, or certifications. The Enterprises would be expected to use similar compliance tools such as appropriate provisions in seller-servicer guides, representations and warranties, and quality-control processes. FHFA does not expect that the Federal Home Loan Banks must use such compliance tools with respect to Enterprise securities, because Enterprise securities issued prospectively should comply with the provisions of the final rule. FHFA will work with the regulated entities to develop appropriate methods to implement the rule.

The suggestion offered by some commenters that recording and disclosure are an alternative to the rule's description of covenants that qualify for investment is misplaced. The rule is not directed at controlling private transfer fee covenants. It is instead directed at limiting the risk to regulated entities when investing in property with values that may be compromised by such covenants. Recording and disclosure requirements do not distinguish among levels of risk, but only make identification of an existing covenant easier. Those details, as noted above, are matters best left to state law or other appropriate federal consumer-focused regulation.

Prospective Application

A variety of commenters, including Federal Home Loan Banks, law firms, and non-profit organizations, expressed concerns over the date on which the rule would apply. The proposed rule provided that regulated entity compliance was not required until after publication of the final rule. To comply with the rule, regulated entities cannot trade in disqualified ''mortgages on properties encumbered by private transfer fee covenants created on or after'' February 8, 2011. The obligation on the regulated entities is unequivocally prospective—''The regulated entities shall comply with this part not later than 120 days'' after publication of the final rule. The date—February 8, 2011—identifies the private transfer fee covenants to which the regulated entities are to apply the rule's qualification and disqualification tests.

The structure of the proposed rule is clear that the language ''created on or after'' refers to the date on which the covenant that encumbers the land was created. Covenants that encumbered land before February 8, 2011 do not disqualify mortgages. It is FHFA's intention that the date of creation is the date on which the covenant became legally enforceable with respect to the specific encumbered property that is the subject of a mortgage, whether under state law that is the date of recording or some other date.

The only obligations that the proposed rule would impose are forward looking, and they apply only to the regulated entities. The rule regulates neither private transfer fee covenants nor market participants who create or use them.

National Cable & Telecommunications Association v. *Federal Communications Commission,* 567 F.3d 659 (D.C. Cir. 2009), is instructive with respect to applying retroactivity principles to this rule. In that case, the Federal Communications Commission (FCC) promulgated a rule that prohibited the enforcement of pre-existing exclusivity contracts between cable operators and multi-unit developments, like apartment buildings. The court upheld the rule and determined that it was not an impermissibly retroactive regulation. *Id.* at 671–72.

In *National Cable,* the petitioners asserted that applying the rule to existing contracts violated the presumption against retroactivity contained in the Administrative Procedure Act's ''future effect'' requirement and was impermissible because of the rule's so-called ''secondary retroactivity''; that is, secondary effects of the rule that the FCC failed to consider. The court first emphasized that ''[w]e have thus repeatedly made clear that an agency order that only 'upsets expectations based on prior law is not retroactive,' *Mobile Relay Associates* v. *FCC,* 457 F.3d [1, 11 (D.C. Cir. 2006)].'' 567 F.3d at 670.

Even if the proposed rule affects the value of private transfer fee covenants entered between February 8, 2011 and the date of the regulation, it has ''not rendered [those covenants] illegal or otherwise sanctionable. 'It is often the case that a business will undertake a certain course of conduct based on the current law, and will then find its expectations frustrated when the law changes.' *Chemical Waste Management, Inc.* v. *U.S. Environmental Protection Agency* (EPA), 869 F.2d 1526, 1536 (D.C. Cir. 1989). Such expectations, however legitimate, cannot furnish a sufficient basis for identifying impermissibly retroactive rules.'' 567 F.3d at 670. *See also, Landgraf* v. *USI Film Products,* 511 U.S. 244, 269 (1994); *Arkema, Inc.* v. *EPA,* 618 F.3d 1, 7 (D.C. Cir. 2010) (''A rule operates retroactively if it takes away or impairs vested rights.''). A retroactive rule ''alter[s] the *past* legal consequences of past actions.'' *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 219 (Scalia, J., concurring) (emphasis in original). If a vested right is not impaired, the rule is not retroactive. *See Arkema,* 518 F.3d at 7.

This rule might frustrate an assumption that an encumbered mortgage would be eligible for purchase by a regulated entity, but it does not extinguish any third-party right to have a regulated entity trade in that mortgage, because there is no such right. At any time in the past, regulated entities could refuse to make such purchases; no one possessed a right to require them to be purchased and no regulated entity had any obligation to purchase, invest or otherwise trade in them. Since the rule does not impair a vested right, the rule is not retroactive.

''Secondary retroactivity'' exists where a rule ''affects a regulated entity's investment made in reliance on the regulatory status quo before the rule's promulgation.'' *Mobile Relay,* 457 F.3d at 11. It invalidates a rule only if the rule is arbitrary or capricious. *See Bowen,* 488 U.S. at 219 (Scalia, J. concurring); *Mobile Relay,* 457 F.3d at 11. An assessment and balancing of

benefits and burdens is required if a rule creates such secondary effects. *National Cable,* 567 F.3d at 671–72.

Through this rule, FHFA is protecting regulated entities from investments with certain features that impair their value and pose unacceptable levels of risk to the financial safety and soundness of the entities. The regulation is supported by the proliferating use of private transfer fees for purposes unrelated to the encumbered property and proposals to securitize streams of income from them that will never be returned to the property or property owner. By strengthening the safety and soundness of the regulated entities, the rule furthers the central mission of FHFA. It is abundantly clear that FHFA has considered secondary effects. Despite the fact that the rule does not prohibit covenants, it contains a grandfathering provision to allow the regulated entities to trade in mortgages encumbered by otherwise disqualifying covenants if the covenants were created before a date certain. The date certain of February 8, 2011, is the date on which the rule was proposed. It was chosen as a rational date at which markets and market participants could adjust their behavior in case a rule unfavorable to them was eventually adopted and as a means to avoid market disruption that would occur if developers and others attempted to anticipate the forthcoming rule by placing disqualifying covenants on large numbers of previously unencumbered properties during the time that a final rule was being considered. This is an acceptable practice among regulatory agencies.

In *National Cable* the court upheld the rule despite the fact that ''by significantly altering the bargained-for benefits of now unenforceable exclusivity agreements, the Commission has undoubtedly created the kinds of secondary retroactive effects that require agency attention and balancing'' because the FCC in fact conducted the balancing analysis and concluded that ''banning enforcement of existing contracts was essential.'' 567 F.3d at 671. Like FHFA, the FCC concluded that the public interest required it to ''prevent the harms from existing contracts 'to continue for years,' or 'to continue indefinitely in the cases of exclusivity clauses that last in perpetuity.'' *Id.* The court noted that, as FHFA has done here, the FCC considered legitimate expectations and felt they were relatively undisturbed because states and the FCC had been scrutinizing the prohibited arrangements for some time. *Id.*

FHFA has fully considered the benefits and burdens and primary and secondary effects of the rule. FHFA concludes that this rule is not impermissibly retroactive and that this conclusion is supported by applicable precedent.

Opposition to Core Elements of the Rule

Some comments opposed elements so fundamental to the proposed rule that changing or eliminating them as requested would vitiate the purpose of the regulation itself. FHFA considered all comments and assessed whether to issue this rule as a regulation, guidance, or not at all. FHFA determined that the concerns, risks, and issues leading it to propose guidance in the first place have not abated and the comments to the proposed rule reinforce that the housing finance system and its participants are better served by the certainty of a rule on this subject. Consequently, FHFA has not accepted suggestions that would serve to make the rule ineffective and undermine its core principles.

One of the principal objectors to the fundamental underpinnings of the proposed rule is Freehold, joined by law firms, developers, and some builders. These commenters claim that private, profit-motivated entities can use private transfer fees (characterized by them as ''capital recovery fees,'' although the fees are not tied to any particular capital investment) to provide financial benefits to homeowners and communities by distributing development and infrastructure costs to ''future'' homeowners, rather than embedding all of these costs in the sales price to the initial homebuyer. They generally liken these benefits to those provided by homeowner associations and similar entities that provide ongoing support to encumbered properties. This view is far from universal, as many builders and the NAHB oppose private transfer fee covenants of this sort.

Freehold and other proponents of private transfer fees contend that creating a right for the developer to receive a future stream of transfer fee payments from successive homebuyers allows the developer to recover investment costs more quickly, enabling more capital investment in new development. This is to be accomplished by securitizing that revenue stream, and selling the security to investors who have no connection to the encumbered property. The developer receives the sale proceeds of the security irrespective of the subsequent market value of the developed property. If the stream of income is not securitized and sold to investors, or otherwise assigned, the developer receives it over the life of the covenant, usually 99 years. Advocates for this model argue that the fees allow developers to pursue or complete projects not otherwise viable due to a housing market downturn. As new developments are completed, they assert, jobs are created and the economy in general benefits. Additionally, proponents claim that by spreading costs into the future, each homebuyer benefits from a price that is lower than if the full costs of the development were recovered from the initial purchaser. However, another commenter, the Center for Regulatory Effectiveness (CRE), challenged Freehold's analysis, finding that private transfer fees paid to developers or to unrelated third parties (as opposed to those directly benefiting owners of burdened property) produce negligible benefits for homeowners, while imposing additional costs and burdens, such as increased difficulty of selling a home encumbered by a private transfer fee. FHFA has carefully considered both analyses and finds CRE's comments more persuasive.

Freehold argues that the purpose of the private transfer fee revenue stream is to fund infrastructure investments. However, FHFA has determined that these arrangements do not require that the revenue stream be spent on infrastructure improvements. To the contrary, Freehold's marketing literature to developers, available on its Web site and cited in CRE's comment on the proposed rule, describes private transfer fees as a means to ''extract more value from your real estate projects.'' *See http://freeholdcapitalpartners.com/forms/freehold_brochure.pdf.* That ''value'' is not used to fund any part of the development, precisely because it is a future revenue stream and not cash in hand to the developer. To FHFA's knowledge, no securities based on these revenue streams have ever been sold, so the asserted benefits of this arrangement to developers as a means of funding projects are speculative.

Even as a matter of principle, the arrangement that Freehold markets to developers cannot work to the benefit of both developers and homebuyers as Freehold argues. In a fully informed, freely functioning marketplace, the initial sale price of a property subject to the covenants should be reduced by the present value of the expected future stream of transfer fee payments with which the property is burdened. The price of the security that the developer sells should also reflect the present value of the expected future stream of transfer fee payments, so there is no net creation of value to the developer. In fact, because the financial intermediaries who would manage the transaction would extract a fee, and

because Freehold also would extract a fee, the amount received by the developer would actually be *less* than the amount the developer loses because of the reduction in the sale price of the burdened properties. The developer gains a benefit only if the home buyers *do not* reduce the price they are willing to pay by the present value of the future transfer fee burden or even close to it.[5] The arrangement does not work to the benefit of both developers and homebuyers.

FHFA has carefully reviewed and considered Freehold's analysis and has concluded that Freehold's assertion that private transfer fees are economically beneficial to homebuyers and to the economy is based on assumptions that are not verifiable and lack empirical data. In particular, Freehold's present value assertions rest on assumptions about cash flow streams and appropriate discount rates that are unidentified, unexplained, and lack validation.

FHFA does not agree that private transfer fees appropriately and equitably spread initial developer costs across future homeowners. Development costs ostensibly recovered by these fees do not have a value that extends to the typical 99-year life of the covenant. Initial improvements by a developer depreciate in value over a much shorter period of time. In a traditional development, the initial home price captures the value of the developer's investment. Resale prices capture remaining value of the improvement. This method of capital recovery is more equitable and less disruptive to home resale markets than charging future generations of homeowners for capital investments and residual values of the improvements funded by those investments. Instead, FHFA finds that the core purpose behind the Freehold model is reflected in Freehold's own marketing material heralding the returns to developers and remote investors from generations-long extraction of value from land at the expense of successive homebuyers. Nothing in the Freehold model demonstrates that any benefit is ever returned to the property burdened by private transfer fee covenants in exchange for repeated and potentially escalating charges.

A variety of non-profit environmental groups asserted that private transfer fee covenants can be used to promote environmental protections and resource conservation, which they claim inures to the benefit of encumbered property and to society at large. The benefits are argued to transcend the property and property owners and therefore, the commenters assert, the covenants have indirect and non-exclusive benefits that should not cause a mortgage to be ineligible for investment. Commenters opposed to such use of private transfer fees argue that developers are willing to impose private transfer fee covenants on properties in settlement of environmental and similar litigation, because the resulting fees are not paid by the developer but shifted to the homeowners; a phenomenon exacerbated by the fact that the initial sale from developer to first buyer is typically exempt from the fee.

FHFA does not take a position on the merits of the environmental, conservation, or similar projects that are funded by private transfer fees. Instead, in its capacity as the safety and soundness regulator of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks and as the Conservator of the Enterprises, FHFA addresses the subject from the perspective of the valuation issues that such use of private transfer fees may cause for the reasons enumerated above: Unpredictability of future sales and, therefore, the magnitude of the financial burden on the encumbered properties;[6] lack of transparency to sellers and purchasers; and the practice of shifting the payment obligation to future buyers who are not privy to the settlement with environmental groups or to the initial transaction with the developer.[7] As a result, FHFA declines to recognize such private transfer fee covenants as excepted from disqualification unless the activities they fund provide a direct benefit to the burdened properties, as defined in the rule and discussed further below. The environmental commenters' reliance on the National Environmental Policy Act of 1969, as amended (NEPA), (42 U.S.C. 4321 *et seq.*), is also discussed below.

Regulatory Prerequisites

A number of commenters asserted that FHFA failed to satisfy prerequisites for rulemaking. Through counsel, a variety of environmental groups, including the NRDC, claimed that FHFA is required to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under NEPA before proceeding with the rule. Freehold contended that FHFA is not complying with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601through 612, because the regulation impacts small business entities and the RFA requires FHFA to undertake a detailed analysis and to adopt the least restrictive means for accomplishing the agency's objectives while minimizing the economic impact on small entities.

For reasons explained below, FHFA disagrees with both of these comments. Neither an EIS nor an EA is required for this rule. The RFA was satisfied by the certification contained in the proposed rule and repeated in this final rule.

National Environmental Policy Act

Before addressing the commenters' legal arguments, it is useful to review the background in which their private transfer fee practices have arisen. As described above, certain private transfer fees have been put in place to resolve claims of adverse environmental or other impacts that are asserted to result from proposed real estate developments—claims that would otherwise be resolved in court, or before government permitting bodies. Specifically, particular arrangements that commenters have held up as examples of how they would like to continue using private transfer fees have resulted from settlement of litigation or as a negotiated means to obtain government approval.[8] In response to

[5] Why might developers and Freehold expect this to be the case? There are at least two possible explanations. First, behavioral economists argue that consumers discount future negative outcomes at excessively high rates, a phenomenon that they call ''hyperbolic discounting.'' *See* Bar-Gill, *Seduction by Plastic,* 98 Nw. U. L. Rev. 1373, 1396–99 (2004); Heidhues & Koszegi, ''Exploiting Naïvete About Self-Control in the Credit Market'' (Institute for Behavioral Economics, Sept. 2009). Second, a substantial number of commenters argue that transfer fees are inadequately disclosed, both as a matter of clarity and as a matter of timing in the real estate purchase transaction, and urge FHFA to establish disclosure standards. This phenomenon could be reinforced by the fact that Freehold's fees—as well as most of those supporting environmental and conservation projects, discussed below—are not charged to the initial buyer of the burdened property, but only to subsequent buyers. That is, the arrangement is structured to ensure that the fees are paid only by parties who are remote from the creation of the covenants and least likely to be aware of them or appreciative of their impact. As explained above, FHFA does not believe that it is its role to fashion or to mandate appropriate disclosures, nor does FHFA take a position on behavioral economics or any of its theories. It is enough for FHFA to recognize that the effect of transfer fee covenants on property values is uncertain, and that the Freehold arrangement extracts value from property that is not returned to it.

[6] ''If the fee has a 20-year term, for example, one house may be sold three times and assessed three fees while another house is not sold and, consequently, has no fee.'' ''Using Real Estate Transfer Fees to Deliver Community Projects,'' in *Conservation Frontiers: Reports from the California Council of Land Trusts* (Feb. 2008), p. 3, *at http://www.calandtrusts.org/download.cfm?ID=24427.*

[7] ''[T]he original sale of a house has not been assessed in most cases, but the fee does apply to all subsequent sales.'' *Id.*

[8] *See* ''Using Real Estate Transfer Fees to Deliver Community Projects,'' in *Conservation Frontiers: Reports from the California Council of Land Trusts*

Continued

those environmental and other concerns, various possible tools and outcomes are possible in such cases: a development may be blocked; restricted in other ways; or mitigating measures may be funded using means other than private transfer fees, such as by regular assessments that are more transparent and more readily translatable into property valuation than private transfer fees,[9] or by a lump sum from sale of part of the subject property. Other tools may be available as well and, in some cases, the deciding authority would conclude that the development does not pose the concerns that are claimed and can proceed without restriction. Not one of the letters FHFA received raising environmental concerns about the proposed rule has explained why, or even asserted that, private transfer fees are the only or even a specially valuable tool for dealing with the concerns that have been asserted in comparison with other tools, or why they are the tool of preference, if they are.[10] In each case, the environmental and other impacts that are asserted do not result from FHFA's proposed rule on private transfer fees, but from the real estate development to which the commenters object. That federal regulations may make one or another financing tool that the commenters might wish to use less attractive does not mean that those regulations cause environmental impacts.

Even focusing only on private transfer fees, contrary to a commenter's assertion that FHFA ''proposed [the] elimination of private transfer fees,'' the rule does not restrict or ban them, but restricts its regulated entities from buying mortgages backed by real estate subject to certain types of covenants. Mortgages held in portfolio or securitized in private secondary markets are not affected by the rule.

For these reasons, for purposes of the NEPA, FHFA's rule is financial and economic; it is not ''a major Federal action[] *significantly affecting the quality of the human environment.''* 42 U.S.C. 4332. NEPA does not require the analysis commenters assert without an ''injury to the environment; an economic injury will not suffice.'' *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, ICA* v. *United States Department of Agriculture,* 415 F.3d 1078, 1103 (9th Cir. 2005) (emphasis added). There must be some causal connection between the rule and the environmental injury. The environmental injury the commenters appear to assert is not caused by FHFA's rule; at best it has a tenuous and speculative nexus to the rule.

The commenters assume that without unrestricted access to a federally supported secondary mortgage market for private transfer fee encumbered mortgages, their environmental protection activities will not just be inconvenienced, but subverted and permanently stopped. The agency recognized that some private transfer fees are used to fund desirable ends, some of which are environmental, social, or cultural. They still can be used for those purposes, but mortgages on property encumbered by them may not qualify for the federally supported secondary mortgage market unless they contain the features required by the rule. Considering all private transfer fee covenants, the rule allows regulated entity investment when property is encumbered by a grandfathered covenant, and also when the covenant creates a direct benefit to the encumbered property. In these circumstances, the regulated entities may invest in encumbered property. That leaves, as the asserted environmental injury, the inability to trade in the secondary mortgage market mortgages on property encumbered by those private transfer fees that do not return a benefit to the encumbered property, and that are not grandfathered as related to a pre-existing litigation settlement or government-approved agreement. No explanation has been offered why regulation of the mortgage market will result in developments with detrimental environmental impacts or that cannot be remedied by other means that do not pose risks to the safety and soundness of the regulated entities.

FHFA is fundamentally responsible for the safety and soundness of the regulated entities. Its statutory command is to ensure their financial safety and soundness. FHFA cannot allow speculative considerations such as those offered by the commenters to interrupt or subordinate its statutory obligation to prohibit the regulated entities from engaging in unsafe and unsound practices. Congress did not condition FHFA's safety and soundness determinations on assessments of their environmental impact. Like the Federal Energy Regulatory Commission in *Grand Council of the Crees* v. *Federal Energy Regulatory Commission* (FERC), even if the proposed rule had an environmental impact, when acting to fulfill its independent statutory command to ensure safety and soundness, FHFA would not be required to conduct an EIS or an EA. 198 F.3d 950, 953–54, 956 (D.C. Cir. 2000) (when setting ''just and reasonable rates'' as commanded by statute, FERC was not required to conduct an EIS or EA, despite the environmental consequences of the action).

Regulatory Flexibility Act

Both the proposed rule and this final rule comply with the RFA, 5 U.S.C. 601 through 612, because they contain FHFA's certification that the rule will not have a significant economic impact on a substantial number of small entities. This certification obviates the need for the detailed analysis commenters seek. *See* 5 U.S.C. 605(b).

The only impacts that require an RFA analysis are the direct impacts of the rule on small entities that are subject to the rule. *See, e.g., Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 869 (D.C. Cir. 2001) (citing cases ''consistently reject[ing] the contention that the [RFA] applies to small businesses indirectly affected by the regulation of other entities''); *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327, 343 (D.C. Cir. 1985) (where rule directly regulated utilities, agency did not have to analyze economic impact on wholesale customers of utilities); *National Women, Infants, and Children Grocers Association* v. *Food and Nutrition Service,* 416 F. Supp. 2d 92, 108–10 (D.D.C. 2006) (where rule regulated state agencies, agency did not have to analyze impact on vendors that did business with state agencies). The only entities subject to this rule, and the only entities on which the rule will have direct impact, are the FHFA regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—none of which is small. Therefore, an analysis under the RFA is not required. FHFA's certification is sufficient.

(Feb. 2008), describing the litigation origin of the Roseville and Martis Valley private transfer fee arrangements in Placer County, California. Both of those arrangements are discussed in the comment letters FHFA has received. One comment letter described the Plum Creek development in Maine, in which private transfer fees feature prominently in an arrangement arrived at after five years of negotiations and hearings and approved by Maine's Land Use Regulation Commission. That arrangement, however, appears to be currently on hold as a result of subsequent litigation by a subset of the environmental groups, *see* ''Plum Creek's Maine Development Set Aside by Judge'' (Associated Press, April 7, 2011).

[9] *See* Quang Do & Sirmans, ''Residential Property Tax Capitalization: Discount Rate Evidence from California,'' 47 Nat'l Tax J. 341 (1994) (analyzing a data-set from a tax district in San Diego to argue that homebuyers capitalize real property taxes into purchase prices, discounting the future tax payments at a rate of about 4 percent).

[10] Perhaps developers show less resistance to private transfer fees than to other types of restrictions or funding mechanisms. *See* supra n. 5. That certainly is the perspective of the commenters who are adverse to this use of private transfer fees.

IV. FHFA Response to Public Comments in the Proposed Rule

FHFA has decided to adopt the rule largely as proposed. However, in response to comments received, FHFA is making a number of changes to the text of the regulation.

Section 1228.2 is changed to ensure no doubt that any activity dealing in mortgages on property encumbered by private transfer fee covenants, including guaranteeing them as well as purchasing or investing in them, is restricted. The new language broadens the proposed phrase ''purchase or invest in'' to ''purchase invest, or otherwise deal in.'' The remainder of that section remains unchanged.

A number of commenters criticized the definition of ''adjacent or contiguous property,'' and particularly the requirement that it be located within 1,000 yards of the burdened community, arguing that some commonly held facilities, such as marinas, beach access, or golf courses, often cannot feasibly be located within that distance, but yet are for the common benefit of the members of the community and contribute to the value of their property to the same extent as if they were closer. In response to that concern, FHFA has removed the proposed 1,000-yard requirement from the regulation.

At the same time, some commenters pointed out that the restrictions on public access that the proposed regulation contemplated as part of the definition of ''direct benefit'' would be problematic in situations where the covered association uses transfer fees to fund parks or trails that interconnect with a larger municipal park or trail system which is open to the public. In that situation, although the covered association makes the adjacent property open to the public, the community members (and hence their property) receive fair value in exchange, in the form of convenient access to the larger trail or park system. To address this situation, as well as that described above of common facilities located some distance from the burdened community, FHFA is adopting a two-part approach to the use of transfer fees to fund activities or property outside the burdened community. First, the fees may fund property that is open to the public that is actually adjacent, meaning that it borders the burdened community.[11] Second, transfer fees may fund amenities that are more distant, if the amenities are primarily for the benefit of the covered association's members. In light of these revisions, FHFA has deleted the proposed provisions regarding public access for a fee or *de minimis* use, as adding unnecessary complexity.

Several commenters noted that some planned communities include both master associations and sub-associations, such that all residents are members of both a master association and a sub-association, but not of the same sub-association. The final regulation specifically recognizes that possibility.

Some commenters observed that some payments or charges are secured by a covenant to pay upon the next transfer, but do not impose a continuing obligation to pay whenever the property is transferred. FHFA does not regard such obligations as posing the same valuation problem as continuing transfer fee covenants, and has clarified the regulation to define a private transfer fee as one that is payable on a continuing basis whenever the property is transferred. This clarification makes it unnecessary to except from the definition of ''private transfer fee'' payments arising from an option to purchase or waiver of the right to purchase the encumbered real property (an exception in the proposed definition which FHFA has removed from the final rule) and other exception items suggested by commenters, such as deferred purchase price payments. Other suggested exceptions are unnecessary; for example, loan prepayment fees need not be excepted because they are not paid ''in connection with or as a result of transfer of title to real estate,'' but rather because of prepayment of the loan and, therefore, are not covered by the definition of ''private transfer fee'' as proposed.

In response to some comments and a review of state private transfer fee legislation, FHFA has added to the final rule an exception to the definition of ''private transfer fee'' for fees and payments that defray actual costs of the transfer, such as new keys, mailboxes, and other features that benefit the new owner.

Some commenters urged that private transfer fees should be used to support local services such as schools, libraries, and fire departments. FHFA has not added an exception for such uses, which normally would fall within the proposed exception for fees paid to government entities. FHFA retains that exception in the final rule. If a particular use of transfer fee covenants would not fall within that exception, FHFA is reluctant to specifically sanction it in the final rule, because such a rule is likely to raise the concern about property valuation in the absence of a direct benefit, which motivates the rule as a whole.

The proposed rule's definition of ''private transfer fee'' included an exception for fees that are imposed by court judgment, order, or decree. FHFA removes that exception in the final rule. A survey of existing state laws on private transfer fees reveals that most do not contain that exception. Further, review of the many comments discussing the use of private transfer fees to fund preservation or environmental projects that, though they may be meritorious from the perspective of society as a whole, do not contribute directly to the value of the burdened property, raising the valuation concerns that underlie this regulation when funded by private transfer fees, shows that such arrangements often result from settlement of litigation or threatened litigation, and therefore could be structured to escape the effect of this rule by moving to have them embodied in a court decree.

A review of those state statutes on private transfer fees also shows that most of them do not contain the proposed rule's exception for mechanic's liens, plausibly because those liens do not secure an obligation to pay specifically upon transfer (though as a practical matter that obligation, and any other secured obligation, may have to be satisfied in order to clear the title and make the transfer) and are not private transfer fee covenants to begin with. Therefore, FHFA has removed that exception.

Many commenters reacted favorably to FHFA's proposal that the regulation have prospective effect and not apply to private transfer fee covenants created before a date certain. A number of commenters, however, described projects currently underway that are funded by private transfer fees, which could be disrupted to the extent that covenants have not yet been attached to particular parcels that are part of the overall plan. FHFA has clarified the prospective scope of the rule, so that it will not apply to private transfer fee covenants if they are imposed pursuant to a litigation settlement agreement or an agreement approved by a government body before the date certain specified in the rule, February 8, 2011.

Some commenters suggested that the proposed § 1228.4, ''State restrictions unaffected,'' be revised to state that such state restrictions might include restrictions on validity and enforceability as well as with respect to disclosures or duration, the two

[11] The rule allows the properties to be separated by a public right of way, because a public right of way is not inconsistent with public access across the properties.

examples given in the proposed rule. In cases where a state law restricts the validity or enforceability of private transfer fees, it was not the intention of FHFA to override those restrictions, but rather to provide a framework to protect the regulated entities in the event that private transfer fees could be imposed consistently with state law. For example, one commenter stated that California law does not permit community associations to fund themselves using private transfer fees. That result is not affected by FHFA's rule permitting the regulated entities to buy mortgages that are secured by properties encumbered by such association transfer fees.

And finally, various commenters suggested technical revisions to the proposed regulation in the interest of clarity, and FHFA adopts a number of those suggestions in the final rule.

V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The rule applies only to the regulated entities, which do not come within the meaning of small entities as defined in section 601(6) of the RFA. In accordance with section 605(b) of the RFA, FHFA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1228

Asset-backed securities, Builders, Condominium associations, Cooperative associations, Developers, Federal Home Loan Banks, Government-sponsored enterprises, Homeowners' associations, Housing, Mortgages, Mortgage-backed securities, Nonprofit organizations, Private transfer fees.

For the reasons stated in the Supplementary Information, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency amends Chapter XII of Title 12 of the Code of Federal Regulations by adding new part 1228 to subchapter B to read as follows:

PART 1228—RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN, MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES

Sec.
1228.1 Definitions.
1228.2 Restrictions.
1228.3 Prospective application and effective date.
1228.4 State restrictions unaffected.

Authority: 12 U.S.C. 4511, 4513, 4526, 4616, 4617, 4631.

§ 1228.1 Definitions.

For the purposes of this part, the following definitions apply:

Adjacent or contiguous property means property that borders the burdened community, *provided that* such adjacent or contiguous property may be separated from the burdened community by public right of way.

Burdened community means a community comprising all of the parcels or interests in real property encumbered by a single private transfer fee covenant or a series of separate private transfer fee covenants that require payment of private transfer fees to the same entity to be used for the same purposes.

Covered association means a nonprofit mandatory membership organization comprising owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant or other applicable law; or an organization described in section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. A covered association may include master and sub-associations, each of which is also a covered association.

Direct benefit means that the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit. *Direct benefit* also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that—

(1) Are conducted in or protect the burdened community or adjacent or contiguous property, or

(2) Are conducted on other property that is used primarily by residents of the burdened community.

Enterprises means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Excepted transfer fee covenant means a private transfer fee covenant that requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants.

Federal Home Loan Banks or *Banks* mean the Federal Home Loan Banks established under section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432).

Private transfer fee means a transfer fee, including a charge or payment, imposed by a covenant, restriction, or other similar document and required to be paid in connection with or as a result of a transfer of title to real estate, and payable on a continuing basis each time a property is transferred (except for transfers specifically excepted) for a period of time or indefinitely. A *private transfer fee* does not include fees, charges, payments, or other obligations—

(1) Imposed by or payable to the Federal government or a State or local government; or

(2) That defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association.

Private transfer fee covenant means a covenant that:

(1) Purports to run with the land or to bind current owners of, and successors in title to, such real property; and

(2) Obligates a transferee or transferor of all or part of the property to pay a private transfer fee upon transfer of an interest in all or part of the property, or in consideration for permitting such transfer.

Regulated entities means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks.

Transfer means, with respect to real property, the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in the real property.

§ 1228.2 Restrictions.

The regulated entities shall not purchase, invest or otherwise deal in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants, unless such covenants are excepted transfer fee covenants. The Federal Home Loan Banks shall not accept such mortgages or securities as collateral,

unless such covenants are excepted transfer fee covenants.

§ 1228.3 Prospective application and effective date.

This part shall apply only to mortgages on properties encumbered by private transfer fee covenants if those covenants are created on or after February 8, 2011. This part shall not apply to mortgages on properties encumbered by private transfer fee covenants if those covenants are created pursuant to an agreement entered into before February 8, 2011, applicable to land that is identified in the agreement, and the agreement was in settlement of litigation or approved by a government agency or body. This part also applies to securities backed by mortgages to which this part applies, and to securities issued after February 8, 2011, backed by revenue from private transfer fees regardless of when the covenants were created. The regulated entities shall comply with this part not later July 16, 2012.

§ 1228.4 State restrictions unaffected.

This part does not affect state restrictions or requirements with respect to private transfer fee covenants, such as with respect to validity, enforceability, disclosures, or duration.

Dated: March 12, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–6414 Filed 3–15–12; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1192; Airspace Docket No. 11–ANM–22]

Modification of Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Sheridan County Airport, Sheridan, WY. Decommissioning of the Sheridan Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On December 22, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Sheridan, WY (76 FR 79563). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E surface airspace at Sheridan County Airport, Sheridan, WY. Airspace reconfiguration is necessary due to the decommissioning of the Sheridan TACAN. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Sheridan County Airport, Sheridan WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Sheridan WY [Amended]

Sheridan County Airport, WY

(Lat. 44°46′09″ N., long. 106°58′49″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of the Sheridan County Airport, and within 4.5 miles each side of the 157° bearing of the airport, extending from the 4.5-mile radius to 17.6 miles southeast of the airport, and within 3.5 miles each side of the Sheridan County Airport 316° bearing extending from the 4.5-mile radius to 15.5 miles northwest of the airport, and within 3.5 miles each side of the Sheridan County Airport 325° bearing extending from the 4.5-mile radius to 16 miles northwest of the airport, and 4 miles each side of the 336° bearing of the Sheridan County Airport extending from the 4.5-mile radius to 15.4 miles northwest of the airport, and within 3.5 miles each side of the Sheridan County Airport 140° bearing extending from the 4.5-mile radius to 15.5 miles southeast of the airport.

Issued in Seattle, Washington, on March 7, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–6341 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30831; Amdt. No. 3468]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on March 2, 2012.

John McGraw,,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 5 APR 2012

Bethel, AK, Bethel, ILS OR LOC/DME Y RWY 19R, Orig
Bethel, AK, Bethel, ILS OR LOC/DME Z RWY 19R, Amdt 7
Bethel, AK, Bethel, RNAV (GPS) RWY 19R, Amdt 2
Jasper, AL, Walker County-Bevill Field, RNAV (GPS) RWY 9, Orig
Scottsdale, AZ, Scottsdale, RNAV (GPS)–D, Amdt 1
Scottsdale, AZ, Scottsdale, RNAV (GPS)–E, Amdt 1
Scottsdale, AZ, Scottsdale, VOR–C, Amdt 2
Scottsdale, AZ, Scottsdale, VOR/DME–A, Amdt 3
Georgetown, DE, Sussex County, Takeoff Minimums and Obstacle DP, Amdt 3
Laurel, DE, Laurel, GPS–A, Orig-A, CANCELLED
Laurel, DE, Laurel, RNAV (GPS)–A, Orig
Laurel, DE, Laurel, Takeoff Minimums and Obstacle DP, Amdt 2
Miami, FL, Kendall-Tamiami Executive, ILS OR LOC RWY 9R, Amdt 11
Orlando, FL, Executive, ILS OR LOC/DME RWY 25, Orig
Orlando, FL, Executive, LOC BC RWY 25, Amdt 21B, CANCELLED
Orlando, FL, Executive, LOC RWY 25, Orig
Orlando, FL, Executive, RNAV (GPS) RWY 25, Amdt 1
Ormond Beach, FL, Ormond Beach Muni, GPS RWY 8, Orig-A, CANCELLED
Ormond Beach, FL, Ormond Beach Muni, RADAR 1, Amdt 2C, CANCELLED
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 8, Orig
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 17, Orig
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 26, Orig
Ormond Beach, FL, Ormond Beach Muni, VOR RWY 17, Amdt 2
Honolulu, HI, Honolulu Intl, ILS Y RWY 4R, Amdt 1
Honolulu, HI, Honolulu Intl, ILS Z RWY 4R, Amdt 1
Honolulu, HI, Honolulu Intl, LOC/DME RWY 4R, Amdt 1
Honolulu, HI, Honolulu Intl, RNAV (GPS) Y RWY 4R, Amdt 2
Honolulu, HI, Honolulu Intl, RNAV (RNP) Z RWY 4R, Amdt 1
Honolulu, HI, Honolulu Intl, RNAV (RNP) Z RWY 8L, Amdt 1
Chariton, IA, Chariton Muni, RNAV (GPS) RWY 17, Amdt 1
Chariton, IA, Chariton Muni, VOR OR GPS RWY 17, Amdt 1A, CANCELLED
Independence, IA, Independence Muni, NDB RWY 18, Amdt 3
Independence, IA, Independence Muni, RNAV (GPS) RWY 18, Orig
Independence, IA, Independence Muni, RNAV (GPS) RWY 36, Orig
Red Oak, IA, Red Oak Muni, NDB RWY 17, Amdt 9, CANCELLED
Red Oak, IA, Red Oak Muni, RNAV (GPS) RWY 5, Amdt 1
Carmi, IL, Carmi Muni, NDB RWY 36, Amdt 1A, CANCELLED
Bar Harbor, ME, Hancock County-Bar Harbor, ILS OR LOC RWY 22, Amdt 6A
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, ILS OR LOC/DME RWY 4, Amdt 16A
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, LOC BC RWY 22, Amdt 8
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, RNAV (GPS) RWY 4, Amdt 2
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, RNAV (GPS) RWY 22, Amdt 4
Pinehurst/Southern Pines, NC, Moore County, ILS OR LOC RWY 5, Amdt 1
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 23, Amdt 1
Chadron, NE, Chadron Muni, ILS OR LOC RWY 2, Amdt 2A
Chadron, NE, Chadron Muni, NDB RWY 20, Amdt 12A
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 2, Amdt 1
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 20, Amdt 2
Lincoln, NE, Lincoln, ILS OR LOC RWY 18, Amdt 7
Lincoln, NE, Lincoln, ILS OR LOC RWY 36, Amdt 11G
Findlay, OH, Findlay, VOR RWY 25, Amdt 5A, CANCELLED
Findlay, OH, Findlay, VOR RWY 36, Amdt 6B, CANCELLED
Bloomsburg, PA, Bloomsburg Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Reedsville, PA, Mifflin County, LOC RWY 6, Amdt 8A
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 20C, Orig
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 6, Amdt 2
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 24, Amdt 2
Houston, TX, Ellington Field, RNAV (GPS) RWY 17R, Amdt 1
Houston, TX, Ellington Field, RNAV (GPS) RWY 22, Amdt 1A
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, LOC RWY 30, Amdt 4A
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, RNAV (GPS) RWY 12, Amdt 1
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, RNAV (GPS) RWY 30, Orig-A

[FR Doc. 2012–6010 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30832; Amdt. No. 3469]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under

instrument flight rules at the affected airports.

DATES: This rule is effective March 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 2, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	TN	Bristol-Johnson-Kingsport	Bristol/Tri-Cities Rgnl	2/0280	2/23/12	ILS RWY 23, ILS RWY 23 (CAT II), Amdt 24D.
5–Apr–12	AK	Soldotna	Soldotna	2/0793	2/23/12	NDB RWY 07, Amdt 2.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	AK	Soldotna	Soldotna	2/1292	2/23/12	VOR–A, Amdt 7.
5–Apr–12	TX	Van Horn	Culberson County	2/2701	2/13/12	NDB RWY 21, Amdt 2A.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2720	2/27/12	ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Orig-A.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2721	2/27/12	ILS OR LOC RWY 12L, ILS RWY 12L (CAT II), ILS RWY 12L (CAT III), Amdt 6.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2722	2/23/12	ILS OR LOC RWY 1R, ILS RWY 1R (CAT II), ILS RWY 1R (CAT III), Amdt 3A.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2723	2/23/12	ILS OR LOC RWY 19R, ILS RWY 19R (CAT II), ILS RWY 19R (CAT III), Amdt 10A.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2724	2/27/12	ILS OR LOC RWY 30R, ILS RWY 30R (CAT II), ILS RWY 30R (CAT III), Amdt 10.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2725	2/23/12	ILS OR LOC RWY 6L, ILS RWY 6L (CAT II), ILS RWY 6L (CAT III), Amdt 9.
5–Apr–12	AR	Little Rock	Adams Field	2/2727	2/22/12	ILS OR LOC RWY 22R, ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 2A.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2732	2/22/12	ILS OR LOC RWY 3R, ILS RWY 3R (CAT II), ILS RWY 3R (CAT III), Amdt 15A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2733	2/22/12	ILS OR LOC RWY 6L, ILS RWY 6L (CAT II), ILS RWY 6L (CAT III), Amdt 2B.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2734	2/22/12	ILS OR LOC/DME RWY 24R, ILS RWY 24R (SA CAT I), ILS RWY 24R (CAT II), ILS RWY 24R (CAT III), Amdt 5.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2735	2/22/12	ILS OR LOC RWY 24L, ILS RWY 24L (SA CAT II), Amdt 22.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2740	2/22/12	ILS OR LOC RWY 4R, ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 16.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2743	2/23/12	RNAV (GPS) Y RWY 1R, Amdt 1A.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2744	2/23/12	RNAV (GPS) Y RWY 19L, Amdt 1.
5–Apr–12	AR	Little Rock	Adams Field	2/2746	2/22/12	ILS OR LOC RWY 4R, Amdt 2A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2751	2/22/12	ILS OR LOC RWY 6R, ILS RWY 6R (SA CAT II), Amdt 21.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2752	2/22/12	RNAV (GPS) RWY 1R, Orig-A.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2754	2/22/12	RNAV (RNP) Z RWY 19L, Orig-A.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2758	2/22/12	RNAV (GPS) RWY 4L, Amdt 2.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2759	2/23/12	RNAV (RNP) Z RWY 1R, Orig-B.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2760	2/27/12	RNAV (GPS) RWY 11, Orig.
5–Apr–12	AR	Little Rock	Adams Field	2/2768	2/22/12	ILS OR LOC RWY 4L, Amdt 25D.
5–Apr–12	AR	Little Rock	Adams Field	2/2770	2/22/12	RNAV (GPS) RWY 4R, Amdt 1A.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	AR	Little Rock	Adams Field	2/2771	2/22/12	RNAV (GPS) RWY 22L, Amdt 1A.
5–Apr–12	AR	Little Rock	Adams Field	2/2772	2/22/12	RNAV (GPS) RWY 4L, Amdt 1A.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2780	2/22/12	ILS OR LOC RWY 19R, Amdt 5C.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2781	2/23/12	RNAV (RNP) Z RWY 17L, Amdt 2.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2783	2/23/12	RNAV (RNP) Z RWY 19R, Orig-A.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2784	2/27/12	ILS OR LOC RWY 29, Amdt 1B.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2786	2/23/12	RNAV (RNP) Z RWY 35R, Amdt 1.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2790	2/23/12	RNAV (GPS) Y RWY 35R, Amdt 2.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2792	2/23/12	ILS OR LOC RWY 1L, Amdt 14.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2793	2/27/12	RNAV (GPS) RWY 12L, Amdt 2.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2795	2/27/12	ILS OR LOC RWY 12R, Admt 21E.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2797	2/23/12	RNAV (GPS) Y RWY 17L, Amdt 2.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2799	2/23/12	ILS OR LOC RWY 17R, Amdt 11.
5–Apr–12	OK	Oklahoma City	Will Rogers World	2/2800	2/23/12	ILS OR LOC/DME RWY 35L, Amdt 1.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2802	2/23/12	RNAV (RNP) Z RWY 1L, Orig-A.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2805	2/23/12	RNAV (GPS) Y RWY 19R, Amdt 1.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2806	2/27/12	RNAV (GPS) RWY 30R, Amdt 1B.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2807	2/22/12	RNAV (GPS) RWY 22R, Amdt 1.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2810	2/23/12	RNAV (GPS) RWY 24R, Amdt 1.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2811	2/22/12	RNAV (GPS) RWY 22L, Amdt 1.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2818	2/27/12	RNAV (GPS) RWY 30L, Amdt 1.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2823	2/27/12	ILS OR LOC RWY 30L, Amdt 12.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2825	2/27/12	RNAV (GPS) RWY 12R, Amdt 1.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2826	2/23/12	RNAV (RNP) Z RWY 19L, Orig-A.
5–Apr–12	MO	St Louis	Lambert-St Louis Intl	2/2827	2/27/12	RNAV (GPS) RWY 29, Orig-A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2828	2/22/12	RNAV (GPS) RWY 6L, Amdt 1A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2830	2/22/12	RNAV (GPS) RWY 24R, Amdt 3.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2831	2/22/12	LDA/DME RWY 6R, Amdt 1A.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2832	2/23/12	ILS OR LOC RWY 19L, Amdt 1.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2833	2/22/12	RNAV (GPS) RWY 24L, Amdt 3.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2834	2/22/12	RNAV (RNP) Z RWY 1L, Orig-A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2835	2/22/12	LDA/DME RWY 24L, Amdt 1A.
5–Apr–12	MO	Kansas City	Kansas City Intl	2/2836	2/23/12	RNAV (GPS) Y RWY 1L, Amdt 1.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2837	2/22/12	ILS OR LOC RWY 1R, Amdt 17A.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2839	2/22/12	RNAV (GPS) Y RWY 1L, Amdt 1.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2840	2/23/12	RNAV (GPS) RWY 24L, Amdt 1A.
5–Apr–12	OH	Cleveland	Cleveland-Hopkins Intl	2/2844	2/22/12	RNAV (GPS) RWY 6R, Amdt 2A.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2846	2/22/12	RNAV (GPS) Y RWY 19L, Amdt 1.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/2847	2/22/12	ILS OR LOC RWY 19L, Orig-A.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2850	2/23/12	RNAV (GPS) RWY 6R, Amdt 1.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2854	2/23/12	ILS OR LOC RWY 24R, Amdt 9.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2858	2/23/12	RNAV (GPS) RWY 6L, Amdt 1.
5–Apr–12	AR	Little Rock	Adams Field	2/2859	2/22/12	ILS OR LOC RWY 22L, Orig-A.
5–Apr–12	OH	Dayton	James M Cox Dayton Intl	2/2860	2/23/12	ILS OR LOC RWY 24L, Amdt 9.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2864	2/22/12	ILS Y RWY 22R, Orig.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2865	2/22/12	ILS Z OR LOC RWY 22R, Amdt 2A.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2868	2/22/12	RNAV (GPS) RWY 3R, Amdt 1.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2869	2/22/12	RNAV (GPS) RWY 4R, Amdt 1.
5–Apr–12	MI	Detroit	Detroit Metropolitan Wayne County.	2/2871	2/22/12	RNAV (GPS) RWY 27R, Amdt 2.
5–Apr–12	TN	Nashville	Nashville Intl	2/2893	2/22/12	ILS OR LOC RWY 20R, Amdt 10.
5–Apr–12	TN	Nashville	Nashville Intl	2/2894	2/22/12	RNAV (GPS) Y RWY 20R, Amdt 2.
5–Apr–12	TN	Nashville	Nashville Intl	2/2895	2/22/12	RNAV (RNP) Z RWY 20R, Orig-A.
5–Apr–12	TN	Nashville	Nashville Intl	2/2896	2/22/12	RNAV (GPS) Y RWY 20L, Amdt 1.
5–Apr–12	TN	Nashville	Nashville Intl	2/2897	2/22/12	ILS OR LOC RWY 2R, Amdt 7.
5–Apr–12	TN	Nashville	Nashville Intl	2/2898	2/22/12	ILS RWY 2R (CAT II), Amdt 7.
5–Apr–12	TN	Nashville	Nashville Intl	2/2899	2/22/12	RNAV (GPS) Y RWY 2R, Amdt 1.
5–Apr–12	TN	Nashville	Nashville Intl	2/2900	2/22/12	RNAV (RNP) Z RWY 2R, Orig-A.
5–Apr–12	TN	Nashville	Nashville Intl	2/2901	2/22/12	RNAV (GPS) Y RWY 2L, Amdt 1.
5–Apr–12	TN	Nashville	Nashville Intl	2/2902	2/22/12	RNAV (GPS) Y RWY 2C, Amdt 1.
5–Apr–12	TN	Nashville	Nashville Intl	2/2903	2/22/12	RNAV (RNP) Z RWY 2C, Orig-A.
5–Apr–12	TN	Nashville	Nashville Intl	2/2904	2/22/12	ILS OR LOC RWY 20L, Amdt 5.
5–Apr–12	TN	Nashville	Nashville Intl	2/2905	2/22/12	RNAV (RNP) Z RWY 20L, Orig-A.
5–Apr–12	TN	Nashville	Nashville Intl	2/2906	2/22/12	ILS OR LOC RWY 2C, Amdt 1.
5–Apr–12	TN	Nashville	Nashville Intl	2/2907	2/22/12	ILS OR LOC RWY 2L, Amdt 9.
5–Apr–12	TN	Nashville	Nashville Intl	2/2908	2/22/12	ILS RWY 2L (CAT II), Amdt 9.
5–Apr–12	TN	Nashville	Nashville Intl	2/2909	2/22/12	ILS RWY 2L (CAT III), Amdt 9.
5–Apr–12	TN	Nashville	Nashville Intl	2/2910	2/22/12	ILS RWY 2R (CAT III), Amdt 7.
5–Apr–12	TN	Nashville	Nashville Intl	2/2911	2/22/12	RNAV (RNP) Z RWY 2L, Orig-A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2920	2/23/12	ILS OR LOC RWY 18C, Amdt 10A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2921	2/23/12	RNAV (GPS) Y RWY 18C, Amdt 3A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2922	2/23/12	RNAV (RNP) Z RWY 18C, Orig-B.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2933	2/23/12	ILS RWY 36C (CAT II), Amdt 16A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2934	2/23/12	RNAV (GPS) Y RWY 36C, Amdt 3A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2941	2/23/12	ILS OR LOC RWY 36C, Amdt 16A.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2942	2/23/12	ILS RWY 36C (CAT III), Amdt 16A.
5–Apr–12	NC	Charlotte	Charlotte/Douglas Intl	2/2943	2/23/12	RNAV (RNP) Z RWY 36C, Orig-C.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2946	2/6/12	RNAV (RNP) Z RWY 18L, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2947	2/6/12	ILS RWY 36C (CAT III), Amdt 41.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2948	2/6/12	ILS OR LOC RWY 36L, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2949	2/6/12	ILS OR LOC RWY 18C, Amdt 22.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2950	2/6/12	RNAV (GPS) Y RWY 18C, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2951	2/6/12	RNAV (GPS) Y RWY 18L, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2952	2/6/12	ILS OR LOC RWY 18R, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2953	2/6/12	ILS OR LOC RWY 36C, Amdt 41.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2954	2/6/12	ILS OR LOC RWY 18L, Amdt 7.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2955	2/6/12	RNAV (GPS) RWY 36C, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2956	2/6/12	ILS OR LOC RWY 36R, Amdt 8.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2957	2/6/12	ILS RWY 36R (CAT II), Amdt 8.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2958	2/6/12	RNAV (RNP) Z RWY 36R, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2959	2/6/12	RNAV (GPS) Y RWY 36L, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2960	2/6/12	RNAV (RNP) Z RWY 36L, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2961	2/6/12	RNAV (RNP) Z RWY 18C, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2962	2/6/12	ILS RWY 18R (CAT II), Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2963	2/6/12	ILS RWY 36C (CAT II), Amdt 41.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2964	2/6/12	ILS RWY 36L (CAT II), Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2965	2/6/12	RNAV (GPS) Y RWY 36R, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2966	2/6/12	ILS RWY 36R (CAT III), Amdt 8.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2967	2/6/12	RNAV (GPS) Y RWY 36C, Amdt 1.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2968	2/6/12	RNAV (RNP) Z RWY 36C, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2969	2/6/12	RNAV (RNP) Z RWY 18R, Orig-A.
5–Apr–12	KY	Covington	Cincinnati/Northern Kentucky Intl.	2/2970	2/6/12	RNAV (GPS) Y RWY 18R, Amdt 1.
5–Apr–12	FL	Orlando	Orlando Intl	2/3079	2/22/12	ILS OR LOC RWY 17L, Amdt 1.
5–Apr–12	FL	Orlando	Orlando Intl	2/3081	2/22/12	ILS RWY 17L (CAT II), Amdt 1.
5–Apr–12	FL	Orlando	Orlando Intl	2/3082	2/22/12	ILS RWY 17R (CAT II), Amdt 5.
5–Apr–12	FL	Orlando	Orlando Intl	2/3084	2/22/12	ILS RWY 35L (CAT II), Amdt 6A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3085	2/22/12	RNAV (RNP) Z RWY 35L, Orig-A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3086	2/22/12	ILS OR LOC RWY 17R, Amdt 5.
5–Apr–12	FL	Orlando	Orlando Intl	2/3087	2/22/12	ILS RWY 35R (CAT II), Amdt 1A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3088	2/22/12	ILS RWY 36R (CAT II), Amdt 1A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3090	2/22/12	ILS OR LOC RWY 18R, Amdt 9.
5–Apr–12	FL	Orlando	Orlando Intl	2/3091	2/22/12	ILS OR LOC RWY 36R, Amdt 9A.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	FL	Orlando	Orlando Intl	2/3092	2/22/12	ILS OR LOC RWY 35L, Amdt 6A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3093	2/22/12	RNAV (GPS) Y RWY 36L, Orig.
5–Apr–12	FL	Orlando	Orlando Intl	2/3094	2/22/12	ILS RWY 35L (CAT III), Amdt 6A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3095	2/22/12	ILS OR LOC RWY 35R, Amdt 1A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3096	2/22/12	RNAV (GPS) Y RWY 35L, Orig.
5–Apr–12	FL	Orlando	Orlando Intl	2/3097	2/22/12	RNAV (RNP) Z RWY 36L, Orig-A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3098	2/22/12	RNAV (RNP) Z RWY 35R, Orig-A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3099	2/22/12	RNAV (GPS) Y RWY 36R, Orig.
5–Apr–12	FL	Orlando	Orlando Intl	2/3100	2/22/12	RNAV (GPS) Y RWY 35R, Orig.
5–Apr–12	FL	Orlando	Orlando Intl	2/3101	2/22/12	ILS RWY 36R (CAT III), Amdt 9A.
5–Apr–12	FL	Orlando	Orlando Intl	2/3104	2/22/12	RNAV (RNP) Z RWY 36R, Orig-A.
5–Apr–12	FL	Miami	Miami Intl	2/3113	2/22/12	RNAV (GPS) RWY 9, Orig-C.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3114	2/6/12	ILS OR LOC RWY 28R, Amdt 9.
5–Apr–12	FL	Miami	Miami Intl	2/3116	2/22/12	ILS OR LOC RWY 26L, Amdt 15A.
5–Apr–12	FL	Miami	Miami Intl	2/3118	2/22/12	ILS OR LOC RWY 9, Amdt 9B.
5–Apr–12	FL	Miami	Miami Intl	2/3119	2/22/12	ILS OR LOC RWY 27, Amdt 25.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3124	2/6/12	RNAV (RNP) Z RWY 28L, Orig-B.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3126	2/6/12	ILS RWY 28R (CAT II), Amdt 9.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3127	2/6/12	ILS OR LOC RWY 28L, Amdt 10.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3128	2/6/12	RNAV (GPS) Y RWY 28L, Amdt 4A.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3129	2/6/12	RNAV (GPS) Y RWY 28C, Amdt 4.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3130	2/6/12	RNAV (RNP) Z RWY 28C, Orig-B.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3131	2/6/12	ILS RWY 10L, Amdt 25A.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3132	2/6/12	ILS RWY 10L (CAT II), Amdt 25A.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3133	2/6/12	ILS RWY 10L (CAT III), Amdt 25A.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3134	2/6/12	RNAV (GPS) RWY 10L, Amdt 3.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3135	2/6/12	RNAV (RNP) Z RWY 10C, Orig-B.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3136	2/6/12	RNAV (GPS) Y RWY 10C, Amdt 4.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3137	2/6/12	ILS RWY 10R (CAT II), Amdt 10D.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3138	2/6/12	ILS OR LOC RWY 10R, Amdt 10D.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3139	2/6/12	RNAV (GPS) Y RWY 10R, Amdt 3A.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3140	2/6/12	ILS RWY 10R (CAT III), Amdt 10D.
5–Apr–12	PA	Pittsburgh	Pittsburgh Intl	2/3141	2/6/12	RNAV (RNP) Z RWY 10R, Orig-B.
5–Apr–12	FL	Tampa	Tampa Intl	2/3163	2/6/12	ILS OR LOC RWY 19L, Amdt 40.
5–Apr–12	FL	Tampa	Tampa Intl	2/3165	2/6/12	ILS RWY 1L (CAT III), Amdt 16A.
5–Apr–12	FL	Tampa	Tampa Intl	2/3166	2/6/12	ILS RWY 1L (CAT II), Amdt 16A.
5–Apr–12	FL	Tampa	Tampa Intl	2/3167	2/6/12	RNAV (GPS) RWY 1R, Amdt 2.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	FL	Tampa	Tampa Intl	2/3168	2/6/12	ILS RWY 19L (CAT II), Amdt 40.
5–Apr–12	FL	Tampa	Tampa Intl	2/3169	2/6/12	RNAV (GPS) Z RWY 19L, Amdt 2.
5–Apr–12	FL	Tampa	Tampa Intl	2/3170	2/6/12	ILS OR LOC RWY 19R, Amdt 5.
5–Apr–12	FL	Tampa	Tampa Intl	2/3171	2/6/12	ILS RWY 19L (SA CAT I), Amdt 40.
5–Apr–12	FL	Tampa	Tampa Intl	2/3172	2/6/12	RNAV (RNP) Y RWY 19L, Amdt 1A.
5–Apr–12	FL	Tampa	Tampa Intl	2/3173	2/6/12	ILS RWY 1L (SA CAT I), Amdt 16A.
5–Apr–12	FL	Tampa	Tampa Intl	2/3174	2/6/12	ILS OR LOC RWY 1L, Amdt 16A.
5–Apr–12	UT	Logan	Logan-Cache	2/3187	2/23/12	RNAV (GPS) RWY 17, Amdt 1.
5–Apr–12	VT	Lyndonville	Caledonia County	2/4811	2/22/12	NDB RWY 2, Amdt 4A.
5–Apr–12	VT	Lyndonville	Caledonia County	2/4812	2/22/12	RNAV (GPS) RWY 2, Orig-A.
5–Apr–12	TX	Dallas	Dallas Executive	2/5875	2/13/12	ILS OR LOC RWY 31, Amdt 8B.
5–Apr–12	TX	San Antonio	San Antonio Intl	2/6055	2/13/12	ILS OR LOC RWY 12R, ILS RWY 12R (CAT II), Amdt 14A.
5–Apr–12	TX	San Antonio	San Antonio Intl	2/6056	2/13/12	ILS OR LOC RWY 30L, Amdt 10A.
5–Apr–12	KS	Wichita	Wichita Mid-Continent	2/6416	2/22/12	ILS OR LOC RWY 1L, ILS RWY 1L (CAT II), Amdt 3A.
5–Apr–12	OK	Tulsa	Tulsa Intl	2/6417	2/23/12	ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), Amdt 39A.
5–Apr–12	MN	Minneapolis	Minneapolis-St Paul Intl/ Wold-Chamberlain.	2/6418	2/23/12	ILS OR LOC RWY 30L, ILS RWY 30L (CAT II), Amdt 44A.
5–Apr–12	MN	Minneapolis	Minneapolis-St Paul Intl/ Wold-Chamberlain.	2/6419	2/23/12	CONVERGING ILS RWY 30L, Orig.
5–Apr–12	MN	Duluth	Duluth Intl	2/6423	2/22/12	ILS OR LOC RWY 9, ILS RWY 9 (CAT II), Amdt 21.
5–Apr–12	OH	Wilmington	Wilmington Air Park	2/6427	2/23/12	NDB RWY 22R, Amdt 7D.
5–Apr–12	NE	Omaha	Eppley Airfield	2/6429	2/23/12	ILS OR LOC RWY 32R, ILS RWY 32R (CAT II), ILS RWY 32R (CAT III), Orig-B.
5–Apr–12	OH	Wilmington	Wilmington Air Park	2/6432	2/23/12	ILS RWY 22L, ILS RWY 22L (CAT II), Orig-A.
5–Apr–12	OH	Wilmington	Wilmington Air Park	2/6435	2/23/12	ILS OR LOC RWY 22R, ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 5.
5–Apr–12	MN	Duluth	Duluth Intl	2/6442	2/22/12	ILS OR LOC RWY 27, Amdt 9A.
5–Apr–12	MN	Duluth	Duluth Intl	2/6443	2/22/12	COPTER ILS OR LOC RWY 27, Amdt 1.
5–Apr–12	NE	Omaha	Eppley Airfield	2/6444	2/23/12	ILS OR LOC/DME RWY 14R, ILS RWY 14R (CAT II), ILS RWY 14R (CAT III), Amdt 4A.
5–Apr–12	MN	Duluth	Duluth Intl	2/6445	2/22/12	COPTER ILS RWY 9, Amdt 1.
5–Apr–12	WI	Milwaukee	General Mitchell Intl	2/6638	2/23/12	ILS OR LOC RWY 1L, ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 9.
5–Apr–12	TX	Fort Worth	Fort Worth Alliance	2/6942	2/23/12	ILS OR LOC RWY 16L, ILS RWY 16L (CAT II), ILS RWY 16L (CAT III), Amdt 6.
5–Apr–12	TX	Houston	Houston/William P. Hobby	2/6943	2/23/12	ILS OR LOC RWY 4, ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 40A.

AIRAC date	State	City	Airport	FDC	FDC date	Subject
5–Apr–12	ME	Bangor	Bangor Intl	2/7098	2/23/12	ILS OR LOC RWY 15, ILS RWY 15 (CAT II), ILS RWY 15 (CAT III), Amdt 6A.
5–Apr–12	IL	Chicago/Lake In The Hills	Lake In The Hills	2/7102	2/23/12	Takeoff Minimums and Obstacle DP, Orig.
5–Apr–12	AL	Huntsville	Huntsville Intl—Carl T Jones Field.	2/7139	2/23/12	VOR A, Amdt 12A.
5–Apr–12	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/7608	2/22/12	ILS RWY 13R (SA CAT II), Amdt 8.
5–Apr–12	TN	Knoxville	McGhee Tyson	2/7680	2/23/12	RNAV (GPS) RWY 5L, Amdt 1A.
5–Apr–12	TX	Waco	Waco Rgnl	2/7711	2/22/12	RNAV (GPS) RWY 32, Orig.
5–Apr–12	TX	Port Aransas	Mustang Beach	2/7820	2/23/12	RNAV (GPS) RWY 12, Orig-A.
5–Apr–12	TX	Port Aransas	Mustang Beach	2/7821	2/23/12	RNAV (GPS) RWY 30, Orig-A.
5–Apr–12	TX	Houston	Ellington Field	2/8123	2/23/12	RNAV (GPS) RWY 35L, Orig-B.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8139	2/27/12	ILS RWY 5R (CAT II), Amdt 7A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8140	2/27/12	ILS RWY 5L (CAT III), Orig-A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8141	2/27/12	ILS OR LOC RWY 23R, Orig-A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8142	2/27/12	RNAV (GPS) RWY 5L, Orig-A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8143	2/27/12	ILS OR LOC RWY 5L, Orig-A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8144	2/27/12	ILS RWY 5L (CAT II), Orig-A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8146	2/27/12	ILS OR LOC RWY 5R, Amdt 7A.
5–Apr–12	NC	Greensboro	Piedmont Triad Intl	2/8148	2/27/12	RNAV (GPS) RWY 23R, Orig-A.
5–Apr–12	AZ	Phoenix	Phoenix Sky Harbor Intl	2/8151	2/27/12	ILS OR LOC RWY 25L, Amdt 1E.
5–Apr–12	AZ	Phoenix	Phoenix Sky Harbor Intl	2/8152	2/27/12	ILS OR LOC RWY 7R, Amdt 2.
5–Apr–12	UT	Vernal	Vernal Rgnl	2/8182	2/23/12	RNAV (GPS) RWY 34, Amdt 1.
5–Apr–12	SC	Aiken	Aiken Muni	2/8273	2/23/12	RNAV (GPS) RWY 7, Amdt 1.
5–Apr–12	SC	Aiken	Aiken Muni	2/8274	2/23/12	ILS OR LOC/DME RWY 7, Orig.
5–Apr–12	IN	Jeffersonville	Clark Rgnl	2/8287	2/22/12	NDB RWY 18, Amdt 1.
5–Apr–12	IN	Jeffersonville	Clark Rgnl	2/8288	2/22/12	ILS OR LOC RWY 18, Amdt 2.
5–Apr–12	IN	Auburn	De Kalb County	2/8896	2/22/12	VOR RWY 9, Amdt 7B.
5–Apr–12	ND	Bismarck	Bismarck Muni	2/8897	2/23/12	ILS OR LOC RWY 31, Amdt 33.
5–Apr–12	MN	Bemidji	Bemidji Rgnl	2/9058	2/22/12	RNAV (GPS) RWY 25, Orig.
5–Apr–12	NH	Portsmouth	Portsmouth Intl at Peasea	2/9382	2/23/12	Takeoff Minimums and Obstacle DP, Orig.
5–Apr–12	AK	Kodiak	Kodiak	2/9393	2/22/12	ILS OR LOC/DME Y RWY 25, Amdt 2.
5–Apr–12	ME	Brunswick	Brunswick Executive	2/9657	2/23/12	ILS OR LOC/DME RWY 1R, Orig.

[FR Doc. 2012–6006 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2010–OS–0183]

32 CFR Part 311

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 15 DoD, entitled ''Armed Services Military Accession Testing'' when the record includes the specific answers submitted and the answer key. Releasing this information to the individual will compromise the

objectivity or fairness of the test if the correct or incorrect answers are released.

DATES: This rule is effective March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on January 3, 2011, in the **Federal Register** (76 FR 56–57). During the comment period, two public comments were received.

The first commenter asserted that the proposed Privacy Act exemption rule ''could possibly be viewed as a violation of [the] constitutional rights * * * [of] U.S. citizen[s],'' making reference to the Third, Fifth, Sixth, and Fourteenth Amendments of the Constitution. Also the first commenter commented that the provision ''of the answers and/or answer keys should be at the discretion of the test taker, i.e., U.S. citizens.''

The Privacy Act exemption rule addresses an individual's answers to the Armed Services Vocational Aptitude Battery (ASVAB) and the appropriate answer key, allowing the Department of Defense to exempt an individual's ASVAB answers and the answer key from the access provisions of the Privacy Act of 1974.

The exemption rule is intended to ensure that individuals will not compromise the purpose of the ASVAB—to ascertain the skills and abilities of individuals joining the military or seeking to join the military. If individuals were allowed to have the specific responses to the questions as well as the correct answers, the Department of Defense would be unable to ensure that individuals were placed in jobs for which they had an aptitude, or more importantly, placed in jobs for which they had no aptitude. If individuals were allowed to have their individual responses as well as the correct answers, the integrity and scoring of the battery would be compromised rendering the testing worthless.

Individuals taking the test are provided a copy of their scores along with an explanation of what the given scores indicate.

The exemption rule is consistent with the Privacy Act, its underlying purposes, and the U.S. Constitution. Further, the rules published at 32 CFR part 311, The OSD Privacy Program, provide individuals an opportunity to appeal the denial of access to their records, which could include the consideration of alleged constitutional rights violations arising out of the denial of access to requested records.

The second commenter did not address the proposed exemption rule but addressed the first commenter's comments.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by adding paragraph (c)(16) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(16) *System identifier and name:* DMDC 15 DoD, Armed Services Military Accession Testing.

(i) *Exemption:* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

(ii) *Authority:* 5 U.S.C. 552a(k)(6).

(iii) *Reasons:* (A) An exemption is required for those portions of the Skill Qualification Test system pertaining to individual item responses and scoring keys to preclude compromise of the test and to ensure fairness and objectivity of the evaluation system.

(B) From subsection (d)(1) when access to those portions of the Skill Qualification Test records would reveal the individual item responses and scoring keys. Disclosure of the individual item responses and scoring keys will compromise the objectivity and fairness of the test as well as the validity of future tests resulting in the Department being unable to use the testing battery as an individual assessment tool.

* * * * *

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6169 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0027]

32 CFR Part 311

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 11, entitled ''Investigative Records Repository'', when investigatory material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that such material would reveal the identity of a confidential source. This direct final rule makes nonsubstantive changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This change will allow the Department to move part of the Department's personnel security program records from the Defense Security Service Privacy Program to the Office of the Secretary of Defense Privacy Program. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by revising paragraph (c)(17) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(17) *System identifier and name:* DMDC 13, Investigative Records Repository.

(i) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) because it will enable the Department to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

* * * * *

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6167 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0028]

32 CFR Part 311

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 13 DoD, entitled ''Defense Clearance and Investigations Index (DCII),'' pertaining to investigatory material compiled for law enforcement purposes to enable OSD components to conduct certain investigations and relay law enforcement information without compromise of the information, protect investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence. The exemption will allow DoD to provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence. Further, requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures. This direct final rule makes nonsubstantive changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This change will allow the Department to move part of the Department's personnel security program records from the Defense Security Service Privacy Program to the Office of the Secretary of Defense Privacy Program. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: This direct final rule is consistent with the rule previously published at 32 CFR part 321.13(h) and another rule is being published to remove and reserve 321.13(h).

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by revising paragraph (c)(20) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(20) *System identifier and name:* DMDC 13 DoD, Defense Clearance and Investigations Index.

(i) *Exemptions:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subjections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I) and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because it will enable OSD components to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the investigation of allegations

of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

* * * * *

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6168 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0035]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: Defense Intelligence Agency (DIA) is proposing to update the DIA Privacy Act Program by adding an exemption to accurately describe the basis for exempting the records in the system of records notice LDIA 0660, Security and Counterintelligence Records. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency (DIA) Privacy Program rules. These changes will allow the Department to add an exemption rule to the DIA Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 is amended as follows:

PART 319—DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR Part 319.13 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 319.13 is amended by revising paragraph (e) to read as follows:

§ 319.13 Specific exemptions.

* * * * *

(e) *System identifier and name:* LDIA 0660, Security and Counterintelligence Files.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority:* 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6).

(3) *Reasons:* The reasons for asserting these exemptions are to ensure the integrity of the adjudication process used by the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear or retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters; and protects information used for medical, psychological evaluations, security questionnaires and polygraph testing.

* * * * *

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6176 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0034]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency is deleting an exemption rule for LDIA 0275, ''DoD Hotline Referrals'' in its entirety. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency Privacy Program rules. These changes will allow the Department to transfer these records to another system of records, LDIA 0271.This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption are valid and necessary to protect the contents of the records. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 is amended as follows:

PART 319—DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 319 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a(f) and (k).

§ 319.13 [Amended]

■ 2. In § 319.13, remove and reserve paragraph (d).

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6174 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0029]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency (DIA) is adding a new exemption rule for LDIA 0010, entitled ''Information Requests-Freedom of Information Act (FOIA) and Privacy Act'' to exempt those records that have been previously claimed for the records in another Privacy Act system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, DIA hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency Program rules. This will improve the efficiency and effectiveness of DoD's program by allowing those records that are only exempt from pertinent provisions of law, to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record, to still pertain to the record which is now contained in this system of records. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 amended as follows:

PART 319—DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 319 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a(f) and (k).

■ 2. Section 319.13 is amended by adding paragraph (j) to read as follows:

§ 319.13 Specific exemptions.

* * * * *

(j) *System identifier and name:* LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act.

(1) *Exemption:* During the course of information requests-FOIA and Privacy Act actions, exempt records/material from other systems of records may become part of this system of records. For such records/material, DIA hereby claims the same exemptions as is claimed for the systems from which such records/material are derived.

(2) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(7).

(3) *Reasons:* Records in a system of records are only exempted from pertinent provisions of 5 U.S.C. 552a to the extent such provisions are identified and an exemption claimed. In general, exemptions claimed protect properly classified information relating to national defense and foreign policy; avoid interference during the conduct of criminal, civil, or administrative actions or investigations; ensure protective services provided the President and others are not compromised; protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; preserve the confidentiality and integrity of Federal testing materials; and safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule(s) for the systems of records from which the records/materials was derived will identify the specific reasons why the records/materials are exempt from provisions of 5 U.S.C. 552a.

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6172 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0033]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency (DIA) is adding a new exemption rule for LDIA 0900, entitled ''Accounts Receivable, Indebtedness and Claims'' to exempt those records that have been previously claimed for the records in another Privacy Act system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, DIA hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency Program rules. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the

budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 amended as follows:

PART 319—DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 319 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a(f) and (k).

■ 2. Section 319.13 is amended by revising paragraph (i) to read as follows:

§ 319.13 Specific exemptions.

* * * * *

(i) *System identifier and name:* LDIA 0900, Accounts Receivable, Indebtedness and Claims.

(1) *Exemption:* During the course of accounts receivable, indebtedness or claims actions, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the DIA hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(7).

(3) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6173 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0030]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency is deleting an exemption rule for LDIA 0800, ''Operation Record System'' in its entirety. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency Privacy Program rules. These changes will allow the Department to transfer these records to another system of records, LDIA 10–0002, ''Foreign Intelligence and Counterintelligence Operation Records'' (June 15, 2010, 75 FR 33791). This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption are valid and necessary to protect the contents of the records. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's

management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR 319 is amended as follows:

PART 319—DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 319 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a(f) and (k).

§ 319.13 [Amended]

■ 2. In § 319.13 remove and reserve paragraph (f).

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6175 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0031]

32 CFR Part 322

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The National Security Agency/Central Security Service (NSA/CSS) is adding a new exemption rule for GNSA 29 to exempt those records that are presently exempt from certain requirements of the Privacy Act. This direct final rule makes nonsubstantive changes to the National Security Agency/Central Security Service Privacy Program rules. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption are valid and necessary to protect the contents of the records.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct

final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, 32 CFR part 322 is amended as follows:

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE PROGRAM

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 322.7 is amended by adding paragraph (l) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(l) *ID:* GNSA 29 (General Exemption)

(2) *System name:* NSA/CSS Office of Inspector General Investigations and Complaints.

(3) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if any individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(4) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(5).

(5) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations

* * * * *

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6170 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0032]

32 CFR Part 322

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The National Security Agency/Central Security Service is removing an exemption rule for GNSA 23, NSA/CSS Operations Security Support Program and Training Files. This direct final rule makes nonsubstantive changes to the National Security Agency/Central Security Service Program rules. These changes will remove the exemption rule for the system of records GNSA 23, NSA/CSS Operations Security Support Program and Training Files, which has been

deleted in its entirety. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on May 25, 2012 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 15, 2012. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, 32 CFR part 322 is amended as follows:

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 322.7 [Amended]

■ 2. In § 322.7 remove and reserve paragraph (r).

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6171 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0088]

RIN 1625–AA08

Special Local Regulation; USAT Triathlon/Race Rowing Competition; Black Warrior River; Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River, from mile 338.5 to mile 341.5, Tuscaloosa, AL. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the USAT Triathlon/Race Rowing Competition. Entry into, transiting in or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective and enforceable with actual notice from 7 a.m. until 6 p.m. on April 21, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–

0088 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0088 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street, Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lt. Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' This rule provides proper notice; however, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) which would provide a comment period with respect to this rule. The Coast Guard received applications for Marine Event Permits on February 2, 2012, and February 6, 2012, from the University of Alabama and the Tuscaloosa Tourism and Sports Commission to conduct their events on April 21, 2012. After reviewing the details of the events and the permit applications, the Coast Guard determined that a special local regulation is needed and delaying or foregoing this safety measure to provide a comment period would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the USAT Triathlon and Race Rowing Competition.

Basis and Purpose

The University of Alabama Women's rowing team is sponsoring a Race Rowing Competition between the University of Alabama and the University of Iowa on the Black Warrior River. The Tuscaloosa Tourism and Sports Commission is sponsoring the USAT National Collegiate Championship Triathlon, and the swimming portion of the race is to take place in the Black Warrior River. The introduction of rowing vessels and swimmers into a commercially transited river system poses significant safety hazards to both swimmers and rowing vessels. The COTP Mobile is establishing a temporary special local regulation for a portion of the Black Warrior River, Tuscaloosa, AL, to safeguard persons and vessels during the two events.

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

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River from mile 338.5 to mile 341.5, Tuscaloosa, AL. This temporary rule will safeguard life and property in this area. Entry into, transiting in or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF–FM Channel 16 or through Coast Guard Sector Mobile at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule is effective from 7 a.m. until 6 p.m. on April 21, 2012.

Regulatory Analyses

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

Regulatory Planning and Review

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

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of the Black Warrior River, Tuscaloosa, AL, during the two events. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration, and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2–1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0088 to read as follows:

§ 100.35T08–0088 Special Local Regulation; Black Warrior River; Tuscaloosa, AL.

(a) *Regulated Area.* The following area is a regulated area: a portion of the Black Warrior River, from mile 338.5 to mile 341.5, Tuscaloosa, AL.

(b) *Enforcement dates.* This rule will be enforced from 7 a.m. until 6 p.m. on April 21, 2012.

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

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

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

(4) No spectator shall anchor, block, loiter, or impede the through transit of

participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

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

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

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

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

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

Dated: February 21, 2012.

D.J. Rose,

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

[FR Doc. 2012–6381 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0085]

RIN 1625–AA08

Special Local Regulation; Emerald Coast Super Boat Grand Prix; Saint Andrew Bay; Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of Saint Andrew Bay, Panama City, FL. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Emerald Coast Super Boat Grand Prix high speed boat races. Entry into, transiting in or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective from 10 a.m. until 4 p.m. on May 6, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0085 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0085 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lt. Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' This rule provides proper notice; however, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) which would provide a comment period with respect to this rule. The Coast Guard received an application for a Marine Event Permit on January 31, 2011 from Super Boat International, Inc. to conduct a high speed boat race on May 6, 2012. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed and delaying or foregoing this safety measure to provide a comment period would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Emerald Coast Super Boat Grand Prix high speed boat races.

Basis and Purpose

On January 31, 2012, Super Boat International, Inc. applied for a Marine Event Permit to conduct a high speed boat race on Saint Andrew Bay, Panama City, FL on May 6, 2012. This event will draw in a large number of pleasure craft and the high speed boats pose a significant safety hazard to both vessels and mariners operating in or near the area. The COTP Mobile is establishing a temporary special local regulation for a portion of Saint Andrew Bay, Panama City, FL, to safeguard persons and vessels during the high speed boat races.

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

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for a portion of Saint Andrew Bay, Panama City, FL, enclosed by a bounded area starting at a point on the shore at approximately 30°09′55.62″ N, 085°41′46.30″ W, then east following the shore line to 30°08′39.18″ N, 085°39′27.89″ W, then southwest to 30°08′34.24″ N, 085°39′40.68″ W, then west to 30°09′34.35″ N, 085°41′46.30″ W, then north to the starting point at 30°09′55.62″ N, 085°41′46.30″ W. This temporary rule will safeguard life and property in this area. Entry into, transiting in or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF–FM Channel 16 or through Coast Guard Sector Mobile at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule will

be effective and enforced from 10 a.m. until 4 p.m. on May 6, 2012.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of Saint Andrew Bay during the high speed boat races. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2–1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T08–0085 to read as follows:

§ 100.T08–0085 Special Local Regulation; Saint Andrew Bay; Panama City, FL.

(a) *Regulated Area.* The following area is a regulated area: A portion of Saint Andrew Bay, Panama City, FL, enclosed by a bounded area starting at a point on the shore at approximately 30°09′55.62″ N, 085°41′46.30″ W, then east following the shore line to 30°08′39.18″ N, 085°39′27.89″ W, then southwest to 30°08′34.24″ N, 085°39′40.68″ W, then west to 30°09′34.35″ N, 085°41′46.30″ W, then north to the starting point at 30°09′55.62″ N, 085°41′46.30″ W.

(b) *Enforcement dates.* This rule will be enforced from 10 a.m. until 4 p.m. on May 6, 2012.

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

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

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

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

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

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

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

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

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

Dated: February 21, 2012.

D.J. Rose,

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

[FR Doc. 2012–6377 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–1120]

RIN 1625–AA08

Special Local Regulations for Marine Events; Spa Creek and Annapolis Harbor, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the swim segment of the ''TriRock Triathlon Series'', a marine event to be held on the waters of Spa Creek and Annapolis Harbor on May 12, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Spa Creek and Annapolis Harbor during the event.

DATES: This rule is effective and will be enforced from 6 a.m. to 9:45 a.m. on May 12, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–1120 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1120 in the ''Search'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 18, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Spa Creek and Annapolis Harbor, Annapolis, MD'' in the **Federal Register** (77 FR 11). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On Saturday, May 12, 2012, Competitor Group Inc. of San Diego, California, will sponsor the ''TriRock Triathlon Series'' in Annapolis, Maryland. The swim segment of the event will occur from 6:30 a.m. to 9:15 a.m. and will be located in Spa Creek and Annapolis Harbor. Up to 300 swimmers will operate on a 500-meter course located between the Annapolis City Dock and the confluence of the Spa Creek with the Severn River. The swimmers will be supported by sponsor-provided watercraft. The start and finish will be located at the Annapolis City Dock. A portion of the swim course will impede the federal navigation channel. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of Spa Creek and Annapolis Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly.

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 or operators of vessels intending to transit or anchor in the effected portions of Spa Creek and Annapolis Harbor during the event.

Although this regulation prevents traffic from transiting a portion of the Spa Creek and Annapolis Harbor during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Though the regulated area extends across the entire width of the waterway, this rule would be in effect for only a limited period; and before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly. All Coast Guard vessels enforcing this regulated area can be contacted at telephone number 410–576–2693 or on marine band radio VHF–FM channel 16 (156.8 MHz).

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

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)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35T05–1120 to read as follows:

§ 100.35T05–1120 Special Local Regulations for Marine Events; Spa Creek and Annapolis Harbor, Annapolis, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Spa Creek and Annapolis Harbor, within lines connecting the following positions: from position latitude 38°58′34″ N, longitude 076°29′05″ W, thence to position latitude 38°58′27″ N, longitude 076°28′55″ W, and from position latitude 38°58′40″ N, longitude 076°28′49″ W to position latitude 38°58′32″ N, longitude 076°28′45″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) All Coast Guard vessels enforcing this regulated area can be contacted at telephone number 410–576–2693 or on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 6 a.m. to 9:45 a.m. on May 12, 2012.

Dated: February 23, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–6382 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0134]

Annual Marine Events in the Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Neches River Festival boat races in Port Neches, TX from 3 p.m. on May 4, 2012 through 6 p.m. on May 6, 2012. This action is necessary to provide for the safety of the race participants, crew, spectators, participating vessels, non-participating vessels and other users of the waterway. During the enforcement period no person or vessel may enter the zone established by the special local regulation without permission of the Captain of the Port.

DATES: The regulation in 33 CFR 100.801 (Table 1, paragraph 118) will be enforced from 3 p.m. to 6 p.m. on May 4, 2012; and from 9 a.m. to 6 p.m. on May 5 and May 6, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard Marine Safety Unit Port Arthur, TX; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Special Local Regulations for the annual Neches River Festival in 33 CFR 100.801 (Table 1, paragraph 118) on May 4, 2012, from 3 p.m. to 6 p.m. and on May 5 and May 6, 2012 from 9 a.m. to 10 p.m.

Under the provisions of 33 CFR 100.801 (Table 1, paragraph 118), a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede participants or official patrol vessels. The Coast Guard may be assisted by other federal, state or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under the authority of 33 CFR 100.801 (Table 1, paragraph 118). In addition to this notification in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Local Notice to Mariners, Marine Information Broadcasts, and Marine Safety Information Bulletins.

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

Dated: February 21, 2012.

G.J. Paitl,

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

[FR Doc. 2012–6379 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Mobile Commerce and Personalization Promotion

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 709.3 to add a new temporary promotion in the summer of 2012 for Presorted and automation First-Class Mail® cards, letters and flats, and Standard Mail® letters and flats bearing two-dimensional mobile barcodes or equivalent print technology.

DATES: *Effective Date:* July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Krista Becker at 202–268–7345, Bill Chatfield at 202–268–7278, or *mobilebarcode@usps.gov.*

SUPPLEMENTARY INFORMATION: On February 21, 2012, the Postal Service filed a notice (R2012–6) with the Postal Regulatory Commission to temporarily reduce the prices for certain types of First-Class Mail and Standard Mail letters items that contain, in or on the mailpiece, a transactional two-dimensional barcode or similar print technology such as watermarks or tags (collectively ''Mobile Barcode'' or ''Mobile Barcodes'') readable by consumer mobile devices. In recognition of the success of the mobile barcode promotion in the summer of 2011, the Postal Service offers a revised promotion from July 1, 2012, through August 31, 2012.

In this final rule, the Postal Service provides a description of the conditions for eligibility for the price reduction for the mobile commerce and personalization promotion, and the revised mailing standards to implement the promotion.

To be eligible, each Presorted and automation mailpiece in the mailing that is listed on the postage statement for that mailing must have a Mobile Barcode on the outside of each piece or on the contents within each piece. When scanned, the Mobile Barcode must lead the recipient of the mailpiece to either: a Web page that allows the recipient to purchase a product or service, or a personalized URL that leads to a Web page whose Web address and content are unique to the mailpiece recipient. In both cases, the Web site must remain mobile-optimized. Mobile Barcodes that direct consumers to Web pages that allow payment for prior or future purchases, or encourage enrollment in online bill payment or paperless statement services are not eligible for the discount. Mailpieces with Mobile Barcodes that convey postage information, destination, sender, or a machinable serial number for security also are not eligible for the discount.

The promotion provides an upfront price reduction of 2 percent of the eligible postage for qualifying mailpieces containing Mobile Barcodes as described above. Qualifying mailings are Presorted and automation mailings of First-Class Mail cards, letters, and flats, and Standard Mail (including Nonprofit) letters and flats. Commingled, co-mailed and combined mailings are allowed, but a separate postage statement is required for mailpieces with Mobile Barcodes.

Eligible mailings must be accompanied by electronic documentation. Mailings that are prepared by an entity other than the mail owner must indicate the identity of the owner in the electronic documentation. The electronic documentation must identify the mail owner and mail preparer in the ''By/For'' fields for all mailings, either by Customer Registration ID (CRID), Mailer ID (MID) or other account type that is assigned by USPS®. Mailings of automation letters or flats must have Intelligent Mail® barcodes. Mailpieces with POSTNET™ barcodes will not be eligible for the price reduction.

The price reduction will be taken off the postage amount due at the time of mailing, and there will be no refunds or postage credit provided under this promotion. The promotion discount does not apply to single-piece First-Class Mail pieces including residual single-piece First-Class Mail pieces on a postage statement for Presorted and automation mailings.

Postage Payment Methods

Postage payment methods will be restricted to permit imprint, metered postage, or precancelled stamps. Pieces with metered postage must bear an exact amount of postage as stipulated by the class and shape of mail. Affixed postage values for metered mailings will be as follows:

First-Class Mail postcards	$0.20
First-Class Mail automation and (PRSTD) machinable letters	0.25
First-Class Mail nonmachinable letters	0.45
First-Class Mail automation and Presorted flats	0.35
STD Mail Regular letters	0.12
STD Mail Regular flats	0.13
STD Nonprofit letters	0.05
STD Nonprofit flats	0.06

Mailings with postage paid by metered or precancelled stamp postage will have the percentage discount deducted from the additional postage due, except for Value Added Refund mailings, which may include the amount of the discount with the amount to be refunded.

The mobile barcode promotion discount cannot be combined with other incentives, with the exception of the full-service Intelligent Mail barcode discount.

Promotion Dates and More Information

To participate in the promotion, customers must register on the Business

Customer Gateway at *www.gateway.usps.com* and specify which permits and CRIDs will participate in the promotion. Registration opens May 1, 2012, and must be completed at least 24 hours prior to the first mailing date. The Postal Service will implement the promotion and temporary price reduction for mailings made on July 1, 2012, through August 31, 2012. Plant-verified drop shipment (PVDS) mailings accepted no later than August 31, 2012, may be entered at destinations through September 15, 2012. Program requirements, including updated FAQs, are available on the RIBBS Web site at *https://ribbs.usps.gov/index.cfm?page=mobilebarcode* or by email to *mobilebarcode@usps.gov.*

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

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

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

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

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

* * * * *

700 Special Standards

* * * * *

709 Experimental and Temporary Classifications

* * * * *

[Revise the title of 3.0 as follows:]

3.0 Mobile Commerce and Personalization Promotion

3.1 Program Description and Scope

[Revise 3.1 by incorporating the text of current items a and b into the body of 3.1 and revising the text as follows:]

The mobile commerce and personalization promotion provides a two percent discount for pieces mailed at Presorted and automation prices in mailings of First-Class Mail cards, letters, and flats, and Standard Mail (including Nonprofit) letters and flats that include a transactional two-dimensional mobile barcode when the mailpieces meet all the conditions in these standards. Images such as watermarks and tags that, when scanned, direct consumers to mobile-optimized sites under conditions in 3.0 are also eligible. Automation pieces must bear Intelligent Mail barcodes; pieces with POSTNET barcodes are not eligible for this promotion. The promotion is valid for mailings entered from July 1, 2012 through August 31, 2012. Plant-verified drop shipment (PVDS) mailings meeting all relevant standards may be accepted at origin as late as August 31, 2012 if they are entered no later than September 15, 2012 at the destination.

3.2 Eligibility Standards

[Revise 3.2 as follows:]

To be eligible for the two percent discount, customers must register on Business Customer Gateway at *gateway.usps.com*, and specify which permits and CRIDs will participate in the promotion. Registration opens May 1, 2012, and must be completed at least 24 hours prior to the first mailing date. Mailpieces must be mailed under the following conditions:

a. A two-dimensional mobile barcode or similar image must be on each mailpiece, either on the outside or printed on the contents of the piece. Brief instructions or directional copy must be printed near the barcode to instruct the recipient to scan the barcode. One-dimensional barcodes do not qualify.

b. The mobile barcode must be readable by a mobile device and must lead to a mobile-optimized Web site. The barcode must be relevant to the contents of the mailpiece. Scanning the barcode must lead the consumer to a Web page that allows the recipient a good or service on the mobile device, or to a personalized URL that leads to a Web page unique to an individual recipient. In either situation, the Web site must remain mobile-optimized. Barcodes with links that direct consumers to sites that allow payment for prior or future purchases or that encourage enrollment in online bill payment or paperless statement services are not eligible for the discount. Mailpieces with mobile barcodes that convey postage information, destination, sender, or a machinable serial number for security also are not eligible for the discount.

c. The mailpieces with mobile barcodes must be one of the following:

1. Presorted or automation First-Class Mail cards, letters, or flats. Automation pieces must bear Intelligent Mail barcodes.

2. Standard Mail (including Nonprofit) letters or flats.

d. Postage must be paid by permit imprint or by affixing metered postage or a precanceled stamp to each piece of mail; the postage statement and mailing documentation must be submitted electronically. Mailings that are prepared by an entity other than the mail owner must indicate the owner's identity in the electronic documentation (''eDoc''). The eDoc must identify the mail owner and mail preparer in the By/For fields, either by Customer Registration ID (CRID), Mailer ID (MID) or other account type assigned by the USPS. All Presorted and automation pieces declared on a postage statement must contain a mobile barcode that qualifies for the discount.

e. Mailers must provide the USPS acceptance unit with an unaddressed sample of the mailpiece that contains a mobile barcode. If mobile personalization is used, at least two samples must be submitted, demonstrating that the web addresses are unique to each addressee. Mailers must also retain, until October 31, 2012, a sample of each mailpiece claiming a discount.

f. Other than a full-service Intelligent Mail discount (see 705.24), no other incentives apply for mailpieces claiming a discount under this promotion.

g. Participants must agree to participate in a survey conducted during or after the promotional period.

h. Federal government official mailings under OMAS are not eligible for this promotion.

3.3 Discount

[Revise the first sentence of 3.3 and add new second and third sentences as follows:]

Mailers must claim the two percent postage discount on the postage statement at the time the statement is electronically submitted. Mailings with postage affixed will deduct the discount amount from the additional postage due, except that mail service providers authorized to submit Value Added Refund (VAR) mailings may include the refund for the incentive discount in the VAR amount. Pieces with metered postage must bear an exact amount of postage as stipulated by the class and shape of mail. Affixed postage values for metered mailings may be found in the

Federal Register notice available at *pe.usps.com.* * * *

* * * * *

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

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2012–6086 Filed 3–15–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0380; A–1–FRL–9648–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that the Greater Connecticut serious one-hour ozone nonattainment area did not meet the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area had an expected ozone exceedance rate above the level of the now revoked one-hour ozone NAAQS for the 2005–2007 monitoring period. Separate from and independent of this determination, EPA is also determining that the Greater Connecticut serious one-hour ozone nonattainment area currently attains the now revoked one-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for 2008–2010. The area first attained the one-hour NAAQS during the 2006–2008 monitoring period, and continued in attainment during the 2007–2009, and 2008–2010 monitoring periods. Quality assured and quality controlled, but not yet certified ozone data available for 2011 indicate that the area continues to attain the one-hour NAAQS. These determinations are made under the Clean Air Act.

DATES: *Effective Date:* This rule is effective on April 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2011–0711. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA 02109–3912. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What actions is EPA taking?
II. What is the effect of these actions?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is taking two separate and independent actions for the Greater Connecticut one-hour ozone serious nonattainment area (hereafter, ''the Greater Connecticut area'').

A. Determination of Failure To Attain by Applicable Attainment Date

EPA is determining that the Greater Connecticut area did not attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date, November 15, 2007. This determination is based upon complete, quality-assured and certified air quality monitoring data for the 2005 through 2007 ozone seasons.

B. Determination of Current Attainment

In addition, EPA is determining that the Greater Connecticut area is currently attaining the one-hour ozone NAAQS based upon complete, quality-assured and certified ambient air monitoring data showing the area currently monitored attainment of the one-hour ozone NAAQS, and that it has done so continuously since the 2006–2008 monitoring period.

Other specific details related to these determinations and the rationale for EPA's action are explained in the Notice of Proposed Rulemaking (NPR) published on November 23, 2011 (76 FR 72377) and will not be restated here. No comments were received on the NPR.

II. What is the effect of these actions?

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility, EPA has determined that Greater Connecticut failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2), and the South Coast decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's determination here is linked solely to required, one-hour anti-backsliding, contingency measures. A final determination of failure to attain will not result in reclassification of the area under the revoked one-hour standard, nor is EPA identifying or determining any new one-hour reclassification for the area. EPA is no longer required to reclassify an area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. See 40 CFR 51.905(e)(2)(i)(B). Moreover, EPA has previously approved the one-hour ozone attainment demonstration and Reasonable Further Progress (ROP) plans for this area, and in doing so noted that although there were no state implementation plan contingency measure reductions applicable to the Greater Connecticut area for failure to attain, there were federal measures the state had not accounted for in its attainment demonstration that provided more reductions than necessary to serve the purpose of contingency measures for this area. See 66 FR 634, January 3, 2001. In addition, EPA has also determined that the Greater Connecticut area attained the one-hour ozone standard in 2008, and continues to

attain this standard. In this context, EPA has also determined that there are not any additional obligations, including those relating to one-hour ozone contingency measures, for the Greater Connecticut area under the one-hour ozone standard.

III. Final Action

EPA is determining that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 quality-assured ozone monitoring data. Separate from and independent of this determination, EPA is also determining that the Greater Connecticut one-hour ozone nonattainment area is currently attaining the one-hour ozone standard, based on the most recent three years (2008–2010) of complete, quality-assured ozone monitoring data at all monitoring sites in the area. EPA's review of the data shows that the area began attaining the one-hour ozone standard in the 2006–2008 period, and has continued to attain this standard through the 2007–2009 and 2008–2010 monitoring periods. Quality assured and quality controlled, but not yet certified, ozone data available for 2011 indicate that the area continues to attain the one-hour NAAQS.

IV. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective on April 16, 2012.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 8, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

■ 2. Section 52.377 is amended by adding paragraph (i) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(i) Determination of Attainment for the One-Hour Ozone Standard. Effective April 16, 2012, EPA is determining that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 complete, quality-assured ozone monitoring data. Separate from and independent of this determination, EPA is determining that the Greater Connecticut one-hour ozone nonattainment area met the one-hour ozone standard, based on 2008–2010 complete, quality-assured ozone monitoring data at all monitoring sites in the area. EPA's review of the ozone data shows that the area began attaining the one-hour ozone standard during the 2006–2008 monitoring period, and has continued attaining the one-hour standard through the 2007–2009 and 2008–2010 monitoring periods.

[FR Doc. 2012–6424 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0081; FRL–9648–9]

RIN 2060–AR42

Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: The EPA issued ''Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' as a direct final rule on December 22, 2011. Because the EPA received an adverse comment to the parallel proposal issued under the same name on December 22, 2011, we are withdrawing the direct final rule amendments to ''Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' published in the **Federal Register** on December 22, 2011.

DATES: As of March 16, 2012, the EPA withdraws the direct final rule amendments published on December 22, 2011. *See* 76 FR 79541.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0081. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 through *http://www.regulations.gov* or in hard copy at Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Hawes (919) 541–5591, *hawes.todd@epa.gov,* or Ms. Gobeail McKinley (919) 541–5246, *mckinley.gobeail@epa.gov,* Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. Background Information

The EPA issued ''Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' as a direct final rule on December 22, 2011. *See* 76 FR 79541. The direct final rule revised the preamble and rule text to the ''Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' (Portland) published November 7, 2011, to clarify that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour sulfur dioxide national ambient air quality standard in the State of New Jersey, and not in specific counties within the state. *See* 76 FR 69052. The revisions did not change the conclusions that the EPA made in the final rule and did not affect the emission limits, increments of progress, compliance schedules, or reporting provisions.

The EPA issued a parallel proposal under the same name on December 22, 2011, that proposed to make the same revisions outlined in the direct final and solicited comment on those revisions. *See* 76 FR 79574. We stated in the direct final rule amendments that if we received adverse comment to the parallel proposal by February 21, 2012, we would publish a timely notice of withdrawal of the direct final rule in the **Federal Register.** We received one adverse comment on the proposed amendments on February 21, 2012. We are consequently withdrawing the ''Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' published as a direct final rule in the **Federal Register** on December 22, 2012 as of March 16, 2012. *See* 76 FR 79541. The EPA will address the adverse comment in a subsequent final action based on the parallel proposal also published on December 22, 2011. *See* 76 FR 79574. As stated in the parallel proposal, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 12, 2012.

Lisa P. Jackson,

Administrator.

PART 52—[AMENDED]

Accordingly, the amendments to the rule published in the **Federal Register** on December 22, 2011 (76 FR 79541) on pages 79541–79544 are withdrawn as of March 16, 2012.

[FR Doc. 2012–6427 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2005–0033; FRL–9335–6]

RIN 2070–AD16

Revocation of TSCA Section 4 Testing Requirements for Certain High Production Volume Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revoking certain testing requirements for six chemical substances and all the testing requirements for four chemical substances. EPA is basing its decision to take this action on information received since publication of the first test rule for certain high production volume chemical substances (HPV1). HPV1 established testing requirements for those 10 chemical substances. On the effective date of this direct final rule, persons who export or intend to export the four chemical substances for which all the testing requirements are revoked are no longer subject to section 12(b) of the Toxic Substance Control Act (TSCA) export notification requirements triggered by HPV1.

DATES: This direct final rule is effective May 15, 2012 without further notice, unless EPA receives adverse comment in writing, or a request to present comment orally, on or before April 16, 2012. If EPA receives adverse comment, or a written request for an opportunity to present oral comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule, or relevant portions of this direct final rule, will not take effect. If you write EPA to request an opportunity to present oral comments on or before April 16, 2012, EPA will hold a public meeting on this direct final rule in Washington, DC. The announcement of the meeting will be published in the **Federal Register**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0033, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg.,

Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0033. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0033. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Catherine Roman, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; email address: *roman.catherine@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to those persons who manufacture (defined by statute to include import), process, or export the chemical substances identified in this direct final rule. Because other persons may also be interested, the Agency has not attempted to describe all the specific persons that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Statutory Authority

Section 4(a) of TSCA authorizes EPA to require testing if certain findings are made. EPA is amending the chemical testing requirements for certain HPV chemical substances in 40 CFR 799.5085 because some of the findings that EPA made for 10 chemical substances are no longer supported. These findings were that:

1. The chemical substances were produced in substantial quantities.

2. There are insufficient data upon which the effects of manufacture, distribution, processing, use, or disposal of those chemical substances on health or the environment can reasonably be determined or predicted.

3. Testing of the chemical substance with respect to such effects is necessary to develop such data. (See TSCA section 4(a)(1)(B)(i), (ii), and (iii); also, see Ref. 1).

Unit III. discusses which findings are not supported for each specific chemical substance subject to this direct final rule.

III. Amendment to Chemical Testing Requirements

EPA is amending the chemical testing requirements for certain HPV chemical

substances in 40 CFR 799.5085 by direct final rule. Specifically, this direct final rule revokes the testing requirements for the following four chemical substances: Acetyl chloride (CAS No. 75–36–5); imidodicarbonic diamide (CAS No. 108–19–0); methane, isocyanato- (CAS No. 624–83–9); and urea, reaction products with formaldehyde (CAS No. 68611–64–3). This direct final rule also revokes some of the testing requirements for the following six chemical substances: 9,10–Anthracenedione (CAS No. 84–65–1); 1-chlorododecane (CAS No. 112–52–7); phenol, 4,4′-methylenebis [2,6-bis(1,1-dimethylethyl)]- (CAS No. 118–82–1); methanesulfinic acid, hydroxyl-, monosodium salt (CAS No. 149–44–0); benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]- (CAS No. 1324–76–1); and C.I. Solvent Black 7 (CAS No. 8005–02–5). EPA is basing its decision to revoke all testing requirements for four chemical substances and some of the testing requirements for six other chemical substances on information received since publication of HPV1 (40 CFR 799.5085), as described in this unit.

A. Revocation of All Testing Requirements for Four Chemical Substances

1. *Acetyl chloride.* EPA is revoking all testing requirements for acetyl chloride (CAS No. 75–36–5) because there is no longer support for the TSCA section 4(a)(1)(B)(i) ''substantial production'' finding for this chemical substance. ''Substantial production'' of a chemical substance under TSCA section 4(a)(1)(B)(i) is generally interpreted by EPA to be an aggregate production (including import) volume equaling or exceeding 1 million pounds per year. See EPA's TSCA section 4(a)(1)(B) Final Statement of Policy (''B'' policy) (Ref. 2). The ''substantial production'' finding for this chemical substance was based on reports from several companies to the 2002 TSCA Inventory Update Reporting (IUR) rule. The Albemarle Corporation which manufactured and imported the largest volume of acetyl chloride, without which a finding of substantial production could not have been made, informed EPA in 2007 that its manufacture and importation of acetyl chloride at the time the test rule was promulgated were only for non-TSCA purposes (i.e., for use in pharmaceuticals) (Ref. 3), and was, therefore, not subject to HPV1.

Three other companies had reported importing smaller volumes of acetyl chloride in the 2002 IUR, the sum of which would not have provided support for a finding of substantial production. Two of these companies, Tessenderlo Kerley, Inc., and a company, which claimed its name as CBI, have since ceased importation of acetyl chloride. Tessenderlo Kerley ceased importation several years ago, and the other company ceased importation over a year prior to the effective date of HPV1, April 17, 2006 (Ref. 4). Neither of these companies is, therefore, subject to HPV1. The third small importer, Chartkit Chemical Corporation, reported that it imported only a small amount of acetyl chloride after the effective date of HPV1 in 2006, but none since (Ref. 5). EPA's review of data in the 2006 IUR (which required reporting on chemical substances manufactured or imported during calendar year 2005) did not identify any companies manufacturing or importing acetyl chloride. (Chartkit Chemical Corporation did not import acetyl chloride in 2005, making a report to the 2006 IUR unnecessary.) Because the finding for substantial production for acetyl chloride was not supported when HPV1 was promulgated, the Agency is revoking all the testing requirements for acetyl chloride (CAS No. 75–36–5) by removing it from Table 2 in 40 CFR 799.5085(j).

2. *Imidodicarbonic diamide.* EPA is revoking all the testing requirements for imidodicarbonic diamide (CAS No. 108–19–0), also known as biuret, by removing imidodicarbonic diamide from Table 2 in 40 CFR 799.5085(j). EPA considers the test requirements for this chemical substance unnecessary at this time because sufficient data have been provided to allow the Agency to reverse its finding under TSCA section 4(a)(1)(B)(ii) for ''insufficient data.'' Information that satisfied HPV1's requirements was voluntarily submitted by The Fertilizer Institute (TFI) on behalf of a member company that manufactures the chemical substance as an impurity in its products. EPA considers a company that manufactures a chemical substance only as an impurity to be a Tier 2 manufacturer with regard to its obligations under HPV1. Although subject to HPV1 and responsible for providing reimbursement to persons in Tier 1, Tier 2 manufacturers do not have to respond to HPV1 with a letter of intent to test or a request for exemption, unless directed to do so by EPA through a document published in the **Federal Register**. Although EPA did not publish such a document, TFI, acting on behalf of its member company, volunteered to provide information to EPA on the endpoints specified by HPV1 for that chemical substance. This information (Refs. 6–8) was provided to the Agency and found to meet the standards prescribed by EPA (Refs. 9–11) and is being made available in the docket for this direct final rule and will be added to the High Production Volume Information System (HPVIS).

3. *Methane, isocyanato.* EPA is revoking all the testing requirements for methane, isocyanato- (CAS No. 624–83–9) by removing it from Table 2 in 40 CFR 799.5085(j). On May 11, 2007, Bayer CropScience submitted a test plan and robust summaries of existing data for methane, isocyanato- along with a request that EPA determine if the robust summaries satisfied the Agency's need for data on physical/chemical properties (Ref. 12). In the same letter, Bayer CropScience requested a waiver for the requirement to determine an octanol-water partition coefficient and the requirement to conduct aquatic toxicity tests because of the extreme reactivity in water of methane, isocyanato-. Bayer CropScience also asked EPA to consider, as a substitute for aquatic toxicity studies of methane, isocyanato-, robust summaries of aquatic toxicity studies of dimethyl urea (CAS No. 96–31–1) (DMU), one of the two degradation products of methane, isocyanato- in water, the other being carbon dioxide. EPA concluded that the submitted data satisfied the Agency's need for data on the physical/chemical properties of boiling point, melting point, vapor pressure, and water solubility (Ref. 13). EPA also agreed that methane, isocyanato- hydrolyzes very rapidly and, as a result, an octanol-water partition coefficient is not relevant (Ref. 13). Because of the rapid hydrolysis of methane, isocyanato- to carbon dioxide and DMU, EPA is revoking the requirement to test for aquatic toxicity (fish acute toxicity, *Daphnia* acute toxicity, and toxicity to algae). EPA believes that the aquatic toxicity studies of DMU, provided by Bayer CropScience, which the Agency reviewed and found adequate, provide information on the aquatic effects of methane, isocyanato- (Ref. 14). Therefore, EPA, in this direct final rule, is revoking the testing requirements for boiling point, melting point, vapor pressure, octanol-water partition coefficient, water solubility, fish acute toxicity, *Daphnia* acute toxicity, and toxicity to algae for methane, isocyanato- by removing it from Table 2 in 40 CFR 799.5085(j).

4. *Urea, reaction products with formaldehyde.* EPA is revoking all the testing requirements for urea, reaction products with formaldehyde (CAS No. 68611–64–3) by removing it from Table

2 in 40 CFR 799.5085(j). EPA considers the test requirements for this chemical substance unnecessary at this time because sufficient data have been provided to allow the Agency to reverse its finding under TSCA section 4(a)(1)(B)(ii) for ''insufficient data.'' Information which satisfied HPV1's requirements was voluntarily submitted by TFI on behalf of its member companies that manufacture this chemical substance as an impurity in their products. EPA considers companies that manufacture a chemical substance only as an impurity to be Tier 2 manufacturers with regard to their obligations under HPV1. Although subject to HPV1 and responsible for providing reimbursement to persons in Tier 1, Tier 2 manufacturers did not have to respond to HPV1 with a letter of intent to test or a request for exemption, unless directed to do so by EPA through a document published in the **Federal Register**. Despite the lack of an EPA published **Federal Register** document, TFI, acting on behalf of its member companies, volunteered to provide information to EPA on the endpoints specified by HPV1 for this chemical substance. This information (Refs. 7 and 16) has been provided to the Agency and found to meet the standards for testing prescribed by EPA (Refs. 17–19) and is being made available in the docket for this direct final rule and will be added to HPVIS.

B. Revocation of Some Test Requirements for Six Chemical Substances

1. *9,10-Anthracenedione.* In a letter dated July 10, 2006, the Chemical Products Corporation (CPC) requested EPA's permission to submit the values for boiling point and vapor pressure of 9,10-anthracenedione (CAS No. 84–65–1) contained in the International Uniform Chemical Information Database (IUCLID) instead of conducting the tests required by HPV1 (Ref. 20). CPC stated that the ASTM methods specified by HPV1 would not work for 9,10-anthracenedione because the boiling point and vapor pressure listed for that chemical substance in IUCLID and the boiling point listed for that chemical substance in the ''Handbook of Chemistry and Physics'' (Ref. 21) fell outside the determination ranges of the ASTM methods. EPA agreed and approved CPC's request to submit IUCLID and other existing values because those values matched or were in close agreement with measured values in various literature sources (Ref. 22). CPC also requested a modification of the ASTM method E 324 to determine the melting point for 9,10-anthracenedione (Ref. 23). While evaluating this request, EPA reviewed available data on measured melting points of 9,10-anthracenedione and found the existing data to be in sufficiently close agreement that they could be used to satisfy the Agency's data need for that endpoint (Ref. 22). EPA is, therefore, revoking the requirement that the boiling point, vapor pressure, and melting point of 9,10-anthracenedione be determined by the ASTM methods specified in HPV1 and accepts the submitted existing data as sufficient to satisfy those data needs, making the testing requirements unnecessary. Therefore, EPA is revoking the testing requirements for boiling point, vapor pressure, and melting point for 9,10-anthracenedione by removing those requirements from those listed for 9,10-anthracenedione in Table 2 in 40 CFR 799.5085(j). The test requirements for 9,10-anthracenedione that are not revoked by this direct final rule include tests to determine octanol/water partition coefficient and water solubility, and to screen for reproduction/developmental toxicity. Studies responding to those test requirements have been submitted to the Agency (Ref. 24).

2. *1-Chlorododecane.* In a letter dated February 21, 2008, EPA informed Lonza, Inc., that the testing of 1-chlorododecane (CAS No. 112–52–7), which Lonza had committed to sponsor, did not have to include a test for melting point because, in publicly available documents, 1-chlorododecane is reported to be a liquid (Ref. 25). Therefore, EPA is revoking the testing requirement for melting point for 1-chlorododecane by removing that requirement from those listed for 1-chlorododecane in Table 2 in 40 CFR 799.5085(j). The test requirements for 1-chlorododecane that are not revoked by this direct final rule include tests for boiling point, vapor pressure, octanol/water partition coefficient, water solubility, biodegradation, *Daphnia* chronic toxicity, toxicity to algae, acute mammalian toxicity, mutagenicity, chromosomal damage, and 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Studies responding to those test requirements have been submitted to the Agency (Ref. 26).

3. *Phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethylethyl)]-.* In letters dated May 12, 2006, July 14, 2006, May 1, 2007, and May 16, 2007 (Refs. 27–30), the Albemarle Corporation requested EPA to review existing data that it was submitting for phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethylethyl)]- (CAS No. 118–82–1) to determine if they satisfied the Agency's need for data on water solubility, octanol/water partition coefficient, acute mammalian toxicity, bacterial reverse mutation, and screening level reproduction/developmental toxicity. EPA found that the data satisfied the Agency's data needs for those testing endpoints in HPV1, making the testing requirements unnecessary (Refs. 31–33). Therefore, EPA is revoking the testing requirements for water solubility, octanol/water partition coefficient, acute mammalian toxicity, bacterial reverse mutation assay, and a reproduction/developmental toxicity screen for phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethylethyl)]- by removing those requirements from Table 2 in 40 CFR 799.5085(j). The test requirements for phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethylethyl)]- that are not revoked by this direct final rule include tests for melting point, boiling point, vapor pressure, inherent biodegradation, and chromosomal damage. Studies responding to those test requirements have been submitted to the Agency (Ref. 34).

4. *Methanesulfinic acid, hydroxyl-, monosodium salt.* On May 14, 2007, the Sodium Formaldehyde Sulfoxylate Consortium (SFS Consortium) formed under the auspices of the Synthetic Organic Chemical Manufacturers Association (SOCMA) submitted existing data to satisfy some of the testing requirements for methanesulfinic acid, hydroxyl-, monosodium salt (CAS No. 149–44–0) (Ref. 35). The submitted studies used the dihydrate form of methanesulfinic acid, hydroxyl-, monosodium salt (CAS No. 6035–47–8) as the test substance to address the endpoints of inherent biodegradation, fish acute toxicity, *Daphnia* acute toxicity, and toxicity to algae (Ref. 35). Although the hydrated form is identified by a different CAS number, in general, EPA does not recognize a hydrate as a separate entity from the corresponding anhydrous material for TSCA purposes, and accepts studies of the hydrated form of a chemical substance as predictive of the effects of the anhydrous chemical (Ref. 15). EPA found that the submitted study on ready biodegradation satisfied the need for information on biodegradability, making the test requirement for inherent biodegradation unnecessary (Refs. 36 and 37). The existing studies on fish acute toxicity, *Daphnia* acute toxicity, and toxicity to algae were reviewed by the Agency and found to satisfy EPA's data needs for those endpoints (Ref. 38).

In the test plan submitted with the May 14, 2007 letter, the SFS Consortium

requested that EPA revoke the requirement to determine vapor pressure because the chemical substance is an organo-metallic salt that does not volatilize (Ref. 35). The SFS Consortium also requested that EPA revoke the requirement to determine the octanol/water partition coefficient (log K_{ow}) because its estimated value was −6.17 and HPV1 did not require a determination of octanol/water partition coefficient if its estimated value is less than zero (Ref. 35). EPA agreed with the SFS Consortium's position that testing was not needed to determine vapor pressure (Ref. 39) and octanol/water partition coefficient (Ref. 40). Also, in the test plan submitted on May 14, 2007, (Ref. 35), the SFS Consortium reported that in a test to determine boiling point, the test substance decomposed. EPA, therefore, is waiving the test for boiling point (Ref. 41).

EPA is revoking the testing requirements for boiling point, vapor pressure, octanol/water partition coefficient, biodegradation, fish acute toxicity, *Daphnia* acute toxicity, and toxicity to algae for methanesulfinic acid, hydroxyl-, monosodium salt by removing those requirements from those listed for that chemical substance in Table 2 in 40 CFR 799.5085(j). The testing requirements for methanesulfinic acid, hydroxyl-, monosodium salt that are not revoked by this direct final rule include tests for melting point, water solubility, chromosomal damage, and 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Studies responding to those test requirements, also using the dihydrate form of methanesulfinic acid, hydroxyl-, monosodium salt, were submitted to the Agency (Ref. 42).

5. *Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-.* On July 17, 2006, the Color Pigments Manufacturers Association (CPMA) submitted a test plan for benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]- (CAS No. 1324–76–1), also known as C.I. Pigment Blue 61. CPMA also submitted robust summaries of existing data which CPMA asked EPA to accept as satisfying some of the Agency's data needs for C.I. Pigment Blue 61. Some of the existing data described in the summaries addressed C.I. Pigment Blue 56, a close analog of C.I. Pigment Blue 61, which CPMA requested EPA to accept as satisfying the Agency's data needs for C.I. Pigment Blue 61, providing a structure-activity relationship (SAR) argument in the test plan to justify that request (Refs. 43 and 44). CPMA also asked EPA to accept results for water solubility and octanol/water partition coefficient which were obtained by using an alternative method, due to the extremely low predicted solubility of C.I. Pigment Blue 61, instead of the methods specified by the test rule (Ref. 43). Finally, CPMA asked EPA to accept that determining a melting point for C.I. Pigment Blue 61 was not relevant because the pigment thermally decomposes before it melts (Ref. 43).

EPA reviewed the submitted information on physical/chemical properties and decided that melting point, boiling point, and vapor pressure determinations were not relevant because C.I. Pigment Blue 61 decomposes before it melts and the decomposition temperature had been reported (Ref. 45). EPA accepted the submitted data on water solubility as satisfying the Agency's data needs for that endpoint, but did not accept the calculated value submitted to satisfy the testing requirement for octanol/water partition coefficient (Ref. 45). EPA believes the calculated value would, most likely, underestimate the measured value (Ref. 45) required to be determined by HPV1.

EPA reviewed CPMA's SAR argument concerning C.I. Pigment Blue 61 and C.I. Pigment Blue 56 and agreed that C.I. Pigment Blue 56 is an acceptable surrogate for C.I. Pigment Blue 61, thereby allowing adequate data on C.I. Pigment Blue 56 to satisfy data needs for C.I. Pigment Blue 61 (Ref. 46). As a result, a biodegradation study of C.I. Pigment Blue 56, found adequate by an EPA review, satisfies the need for biodegradation data on C.I. Pigment Blue 61 (Ref. 46). Likewise, a chromosomal damage test of C.I. Pigment Blue 56, which EPA reviewed and found adequate, will satisfy the data need for that endpoint (Ref. 47) for C.I. Pigment Blue 61. EPA's review of the existing data on C.I. Pigment Blue 61 found the studies on fish acute toxicity, mammalian acute toxicity, and bacterial mutation assay to be adequate to satisfy the data needs for those endpoints (Ref. 47). The existing study on repeated-dose toxicity, however, did not satisfy the test requirement for that endpoint (Ref. 47).

Therefore, EPA is revoking the testing requirements for melting point, boiling point, vapor pressure, water solubility, biodegradation, fish acute toxicity, mammalian acute toxicity, bacterial reverse mutation, and chromosomal damage for C.I. Pigment Blue 61 by removing those requirements from those listed for that chemical substance in Table 2 in 40 CFR 799.5085(j). In order to clarify that test requirements for acute toxicity to *Daphnia* and toxicity to algae had not been satisfied by existing studies, and that the fish acute toxicity test requirement had been satisfied, the test symbol C2 replaces C1 for C.I. Pigment Blue 61 in Table 2 in 40 CFR 799.5085(j). The testing requirements for C.I. Pigment Blue 61 that are not revoked by this direct final rule include tests for octanol/water partition coefficient, acute toxicity to *Daphnia,* toxicity to algae, and combined 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Studies responding to those test requirements were submitted to the Agency. The full studies were claimed to be CBI and are not available to the public, but robust summaries of those studies (Ref. 48) are in the docket.

6. *C.I. Solvent Black 7.* On July 29, 2006 and August 4, 2006, the Solvent Black 7 Consortium formed under the auspices of SOCMA submitted eight existing studies on C.I. Solvent Black 7 (CAS No. 8005–02–5) and requested EPA to determine if they satisfied some of the Agency's data needs specified in HPV1 (Ref. 49). EPA found that the studies satisfied the need for data on inherent biodegradation, fish acute toxicity, *Daphnia* acute toxicity, toxicity to algae, acute mammalian toxicity, chromosomal damage, and repeated-dose 28-day oral toxicity in rodents, making those test requirements for C.I. Solvent Black 7 unnecessary (Ref. 50). Although the 28-day oral toxicity study in rodents was accepted, it lacked a required screening test for reproduction/developmental toxicity. Although a test for chronic toxicity to *Daphnia* was not required for this chemical substance, SOCMA submitted a *Daphnia magna* reproduction test because the log K_{ow} of C.I. solvent Black 7 is close to 4.2 and a log K_{ow} greater than 4.2 would have made a *Daphnia* chronic toxicity test a requirement (Refs. 1 and 51). The submitted study was evaluated and was not found adequate to satisfy the objectives of a *Daphnia* chronic toxicity study because the study was only 10 days long instead of 21 days, and only one concentration was tested and it was lethal, preventing observation of sub-lethal endpoints (Ref. 52).

Therefore, EPA is revoking the testing requirements for inherent biodegradation, fish acute toxicity, *Daphnia* acute toxicity, toxicity to algae, acute mammalian toxicity, chromosomal damage, and repeated-dose 28-day oral toxicity in rodents for C.I. Solvent Black 7 (CAS No. 8005–02–5) by removing those requirements from those listed for that chemical substance

in Table 2 in 40 CFR 799.5085(j). In order to clarify that the requirement for a reproduction/developmental toxicity screening test had not been satisfied, but that the requirement for a repeated-dose 28-day oral toxicity test had been satisfied, the test symbol F2 replaces F1 for C.I. Solvent Black 7 in Table 2 in 40 CFR 799.5085(j). The testing requirements not revoked by this direct final rule include the tests to determine five physical/chemical properties and to screen for reproduction/developmental toxicity. Studies responding to those test requirements have been submitted to the Agency (Refs. 51 and 53).

IV. Economic Analysis

In the economic impact analysis of this direct final rule, the Agency estimated the total testing cost to industry to be $4.03 million for all 17 chemical substances, with an average of approximately $237,000 per chemical substance (Ref. 54). This total included an additional 25% in administrative costs. An amendment to HPV1 revoking testing requirements for Coke-Oven Light Oil (Coal) reduced the total cost to industry to an estimated $3.7 million for the remaining 16 chemical substances, with an average compliance cost of approximately $232,000 per chemical substance. This direct final rule would have the effect of further reducing the total testing cost by an estimated $1.5 million (approximately 41%), by eliminating all the testing requirements for acetyl chloride; imidodicarbonic diamide; methane, isocyanato-; and urea, reaction products with formaldehyde; as well as some of the testing requirements for 9,10-anthracenedione; 1-chlorododecane; phenol, 4,4′-methylenebis [2,6-bis (1,1-dimethylethyl)]-; methanesulfinic acid, hydroxy-, monosodium salt; benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylmino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-; and C.I. Solvent Black 7 (Ref. 55). In addition, the 25% administrative costs would be eliminated for these tests. The reduced total cost for the remaining 12 chemical substances with testing requirements is estimated to be $2.2 million (i.e., $3.7 million minus $1.5 million), with an average compliance cost per chemical substance of approximately $184,000 (Ref. 55).

V. Export Notification

On the effective date of the revocations in this direct final rule of the TSCA section 4 testing requirements for acetyl chloride (CAS No. 75–36–5); imidodicarbonic diamide (CAS No. 108–19–0), methane, isocyanato- (CAS No. 624–83–9); and urea, reaction products with formaldehyde (CAS No. 68611–64–3), persons who export or intend to export those chemical substances will no longer be subject to any TSCA section 12(b) export notification requirements triggered by HPV1 (See 40 CFR part 707, subpart D). The export notification requirements remain the same for the other six chemical substances discussed in the preamble of this direct final rule that are listed as subject to the requirements of HPV1 (Ref. 1); these chemical substances are 9,10-anthracenedione (CAS No. 84–65–1); 1-chlorododecane (CAS No. 112–52–7); phenol, 4,4′-methylenebis[2,6-bis(1,1-dimethylethyl)]- (CAS No. 118–82–1); methanesulfinic acid, hydroxy-, monosodium salt (CAS No. 149–44–0); benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]- (CAS No. 1324–76–1); and C.I. Solvent Black 7 (CAS No. 8005–02–5).

VI. Direct Final Rule Procedures

EPA is publishing this direct final rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comment as this action simply revokes testing which is not feasible, or testing for which the substantial production finding was not supported, or testing for which EPA has adequate data at this time. This direct final rule is effective May 15, 2012 without further notice, unless EPA receives adverse comment or a written request for an opportunity to present oral comments on or before April 16, 2012. If EPA receives adverse comment or a written request for an opportunity to present oral comments on one or more distinct amendments, paragraphs, or sections of this direct final rule, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment or a written request for an opportunity to present oral comments. Any distinct amendment, paragraph, or section of this direct final rule for which the Agency does not receive adverse comment or a request for an opportunity to present oral comments is effective May 15, 2012, notwithstanding any adverse comment or request on any other distinct amendment, paragraph, or section of this direct final rule. For any distinct amendment, paragraph, or section of this direct final rule that is withdrawn due to adverse comment or a request for an opportunity to present oral comments, EPA will publish a notice of proposed rulemaking in a future issue of the **Federal Register**. The Agency will address the comment or request for an opportunity to present oral comments on any such distinct amendment, paragraph, or section as part of that notice of proposed rulemaking.

VII. References

Each reference listed in this unit has a docket ID number (EPA–HQ–OPPT–2005–0033) followed by a four-digit document ID number. All document ID numbers are listed in numerical order in the docket. To access a particular document in the docket, go to *http://www.regulations.gov* and follow the online instructions.

1. EPA. Testing of Certain High Production Volume Chemicals; Final Rule. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2). (Document ID number EPA–HQ–OPPT–2005–0033–0001).
2. EPA. TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure; Notice. **Federal Register** (58 FR 28736, May 14, 1993) (FRL–4059–9). (Document ID number EPA–HQ–OPPT–2005–0033–0060).
3. Albemarle Corporation. Letter from M.G. Clisby to Catherine Roman, Chemical Information and Testing Branch (CITB), Chemical Control Division (CCD), Office of Pollution Prevention and Toxics (OPPT), EPA. April 16, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0344).
4. Tessenderlo Kerley, Inc. Email from Dawn Kominski to Catherine Roman, CITB, CCD, OPPT, EPA. March 23, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0342).
5. Charkit Chemical Corporation. Letter from Bryant Hinnant to Document Control Office, OPPT, EPA. December 7, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0220).
6. TFI. Submission for fulfillment of data requirements for biuret under TSCA section 4. July 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0343).
7. Organisation for Economic Co-operation and Development (OECD). Screening Information Data Set (SIDS), Urea, CAS No.: 57–13–6. Also, a supporting document for biuret. 1994. (Document ID number EPA–HQ–OPPT–2005–0033–0360).
8. IUCLID Data Set, Biuret, CAS No. 108–19–0. March 7, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0359).
9. EPA. Memorandum from Tracy Williamson, Industrial Chemistry Branch (ICB), Economics, Exposure, and Technology Division (EETD), OPPT, to Greg Schweer, CITB, CCD, OPPT. Review of the physical-chemical endpoints for HPV orphan chemical biuret (CAS No.

108–19–0). Sept 17, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0356).
10. EPA. Email from Robert Boethling, Exposure Assessment Branch (EAB), EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT. Review of TFI submission on biuret. August 20, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0347).
11. EPA. Email from David Brooks, High Production Volume Chemical Branch (HPVCB), Risk Assessment Division (RAD), OPPT, to Greg Schweer, CITB, CCD, OPPT. Review of biuret (CAS No. 108–19–0). October 2, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0358).
12. Bayer CropScience. Letter to Document Control Office, OPPT, EPA, submitting a test plan and request for review of existing data on physical chemical properties and aquatic toxicity. May 11, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0249).
13. EPA. Email from Tracy Williamson, ICB, EETD, OPPT, to Catherine Roman, CITB, CCD, OPPT. June 18, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0281).
14. EPA. Email and attached review of aquatic studies of methane, isocyanato from David Brooks, HPVCB, RAD, OPPT, to Greg Schweer, CITB, CCD, OPPT. August 29, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0284).
15. EPA. Emails on acceptability of studies on dihydrate form of CAS No. 149–44–0. August 18, 2009. (Document ID number EPA–HQ–OPPT–2005–0033–0357).
16. TFI. Submission for Fulfillment of Data Requirements for Urea, Reaction Products with Formaldehyde under TSCA Section 4. Revised March 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0361).
17. EPA. Memorandum from Kathryn Schechter, ICB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT. September 13, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0345).
18. EPA. Email from David Brooks, HPVCB, RAD, OPPT, to Mike Mattheisen and Catherine Roman, CITB, CCD, OPPT. April 23, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0346).
19. EPA. Email from Robert Boethling, EAB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT. August 14, 2007. Includes copyrighted attachment: Ahapir, Nir, et al. Purification and Characterization of TrzF: Biuret Hydrolysis by Allophanate Hydrolase Supports Growth. *Applied and Environmental Microbiology*. 72(4):2941–2495 (2006). (Document ID number EPA–HQ–OPPT–2005–0033–0363).
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21. CRC Handbook of Chemistry and Physics. 85th Edition. David R. Lide, ed., CRC Press. Boca Raton, FL. 2004.
22. EPA. Letter from Greg Schweer, CITB, CCD, OPPT, to Jerry A. Cook, CPC, concerning acceptance of existing data on boiling point, vapor pressure, and melting point. August 30, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0211).
23. CPC. Email from Jerry Cook to Catherine Roman, CITB, CCD, OPPT, EPA, concerning determination of melting point. July 24, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0348).
24. CPC. Studies submitted for 9,10-anthracenedione on octanol/water partition coefficient, water solubility, and a screen for reproduction/developmental toxicity. Submitted on February 15, 2007. (Document ID numbers EPA–HQ–OPPT–2005–0033–0222.1, EPA–HQ–OPPT–2005–0033–0222.1, and EPA–HQ–OPPT–2005–0033–0222.2, respectively).
25. EPA. Letter from Mike Mattheisen, CITB, CCD, OPPT, to John Van Miller, Toxicology/Regulatory Services, Charlottesville, VA. February 21, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0291).
26. Lonza, Inc. Studies submitted for 1-chlorododecane on boiling point, vapor pressure, octanol/water partition coefficient, water solubility, biodegradation, *Daphnia* chronic toxicity, toxicity to algae, acute mammalian toxicity, mutagenicity, chromosomal damage, and 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Submitted on September 17, 2008. (Document ID numbers EPA–HQ–OPPT–2005–0033–0314.6, EPA–HQ–OPPT–2005–0033–314.10, EPA–HQ–OPPT–2005–0033–0314.8, EPA–HQ–OPPT–2005–0033–0314.11, EPA–HQ–OPPT–2005–0033–0314.9, EPA–HQ–OPPT–2005–0033–0314.7, EPA–HQ–OPPT–2005–0033–0314.5, EPA–HQ–OPPT–2005–0033–0314.1, EPA–HQ–OPPT–2005–0033–0314.2, EPA–HQ–OPPT–2005–0033–0314.3, and EPA–HQ–OPPT–2005–0033–0314.4, respectively).
27. Albemarle Corporation. Letter from Ronald Zumstein to Document Control Office, OPPT, EPA, concerning existing data on water solubility and octanol-water partition coefficient. May 12, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0163).
28. Albemarle Corporation. Letter from Kim Boudreaux to Document Control Office, OPPT, EPA, concerning existing data on acute toxicity, gene mutation, and reproductive/developmental toxicity. July 14, 2006. (Document ID numbers EPA–HQ–OPPT–2005–0033–0181, EPA–HQ–OPPT–2005–0033–0181.1, EPA–HQ–OPPT–2005–0033–0181.2, and EPA–HQ–OPPT–2005–0033–0181.3).
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31. EPA. Letter from Greg Schweer, CITB, CCD, OPPT, to Ronald Zumstein and Kim Boudreaux, Albemarle Corporation, concerning EPA's acceptance of existing data on water solubility and octanol-water partition coefficient. August 9, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0210).
32. EPA. Letter from Greg Schweer, CITB, CCD, OPPT, to Kim Boudreaux, Albemarle Corporation, concerning EPA's acceptance of existing data on mammalian acute toxicity. April 5, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0237).
33. EPA. Letter from Greg Schweer, CITB, CCD, OPPT, to Kim Boudreaux, Albemarle Corporation, concerning EPA's acceptance of existing data on bacterial reverse mutation and reproductive/developmental toxicity. October 23, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0285).
34. Albemarle Corporation. Studies submitted for phenol, 4,4'-methylenebis[2,6-bis(1,1-dimethylethyl)]- on melting point, boiling point, vapor pressure, inherent biodegradation, and chromosomal aberration. Submitted on October 31, 2007 and November 1, 2007. (Document ID numbers EPA–HQ–OPPT–2005–0033–0274, EPA–HQ–OPPT–2005–0033–0274, EPA–HQ–OPPT–2005–0033–0274, EPA–HQ–OPPT–2005–0033–0275.1, and EPA–HQ–OPPT–2005–0033–0257, respectively).
35. SFS Consortium, SOCMA. Letter to Document Control Office, OPPT, EPA, submitting a test plan and request for review of existing data on biodegradation and aquatic toxicity. May 14, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0238).
36. EPA. Memorandum from Robert Boethling, EAB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT, concerning biodegradation test requirement. July 6, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0277).
37. EPA. Memorandum from Jed Costanza, EAB, EETD, OPPT, to Mike Mattheisen,CITB, CCD, OPPT. October 9, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0352).
38. EPA. Email from David Brooks, HPVCB, RAD, OPPT, to Catherine Roman, CITB, CCD, OPPT. Review of CAS No. 149–44–0. August 13, 2009. (Document ID number EPA–HQ–OPPT–2005–0033–0349).
39. EPA. Memorandum from Daniel Lin, ICB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT, concerning vapor pressure requirement. June 19, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0278).

40. EPA. Letter from Charles Auer, OPPT, to Tucker Helmes, SOCMA. May 28, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0307).
41. EPA. Memorandum from Greg Fritz, ICB, EETD, OPPT, to Mike Mattheisen, CITB, CCD, OPPT. August 25, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0351).
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43. CPMA. Letter to Document Control Office, OPPT, EPA, from J. Lawrence Robinson concerning existing data and test plan. July 17, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0185).
44. CPMA. Letter to Document Control Office, OPPT, EPA, from J. Lawrence Robinson concerning existing data and test plan. May 9, 2007. (Document ID EPA–HQ–OPPT–2005–0033–0246).
45. EPA. Memorandum from Diana Darling, ICB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT. Testing requirements and existing data for physical/chemical properties of the HPV test rule chemical, C.I. Pigment Blue 61 (CAS No. 1324–76–1). May 17, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0280).
46. EPA. Memorandum from Robert Boethling, EAB, EETD, OPPT, to Greg Schweer, CITB, CCD, OPPT. Review of SAR argument and a biodegradation test concerning an HPV test rule chemical, C.I. Pigment Blue 61 (CAS No. 1324–76–1). May 15, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0279).
47. EPA. Email and attached review from David Brooks, HPVCB, RAD, OPPT, to Greg Schweer and Catherine Roman, CITB, CCD, OPPT. Review of C.I. Pigment Blue (CAS No. 1324–76–1). August 22, 2007. (Document ID number EPA–HQ–OPPT–2005–0033–0286).
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49. SOCMA. Letters from C. Tucker Helmes to Document Control Office, OPPT, EPA. Submission of existing data on C.I. Solvent Black 7. June 29, 2006 and August 4, 2006. (Document ID numbers EPA–HQ–OPPT–2005–0033–0168, EPA–HQ–OPPT–2005–0033–0169, EPA–HQ–OPPT–2005–0033–0170, EPA–HQ–OPPT–2005–0033–0171, EPA–HQ–OPPT–2005–0033–0172, EPA–HQ–OPPT–2005–0033–0173, EPA–HQ–OPPT–2005–0033–0174, EPA–HQ–OPPT–2005–0033–0175, EPA–HQ–OPPT–2005–0033–0176, and EPA–HQ–OPPT–2005–0033–0184).
50. EPA. Memorandum from Mark Townsend, HPVCB, RAD, OPPT, to Greg Schweer, CITB, CCD, OPPT. November 27, 2006. (Document ID number EPA–HQ–OPPT–2005–0033–0283).
51. SOCMA. Letter from C. Tucker Helmes to Document Control Office, OPPT, EPA. Justification for providing *Daphnia* reproduction study for C.I. Solvent Black 7. February 28, 2008. (Document ID number EPA–HQ–OPPT–2005–0033–0290).
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54. EPA, EPAB, EETD, OPPT. Economic Analysis for the Final Section 4 Test Rule for High Production Volume Chemicals. October 28, 2005. (Document ID number EPA–HQ–OPPT–2005–0033–0131).
55. EPA. Email from Stephanie Suazo, EPAB, EETD, OPPT, to Catherine Roman, CITB, CCD, OPPT. RE: ''Revised Economic Analysis for Revocation of Testing Requirements'' with attached economic analysis. December 14, 2009. (Document ID number EPA–HQ–OPPT–2005–0033–0350).

VIII. Statutory and Executive Order Reviews

This direct final rule only eliminates existing requirements; it does not otherwise impose any new or revised requirements. As such, this action is not subject to review by the Office of Management and Budget (OMB) as a ''significant regulatory action'' under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Nor does it impose or change any information collection burden that requires additional review by OMB under the provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Because this direct final rule eliminates existing requirements without imposing any new or revised requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this action will not have a significant economic impact on a substantial number of small entities.

For the same reasons, it is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538), and does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This direct final rule does not have tribal implications, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), and 13211, ''Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This direct final rule does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 9, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 799—[AMENDED]

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. In § 799.5085, revise the section heading and Table 2 of paragraph (j) to read as follows:

§ 799.5085 Chemical testing requirements for first group of high production volume chemicals (HPV1).

* * * * *

(j) * * *

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical name	Class	Required tests (see table 3 of this section)
74–95–3	Methane, dibromo-	1	A, C1, E2, F2.
78–11–5	1,3-Propanediol, 2,2-bis[(nitrooxy)methyl]-, dinitrate (ester)	1	A4, A5, B, C6, F2.
84–65–1	9,10-Anthracenedione	1	A4, A5, F2.
110–44–1	2,4-Hexadienoic acid, (*E,E*)-	1	A, C4.
112–52–7	1-Chlorododecane	1	A2, A3, A4, A5, B, C3, D, E1, E2, F1.
118–82–1	Phenol, 4,4'-methylenebis[2,6bis(1,1-dimethylethyl)]-	1	A1, A2, A3, B, E2.
149–44–0	Methanesulfinic acid, hydroxy-, monosodium salt	1	A1, A5, E2, F1.
409–02–9	Heptenone, methyl-	2	A, B, C1, D, E1, E2, F1.
594–42–3	Methanesulfenyl chloride, trichloro-	1	A, B, C1, E1, E2, F2.
1324–76–1	Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-.	2	A4, C2, F1.
2941–64–2	Carbonochloridothioic acid, *S*-ethyl ester	1	A, B, C1, E2, F1.
8005–02–5	C.I. Solvent Black 7	2	A, F2.

* * * * *

[FR Doc. 2012–6430 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0079; FXES11130900000C3–123–FF09E30000]

RIN 1018–AX27

Endangered and Threatened Wildlife and Plants; Establishing a Manatee Refuge in Kings Bay, Citrus County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, establish a manatee refuge in Citrus County, Florida, in the waters of Kings Bay, including its tributaries and connected waters. This action is based on our determination that there is substantial evidence showing that certain waterborne activities would result in the taking of one or more manatees and that certain waterborne activities must be restricted to prevent the taking of one or more manatees in Kings Bay. In making this rule final, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity at these sites.

This final rule is modified from the proposed rule to ensure that the provisions do not compromise human safety and to clarify certain aspects. The modifications are not considered significant as they are within the scope of the proposed rule. To avoid creation of a hazard to human safety, watercraft may be operated at 25 miles per hour during daylight hours in a portion of the manatee refuge from June 1 through August 15. The portion of the rule prohibiting use of mooring and floatlines that can entangle manatees has been removed. Language regarding prohibitions on waterborne activities in Three Sisters Spring has been revised to improve clarity. We also announce the availability of a final environmental assessment and Finding of No Significant Impact for this action.

DATES: This rule is effective March 16, 2012.

ADDRESSES: This final rule, and supporting documentation, including public comments, are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2010–0079. Comments and materials received, as well as supporting documentation used in preparing this final rule, are also available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida, 32256.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida, 32256; by telephone (904/731–3336); by facsimile (904/731–3045); by email: *manatee@fws.gov;* or on-line at *http://www.fws.gov/northflorida.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

The West Indian manatee *(Trichechus manatus)* was listed as an endangered species on June 2, 1970 (35 FR 8491), under the Endangered Species Conservation Act of 1969 and this status was retained under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), and the population is further protected as a depleted stock under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). On October 22, 1979, the U.S. Fish and Wildlife Service (Service) adopted a regulatory process to provide a means for establishing manatee protection areas in waters under the jurisdiction of the United States where manatees were taken by waterborne activities (44 FR 60964). The first manatee protection areas were designated in Kings Bay on November 12, 1980, for the purpose of preventing the take of manatees by harassment from waterborne activities and included the Banana Island Sanctuary (including King Spring), the Sunset Shores Sanctuary, and the Magnolia Springs Sanctuary (45 FR 74880). The Service subsequently designated four additional manatee protection areas in Kings Bay on May 12, 1994, and on October 16, 1998, (including the Buzzard Island Sanctuary, Tarpon Springs Sanctuary, Warden Key Sanctuary, and Three

Sisters Springs Sanctuary, respectively) (59 FR 24654 and 63 FR 55553). To prevent the imminent take of manatees by waterborne activities, we published an emergency rule that temporarily established the Kings Bay manatee refuge in Citrus County, Florida, on November 9, 2010 (75 FR 68719). On June 22, 2011, the Service proposed to establish the manatee refuge throughout Kings Bay, while maintaining the seven existing Manatee Sanctuaries in the Bay (76 FR 36493).

The West Indian manatee includes two subspecies: the Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*). Florida manatees can be found throughout the southeastern United States, with Florida at the core of its range. Extensive efforts are ongoing by the Service and the Florida Fish and Wildlife Conservation Commission (Commission or FWC) to recover this species. In particular, significant efforts are made to minimize human-related threats and to reduce the number of manatees taken by human activities.

Take, as defined by section 3(19) of the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by regulation at 50 CFR 17.3 to mean an act which actually kills or injures wildlife. Harass is also defined by regulation to mean any intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Take is further defined in 50 CFR 18.3 to include, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. Under section 3(18) of the MMPA, harassment is defined to include 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); 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). All takings, including takings by harassment, are prohibited.

The primary human-related causes of death and injury to manatees rangewide include watercraft-related strikes (impacts and/or propeller strikes), entrapment and/or crushing in water control structures (gates, locks, etc.), and entanglement in fishing lines, crab pot lines, etc. A 2005 analysis concluded that watercraft-related mortality was the leading human-related cause of death for manatees throughout Florida (MPSWG 2005, p. 5). A subsequent threats analysis concluded that watercraft strikes and the potential loss of warm-water habitat pose the greatest threats to the Florida manatee population (Runge *et al.* 2007, p. 17).

The Service may establish manatee protection areas (in the form of a manatee refuge or a manatee sanctuary) whenever there is substantial evidence showing that such establishment is necessary to prevent the taking of one or more manatees. Regulations authorizing designation of manatee refuges and sanctuaries in areas where restrictions or prohibitions on certain waterborne activities are needed to prevent the take of manatees are codified in 50 CFR 17 subpart J. A manatee refuge is defined as an area in which the Director has determined that: (1) Certain waterborne activities would take one or more manatees; or (2) certain waterborne activities must be restricted to prevent the take of one or more manatees, including but not limited to taking by harassment. A manatee sanctuary is an area where it has been determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102). Manatee refuges and manatee sanctuaries are established under a different authority from Federal National Wildlife Refuges.

Kings Bay

The Florida manatee's range includes Kings Bay, Florida. Kings Bay is a large embayment located at the headwaters of the Crystal River, a tidal river located on Florida's west coast. Springs are the primary water source for this estuarine system; a recent report describes 70 springs that discharge warm, artesian water (that is, water rises under pressure from a permeable stratum overlaid by impermeable rock) into Kings Bay (Vanasse, Hangen, and Brustlin, Inc., 2010, p. 1). Kings Bay is partially located within the City of Crystal River's city limits, and wholly within Citrus County, Florida. Citrus County and the City of Crystal River are an integral part of ''Florida's Nature Coast,'' a northwestern Florida region marketed for outdoor recreational opportunities, including opportunities for viewing manatees (Nature Coast Coalition 2010 Web site). In addition to viewing manatees, area recreationists engage in snorkeling and diving, boating, canoeing and kayaking, fishing, waterskiing, and other activities (Gold 2008, pp. 4–5). Local eco-tour operators, dive shops, marinas, hotels and motels, restaurants, and other businesses benefit from these activities (Buckingham 1990, p. 6).

The Kings Bay springs constitute one of the most important natural warm-water shelters for manatees. Manatees have historically been attracted to the warm, spring-fed waters in Kings Bay where they retreat from the cold during the winter. As manatee populations have increased, year-round use of Kings Bay by manatees has increased accordingly (Figures 1 and 2). Wintering manatees have been the focus of a manatee viewing industry for many years, and bay waters are widely used by commercial and recreational waterway users for a variety of activities throughout the year. Manatees are struck and killed or injured by watercraft operating in Kings Bay. Manatees are harassed by the viewing public. The number of manatees struck and killed by watercraft in Kings Bay is increasing, as are the number of public reports of acts of manatee harassment.

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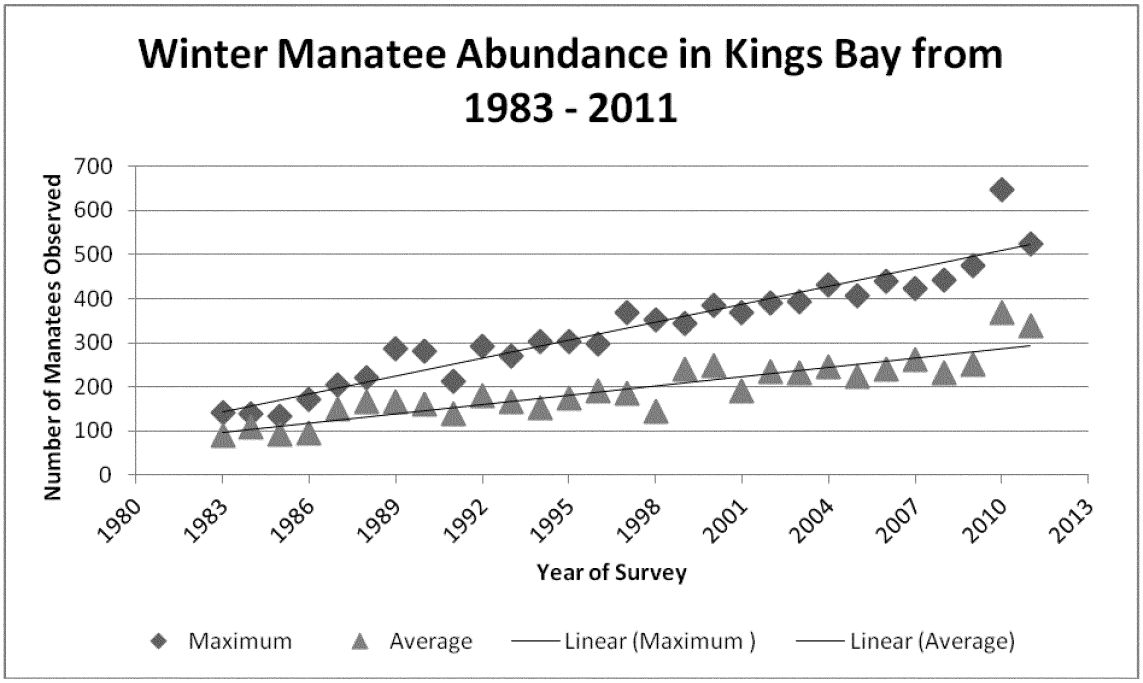

Figure 1. Maximum and average numbers of manatees detected with winter aerial manatee surveys from 1983 through 2011 within the Kings Bay area. The winter survey area is flown from October through March. (Kleen and Breland. 2011 unpublished report)

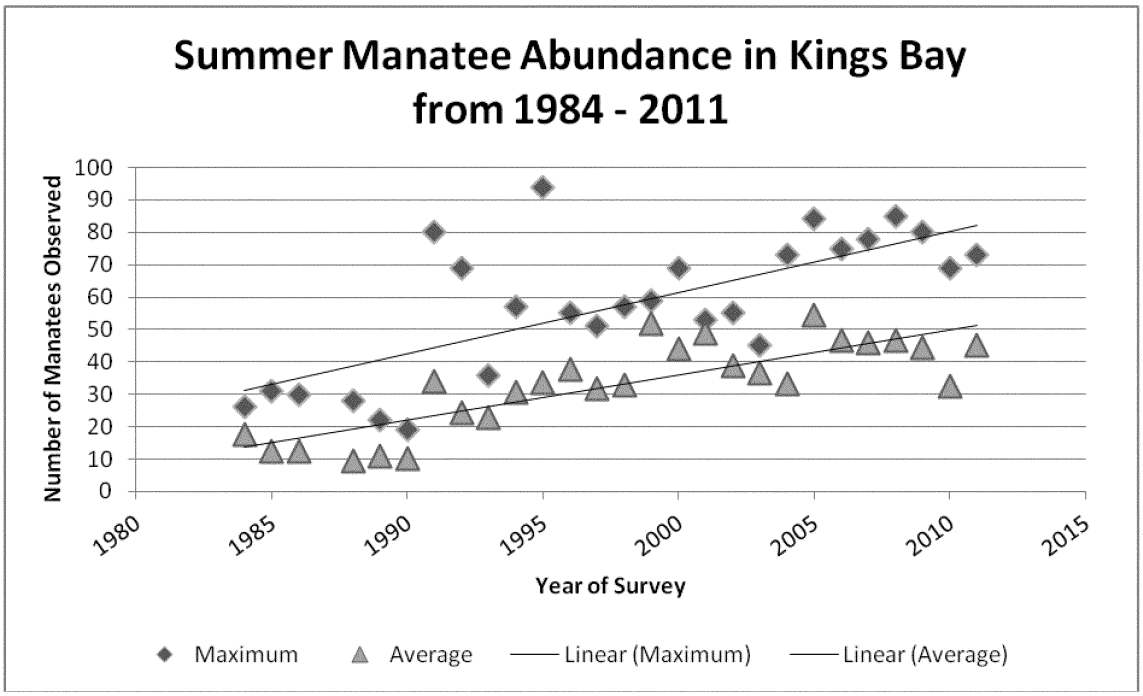

Figure 2. Maximum and average numbers of manatees detected with summer aerial manatee surveys from 1984 through 2011 within the Kings Bay area. The summer survey area is flown from April through September. (Kleen and Breland. 2011 unpublished report)

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Watercraft associated with recreational and commercial activities strike and kill manatees. In the State's northwestern region, where Kings Bay is located, adult manatee mortality is almost equally split between human-related and natural causes, with watercraft collisions being the leading source of human-caused mortality. According to mortality statistics compiled by the FWC, 13 manatees killed as a result of collisions with watercraft have been recovered within the boundaries of the Kings Bay manatee refuge (as established by this rule) between April 1974 and November 2010; all of these occurred since 1999 (Table 1; FWC FWRI Manatee Mortality Database 2011 Web site).

TABLE 1—ALL CARCASSES RECOVERED IN THE "KINGS BAY" REGION FROM APRIL 1974 THROUGH NOVEMBER 2010 FOR WHICH THE CAUSE OF DEATH WAS SPECIFICALLY DETERMINED TO BE WATERCRAFT. *THE ENTRY FOR 06/11/2002 IS A CARCASS THAT WAS RECOVERED OUTSIDE OF THE BOUNDARIES OF THE KINGS BAY MANATEE REFUGE (AS ESTABLISHED BY THIS RULE), BUT CONSIDERED THE "KINGS BAY" REGION BY FWC

[Data source: FWC FWRI Manatee Mortality Database 2011 Web site]

FL county	Date	Field ID	Sex	Size (cm)	Region	Probable cause of death
Citrus	10/27/1999	MNW9934	F	268	Kings Bay	Watercraft.
Citrus	10/12/2000	MNW0029	F	275	Kings Bay	Watercraft.
Citrus	06/11/2002	MNW0222	M	207	Kings Bay*	Watercraft.
Citrus	07/17/2002	MNW0229	F	310	Kings Bay	Watercraft.
Citrus	02/01/2003	MNW0305	F	257	Kings Bay	Watercraft.
Citrus	06/01/2004	MNW0417	F	204	Kings Bay	Watercraft.
Citrus	05/19/2006	LPZ102120	F	259	Kings Bay	Watercraft.
Citrus	05/24/2007	MNW0715	F	227	Kings Bay	Watercraft.
Citrus	07/04/2007	MNW0721	F	331	Kings Bay	Watercraft.
Citrus	08/23/2007	LPZ102383	M	262	Kings Bay	Watercraft.
Citrus	03/25/2008	MNW0813	F	219	Kings Bay	Watercraft.
Citrus	07/13/2008	MNW0814	M	228	Kings Bay	Watercraft.
Citrus	12/05/2008	LPZ102654	F	261	Kings Bay	Watercraft.
Citrus	01/03/2010	MNW1002	M	246	Kings Bay	Watercraft.

Manatee viewing activities provide a significant source of revenue to the local economy (Buckingham 1990, p. 6). Local eco-tour businesses bring visitors out to Kings Bay where visitors view manatees while in the water, from boats, and from other vantage points. Some manatees initiate encounters with visitors, but most manatees avoid or ignore encounters with people, preferring to frequent manatee sanctuaries where all human activities are prohibited. Some manatees are harassed by visitors, despite the fact that all forms of harassment are prohibited by law.

Hartman (1979, pp. 128–131) was the first to observe and describe how manatees respond to the presence of people in the water, observing that most manatees tended to avoid people, some ignored people, a few approached people and then left, and some approached and initiated interactions with people. These observations were made in Kings Bay's warm water springs and the author correlated a reduction in the number of manatees using the Main Spring with an increasing number of people (Hartman 1979, p. 131). Concern has been expressed about manatees displaced from warm water springs for prolonged periods of time; prolonged exposure to cold can be fatal to manatees, especially for smaller animals (O'Shea 1995, p. 304). Hartman (1979, p. 126) believed that manatees in Kings Bay are harassed by people in the water and by boats.

Researchers have observed and documented manatee responses to people and boats (Sorice *et al.* 2003, p. 324). Researchers noted increases in swimming, milling, and cavorting behaviors and decreases in resting, feeding, and nursing behaviors in the presence of increasing numbers of people and boats (Abernathy 1995, pp. 23–26; Wooding 1997, p. 1; King and Heinen 2004, pp. 230–231). They also observed that increases in numbers of boats and people prompted manatees to use other areas (Kochman *et al.* 1985, pp. 922–924; Buckingham *et al.* 1999, p. 514). However, none of these studies' observations of manatee responses to viewing participants and boats suggest that harm (killing or injuring of manatees) has occurred or is occurring (Sorice *et al.* 2003, p. 320). Nor have there been any significant increases in the number of cold-related injuries and mortalities in the northwestern Florida region, even in the recent extreme cold events, which killed large numbers of manatees in other portions of the winter range. For example, in the 2009–2010 winter cold event, only two deaths due to cold stress were recorded in Citrus County while to the south in Lee County, 24 manatee deaths were reported due to cold stress (FWC FWRI Manatee Mortality Database 2011 Web site). Manatee survival rates in the northwestern region are among the highest in Florida (Runge *et al.* 2007, p. 20).

Observations of manatee harassment in Kings Bay prompted the Service to promulgate a rule in 1979 that allowed the agency to designate manatee protection areas where certain waterborne activities, including boating and swimming, could be prohibited in order to "reduce the incidence of manatee injuries and deaths" and to "lessen the likelihood that manatees will encounter boats and people" (44 FR 60964; October 22, 1979). Subsequently, three manatee sanctuaries were designated in Kings Bay in 1980 (45 FR 74880; November 12, 1980) and, in 1983, the Service purchased lands in and around Kings Bay and established the Crystal River NWR for the purpose of protecting manatees and to educate the public about manatees.

In 1994, citing a doubling of the number of manatees in the area since 1980, a large increase in the number of visitors, the inability of the existing sanctuaries to provide sufficient shelter for manatees, and reports of increasing manatee harassment, the Service designated three additional sanctuaries in Kings Bay to prevent the take of manatees by harassment (59 FR 24654; May 12, 1994). This expansion was

followed by the addition of another sanctuary in 1998, similarly justified by reports of increasing harassment and observations of increasing numbers of manatees, increasing numbers of recreational divers and snorkelers, and insufficient space for manatees to rest, free from harassment (63 FR 55553; October 16, 1998: See Table 2.).

TABLE 2—INFORMATION JUSTIFYING PREVIOUS MANATEE SANCTUARY DESIGNATIONS IN KINGS BAY, FLORIDA

Date of Kings Bay manatee sanctuary designations	Approximate number of manatees using Kings Bay	Estimated number of people viewing manatees	Number of sanctuary designations new (total)
November 12, 1980 (45 FR 74880)	100	30,000 to 40,000	3(3)
May 12, 1994 (59 FR 24654)	240	60,000 to 80,000	3(6)
October 16, 1998 (63 FR 55553)	250	100,000	1(7)

Over the last 30 years (1980–2010), the Service and the State of Florida have created a network of manatee protection areas within the Kings Bay area. This network was designed to prevent the take of manatees by waterborne activities, including but not limited to, boating and manatee viewing activities, and was established to allow manatees to continue to gain access to critical warm-water areas and important resting and foraging areas. During the manatee season (November 15 through March 31), the network includes seven Federal manatee sanctuaries (which are described in our regulations at 50 CFR 17.108(a)(1)–(a)(7)) and five State manatee protection zones (as described in Chapter 68C–22, ''The Florida Manatee Sanctuary Act'' (2010)).

The seven Federal sanctuaries are located at heavily–used winter, warm-water sites (springs) and foraging areas and preclude all waterborne activities within their boundaries, preventing take from both boating and manatee viewing within these areas. The State protection zones include year-round idle and slow-speed zones that prevent the take of manatees from high-speed watercraft collisions. Given the State's statutory responsibilities for balancing the needs of manatees with the needs of the boating community, the State designated a 35-mile per–hour (mph) (daytime)/25 mph (nighttime) watersports area (watersports area) in Kings Bay between May 1 and August 31. This area encircles Buzzard Island in the center of the bay.

This network of manatee protection areas is enforced by Service, State, and local law enforcement officers. Extensive outreach and education programs support the protection area network, encouraging the public who engage in waterborne activities, including boating, manatee viewing activities, and others, to avoid taking manatees.

Summary of Comments and Recommendations

In the June 22, 2011, proposed rule (76 FR 36493), we requested comments concerning any aspect of the proposal and the accompanying draft Environmental Assessment (EA) that might contribute to development of the final decision on the proposed rule. A 60-day comment period was provided. We sent notifications and other informational materials about the proposal to Federal and State agencies, Congressional representatives, conservation groups, local governments, local commercial diving operations, and numerous private citizens who may be affected or had expressed an interest in receiving further information on the proposal. In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we also provided copies of the proposed rule to three appropriate independent peer reviewers.

We published a legal notice in the Citrus County Chronicle newspaper on June 24, 2011, announcing the proposal and availability of the draft EA, inviting public comment on both, and announcing the schedule for the informal open house and formal public hearing. Informational flyers were also distributed by the Crystal River National Wildlife Refuge (NWR) staff and friends group to all waterfront properties adjoining Kings Bay, as well as other nearby residences, and copies were mailed to the NWR's Comprehensive Conservation Plan development stakeholder and interested party list.

We held a public informational open house and formal public hearing at the College of Central Florida—Citrus Campus, CF Conference Center in Lecanto, Florida, on July 7, 2011. The public hearing was attended by 169 people, not including Service staff. Of the 49 hearing attendees who signed up to speak, 42 provided oral comments (including 15 local officials).

During the comment period, we received 415 written comments and 42 oral comments. A number of reviewers attached supporting documents such as petitions with multiple signatures or member form letters. Overall, comments came from individuals, conservation organizations, property owners, dive shop owners, tour operators, business owners, local officials, and other stakeholders. The majority of the comments expressed support for or opposition to the proposed manatee refuge without any substantive data or information provided for Service consideration.

Those expressing support generally either supported the rule as proposed, with some minor modifications and suggestions for improving education, or expressed concerns that it was not extensive enough. Those expressing opposition cited a broad range of concerns including riparian property rights, lack of alternatives considered, perception that the public was not involved earlier in the process, recreational user safety, and perceived economic effects. In some cases those in opposition generally supported most of the winter aspects of the rule but not the year-round watercraft restrictions. Analysis of all comments received is summarized in the main issues that are identified and discussed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with expertise in various aspects of the rule. We received responses from two of the peer reviewers. The peer reviewers generally concurred with our proposal and its content. One provided an additional economic reference, which was incorporated into the EA. Another recommended protection of an additional spring (Hunter Spring) but did not provide accompanying justification. The Service does not have

sufficient information to justify its inclusion at this time.

Public Comments

In responding to public comments, the Service has grouped similar comments into a single cohesive comment/response in order to provide greater clarity to the reader. We have not addressed or included comments that were unrelated to the rule, for example, comments about critical habitat designation. Finally, there were comments that were unrelated to the mechanics or effects of the rule such as perceptions, motives, etc. These comments are not addressed in the final rule but may be addressed in outreach materials accompanying the release of the final rule.

(1) *Comment:* With the increased number of manatees using Kings Bay, the death of one manatee should be acceptable.

Our Response: The available data show that, in several years, one or more manatees have been killed or harassed; the Service is establishing the manatee refuge in Kings Bay with the intent of reducing those impacts. All take (as defined by the ESA and the MMPA) of manatees, including take by harassment, is prohibited by Federal law.

(2) *Comment:* The Service did not fully engage the public in the Federal rulemaking process.

Our Response: In accordance with 50 CFR 17.100–108, we issued an emergency rule on November 9, 2010 (75 FR 68719) to establish Kings Bay as a manatee refuge to prevent the imminent take of manatees by waterborne activities. We held four informational meetings with the community to provide the public with information on the next steps in the regulatory process as well as for the exchange of useful information. These meetings were held on November 16, 18, and 20 and December 2, 2010, at the Plantation Inn and Golf Resort, Crystal River, FL, to initiate the process of formalizing the manatee emergency regulation. On June 22, 2011 (76 FR 36493), we proposed to establish Kings Bay as a manatee refuge as defined under 50 CFR 17 subpart J and announced a public hearing on this proposed rule. A 60-day public comment period was provided. On July 7, 2011, we held the public hearing at the College of Central Florida—Citrus Campus, CF Conference Center in Lecanto, Florida. As stated above, the public hearing was well attended, and overall we received 415 written comments and 42 oral comments from interested parties. We have worked closely with the public and the State of Florida and fully engaged the public in the rulemaking process in accordance with applicable laws and regulations. We have thoroughly evaluated and considered comments received and incorporated edits to the regulation where appropriate.

(3) *Comment:* The establishment of Kings Bay as a manatee refuge is an expansion of the Federal Crystal River National Wildlife Refuge.

Our Response: The manatee protection area (manatee refuge) established in Kings Bay through this final rule does not alter the boundary of the existing Crystal River National Wildlife Refuge, although it does overlap with part of this National Wildlife Refuge. It is an area established in accordance with 50 CFR 17.100–108, subpart J, the sole purpose of which is to prevent the take of one or more manatees from waterborne activities being conducted in the area. As previously defined, ''manatee refuges'' are established solely to prevent the take of one or more manatees. They are protection areas designated in the water and are not land acquisitions or land parcels. No ownership of the waterways or submerged lands is transferred as a result of establishing a manatee protection area (i.e., a manatee refuge or manatee sanctuary). National Wildlife Refuges, on the other hand, are part of the Federal National Wildlife Refuge System. These are Federal lands set aside to conserve America's fish, wildlife, and plants through the National Wildlife Refuge System Improvement Act of 1997. The manatee protection area (manatee refuge) established in Kings Bay through this final rule is also *not* an expansion of an existing Federal Crystal River National Wildlife Refuge. The Crystal River National Wildlife Refuge Fish and Wildlife Service staff is only associated with this manatee refuge because they will be a part of the team that implements the management activities detailed in this rule, as they currently are for the seven existing Federal seasonal manatee sanctuaries in Kings Bay.

(4) *Comment:* The establishment of Kings Bay as a manatee refuge will stop all boating activity and recreation.

Our Response: Designating Kings Bay as a manatee refuge pursuant to 50 CFR 17.100–108, subpart J, will not stop all boating and recreational activity. It provides for specific prohibitions, including speed and anchoring restrictions, time and area prohibitions, and prohibited activities such as chasing manatees, to avoid and minimize the harassment of manatees. However, boating, fishing, kayaking, and other forms of recreation are still allowed within all or portions of the manatee refuge, except in manatee sanctuaries and temporary no entry areas while they are in effect, as defined in the rule portion of this regulation.

(5) *Comment:* The proposed designation of Kings Bay as a manatee refuge infringes on property rights of homeowners that own property on the banks of Kings Bay. The establishment of Kings Bay as a manatee refuge will require homeowners on Kings Bay to get a permit.

Our Response: Manatee protection areas (manatee sanctuaries) were established in Kings Bay in 1980, 1994, and 1998. With all of these rules, exceptions were allowed for homeowners that own property on the banks of Kings Bay adjoining manatee sanctuaries or no-entry areas to continue to use waterways to go from and to their property under idle speed. They have also continually been allowed to maintain their property. Homeowners that own property as described above under these prior rules were not required to get a permit. Under these past rules, they notified the Crystal River NWR office and received a no-cost sticker to identify their watercraft. Some of these homeowners on Kings Bay already have identification stickers. When effective, this final rule for Kings Bay allows similar exceptions to all riparian property homeowners (their guests, employees, and designees including contractors and lessees) whose property adjoins a manatee sanctuary or no-entry area so they can retain their watercraft access and conduct property maintenance. This final rule also employs a similar no-cost sticker and no-cost letter of authorization program that has been used in the area for many years. The letter of authorization for contractors and designees is a process to help and protect homeowners as well. These stickers and/or letters are not required for those riparian property homeowners (their guests, employees, and designees including contractors and lessees) with Kings Bay property that does not adjoin a manatee sanctuary or no-entry area.

(6) *Comment:* Several comments related to the human safety aspects of the proposal. Some commenters expressed concern that, by closing the summer watersports zone, recreational watercraft operators would be forced into the narrow channel of Crystal River proper. Others expressed concern that the current watersports zone is unsafe because of the high number of users and the speed at which watercraft are being operated. Some commenters suggested that a reduced watersports zone could

increase safety for manatees while not forcing too much recreational activity into the river.

Our Response: We have fully evaluated comments shared by the public in and around Kings Bay and other concerned stakeholders in relation to actions being considered for implementation that were identified in the Services' June 2011 proposed rule. These concerns led us to seek and review Florida Fish and Wildlife Conservation Commission boating accident records in Crystal River and Kings Bay. Review of that information revealed that, since 2000, eight boating accidents have been reported in Kings Bay. Those accidents resulted in four injuries. In Crystal River, 24 accidents have been reported since 1998. Those accidents resulted in 12 injuries and 1 fatality.

As part of our evaluation of comments, the Service worked with the U.S. Coast Guard (USCG) to evaluate the human safety aspects of the proposed rule. In an October 7, 2011, memorandum, the USCG (and confirmed by FWC by letter of December 8, 2011) conveyed their concern that the proposed closure of the watersports zone is likely to result in the displacement of high-speed watercraft activity into the Gulf of Mexico and the connecting waters of Crystal River, with the latter being the more likely of the two options due to the 2-hour transit time from Kings Bay to the Gulf. Crystal River has a narrow high-speed channel. In working with the USCG, we concluded that an increase in traffic such as might occur with implementation of our proposed rule is likely to result in unsafe conditions for watercraft operators by increasing the density of boaters in a smaller area and, therefore, the danger of boating safety infractions and marine accidents including vessel collisions, potentially involving serious bodily injury. We worked with the USCG to ensure that the manatee protection area designated through this rule both prevents the take of one or more manatees and alleviates the human safety issues raised in public comments.

The Service examined seasonal manatee use data (i.e., numbers of manatees seen and when they were seen) in the watersports zone on a monthly basis from May through August for a period of 13 years (1999–2011); 69 surveys in all (Crystal River NWR unpublished data). Manatee use was highest during May (23.7 manatees/survey), declined in June (16.8 manatees/survey), July (17.5 manatees/survey), and the first half of August (11.0 manatees/survey), and increased in the latter half of August (19.4 manatees/survey). Coincidentally, the period of least manatee use also matched the timeframe when the least experienced boaters would be most likely to be on the water, the public school summer vacation period.

The Service also examined manatee area use data (i.e., numbers of manatees seen and their locations) in various portions of the watersports zone for this same time period. Manatees are found throughout Kings Bay; however, some portions of Kings Bay appear to have less frequent use than others, such as a portion of the bay north of Buzzard Island. Manatee use during the months of May through August, was greatest (approximately 60 percent of all observations) in the waters east, west, and south of Buzzard Island. The waters along the south, west, and north shorelines in that portion of Kings Bay north of Buzzard Island combined encompassed approximately 15 percent of all observations. The remainder of the waters north of Buzzard Island encompassed approximately 25 percent of the manatee observations (Crystal River NWR unpublished data).

We, therefore, considered the best available information, including manatee area and seasonal use within the Bay, and concluded that we could still meet the regulatory requirements of 50 CFR 17.100–108, subpart J, while also considering the human safety aspects by modifying the proposed rule to continue to allow some level of high speed watercraft recreation in Kings Bay. The final rule reflects these modifications that are within the scope of the proposed rule. Further, as confirmed in a memorandum to the Service dated November 8, 2011, these modifications alleviate the USCG's concerns regarding the proposed rule. Specifically, watercraft will be able to operate at high speed, not to exceed 25 mph, in a portion of Kings Bay generally north of Buzzard Island from June 1 through August 15 during daylight hours (sunrise to sunset). Slow-speed operation is required from sunset to sunrise during this period and at all times from August 16 through May 31. Manatees in Kings Bay are known to approach anchored boats for various and sometimes unknown reasons (*e.g.,* to rub on the anchor line, seek cover, etc.). Therefore, we added a protection measure in the high-speed area through a prohibition against anchoring a vessel in the area (except in emergency situations) while the zone is in effect, which will avoid creating an attractive nuisance. A secondary benefit of this manatee protection measure is that it enhances the value of the area for safe waterborne recreation by precluding anchorage of vessels in the high-speed area during the defined time period. Currently, this area is a location where recreational vessels are anchored for extended periods and this effectively limits high-speed recreation in the widest portion of the Bay, causing recreationists to use the more constricted portions of the watersports area.

The modifications to the rule will allow continued use of a portion of Kings Bay for high-speed recreation and, therefore, is less likely to result in additional recreational pressure in Crystal River during this peak summer recreation period. The modifications also coincide with the period of least manatee use based on available occurrence data (Crystal River NWR 2011, unpublished data). The area north of Buzzard Island provides the most open space available for watercraft operation in Kings Bay and is of less value to manatees for feeding, breeding, and sheltering (Crystal River NWR unpublished data). The waters to the east, west, and south of Buzzard Island that will become a year-round slow-speed zone generally have a greater density of manatee occurrences during the summer months, are shallower, and likely contain more submerged aquatic vegetation than the waters to the north of the island.

The *''Speed and anchoring restrictions''* portion of the rule provides for slow speed shoreline buffers along the south, west, and north shorelines in the portion of Kings Bay north of Buzzard Island. This provision allows the Service to protect the areas most frequented by manatees and to allow a safe operating area for recreational vessels. Based on our estimates of the location of these buffers relative to manatee observational data, we believe the final rule provides significant improvements in manatee protection over current conditions. It provides the same level of manatee protection as the June 2011 proposed rule during 47 days of May and August when the bay is slow speed throughout. During June, July, and the first half of August (76 days total), boats will be required to travel at slow speed where manatees are most likely to occur east, west, and south of Buzzard Island (approximately 60 percent of the observed locations) and along shorelines north of Buzzard Island (approximately 15 percent of the observed locations; Crystal River NWR unpublished data). As a result of the changes to the rule, which prohibits mooring and anchoring in the area north of Buzzard Island from June 1 to August 15, we also believe there will be fewer

manatees (currently, this area supports approximately 5 percent of observed locations; Crystal River NWR unpublished data) in the area where boats have historically anchored and moored which will also increase manatee protection in the 25 mph area. In total, we estimate that the final rule will provide at least 84 percent of the slow-speed benefits of the proposed rule (100 percent for 47 days and 75 percent for 76 days) and could reduce the potential risk of manatee mortality and injury by this fraction as the result of legal vessel operation. We believe the final rule will prevent the take of one or more manatees and resolves the safety concerns expressed by the public and confirmed by the USCG and FWC. Therefore, the Service is exercising its discretionary authority under 50 CFR subpart J to establish this manatee protection area.

(7) *Comment:* One reviewer commented that slowing boat speeds will not protect manatees.

Our Response: Slowing vessels allows increased reaction time for both boaters and manatees to avoid each other. It also minimizes the amount of force involved should a collision occur. Blunt force trauma is a significant factor in the deaths of manatees and injuries in collisions with boats.

(8) *Comment:* The definition of slow speed in the rule should be modified to include the aspect of ''no wake'' and should be modified to define a certain miles per hour.

Our Response: The Service uses definitions of watercraft operation speeds that are consistent with those of the State of Florida. We do not have any information to indicate that addition of ''no wake'' and a set miles per hour limit would offer further protection than the current definition in use.

(9) *Comment:* We received comments that there is not enough information to support establishing a temporary no-entry area around House and Jurassic Springs as well as comments that requested greater protection for these springs in the form of sanctuaries.

Our Response: As many as 20 animals have been seen in each of these sites on particularly cold days (J. Kleen, Crystal River NWR, 2010, pers. com.). Based on the best available information, including manatee use data, we believe that having the ability to establish temporary no-entry areas in House and Jurassic Springs will prevent the take, including harassment, of one or more manatees. These temporary no-entry areas will not be established in these spring areas when manatees are not present. Establishment of temporary no-entry areas will be based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. Depending on the winter season, House and Jurassic Springs may not have to be temporarily closed to entry or may only need to be closed for a time less than the duration of the winter season. In relation to greater protection, manatee use at these Springs is also expected to increase with less disturbance and future growth of the manatee population. At this time, the evidence does not support a determination that establishment of permanent sanctuaries is necessary to prevent the taking of one or more manatees. We will work closely with the local, State, and Federal officials and the local community if rule changes are considered in the future.

(10) *Comment:* The Service should specify specific air and water temperatures and tidal conditions that are necessary before an early or late creation of any temporary no-entry area could occur.

Our Response: Creation of any temporary no-entry area will be made only after an evaluation of a number of factors. The designation of temporary no-entry areas in advance of or after the regular manatee winter season will be made based on presence of manatees as identified by aerial survey observations of manatees using the existing sanctuary sites, and current weather information including air and water temperature and forecast duration of the cold event. Tidal conditions are not a factor in considering these designations.

(11) *Comment:* Some reviewers commented that we are only establishing the Kings Bay manatee refuge because of the threat of court action against the Service from several environmental groups.

Our Response: In designating the Kings Bay manatee refuge, the Service is guided by the provisions of 50 CFR 17.100–108.

(12) *Comment:* Some reviewers commented that, with the manatee population increasing, there is no need for establishing a Federal manatee refuge in Kings Bay, Citrus County, Florida.

Our Response: Both the ESA and MMPA prohibit the take, including incidental take, of manatees without appropriate authorization, which, to be obtained, must meet certain findings made under these Acts. Preventing the take of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs because of the overall value of this area to recovery, and the risk of take from harassment and watercraft. This action is consistent with prior Service rulemaking. After evaluating the best available information, we have determined that designation of this area as a manatee refuge is warranted pursuant to 50 CFR 17.100–108.

(13) *Comment:* Kings Bay as a whole and the channel proper that feeds into Kings Bay should be established as a manatee sanctuary.

Our Response: At this time, there is not substantial evidence to support the establishment of a manatee sanctuary throughout Kings Bay or the Crystal River channel proper that feeds into Kings Bay. Establishment of such a designation would unnecessarily restrict recreational opportunities within the Bay.

(14) *Comment:* Several reviewers commented that harassment as defined by these more specific prohibited activities should be added to 50 CFR 17.102 and that these prohibited actions that clarify take of manatees should apply everywhere it occurs and should be clarified in the rule.

Our Response: With the publication of this final rule, 50 CFR part 17 will be amended as noted in the Regulation Promulgation section of this rule. The Director may establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. Defining ''harassment'' under 50 CFR 17.102 is outside the scope of this rule. We have substantial evidence that the prohibited behaviors specifically identified in this rule can and have resulted in take of manatees in Kings Bay. It is not clear that extending the prohibitions beyond Kings Bay is warranted at this time, and in any case, goes beyond the scope of the rule. We will work closely with the local, State, and Federal officials and the local community if rule changes outside of Kings Bay are considered in the future.

(15) *Comment:* Some reviewers expressed confusion about the proposed prohibition against using mooring or float lines that can entangle manatees. Comments were also received suggesting that this line prohibition should apply everywhere the manatee occurs.

Our Response: The intent of the prohibition against the ''use of mooring and float lines that can entangle manatees'' was to prevent one or more manatees from being injured or killed from entanglement in such lines that have been abandoned or are not regularly checked and could, therefore, become an entanglement hazard. We recognize, however, that our intent was not clearly articulated in the proposed

rule. Entanglements are a threat to manatees in Kings Bay. In our attempts to clarify this proposed prohibition, we have recognized that this threat and solutions toward this threat need additional consideration. Implementing this provision at this time is not practical for several reasons (*e.g.,* uncertainty regarding identification and availability of appropriate materials, application for different uses, and enforceability). Our goal of the proposed prohibition was the removal of derelict line sources and to encourage all operators to regularly check lines that are secured in Kings Bay. Through improved outreach, we are going to encourage all operators to help us meet this goal. We intend to work with the community and researchers to assess and evaluate equipment (line, connections, traps) solutions that are feasible and evidence suggests will help reduce manatee entanglements. Until we can accomplish that, other measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide means for reducing the number of lines discarded in this area. Therefore, we have modified the rule to remove this proposed prohibition.

(16) *Comment:* Comments expressed the opinion that the Service does not have the resources to enforce the prohibitions and restrictions within the Kings Bay manatee refuge. Similarly, we received comments suggesting that enforcement should be increased in Kings Bay before additional protections are implemented.

Our Response: Both State and Federal law enforcement agents are authorized to enforce these regulations, and enforcement is a valuable tool to reduce take from noncompliant activity. The watercraft speed restrictions address the potential for accidental take associated with currently legal activities. Increased enforcement of existing laws would not prevent these injuries and deaths.

(17) *Comment:* Numerous comments stated the need to improve education for all parties who participate in waterborne activities within Kings Bay.

Our Response: Education and public awareness are important elements in the ongoing efforts to protect and recover manatees. In addition, our analysis of the best available information indicates that establishment of manatee protection areas and their requisite enforcement are equally important components in the comprehensive approach toward manatee protection. We will continue to work with the local community to increase education and public awareness of these regulations and restrictions.

(18) *Comment:* Some reviewers commented that elimination of the summer watersports zone will adversely impact the economy by reducing property values, certain forms of recreation, and tourism. Others commented that the proposal will support economic growth through increased ecotourism in the summer. One commenter pointed out the savings in costs from rescuing and caring for injured manatees.

Our Response: The net economic effect of the rule, whether positive or negative, is expected to be minimal. There is little debate that manatees are an economic asset to the community, but the extent to which that value may increase in summer months is unknown. The changes in the slow-speed requirements for safety purposes will have the secondary effect of buffering potential adverse economic effects through lost use. The rule will reduce the duration when certain waterborne activities may take place by 38 percent, but will maintain the opportunity for such recreation during the peak summer use period. It will remove some areas where high-speed watercraft operation can take place but improve opportunities for such recreation in other areas. It will increase and enhance the opportunities for other forms of waterborne recreation such as kayaking or canoeing, swimming, diving, and wildlife observation immediately east, south, and west of Buzzard Island. We know that the most recent annual reimbursement by the State to rehabilitation facilities for the cost of rescue and care for injured or distressed manatees is $1.15 million. Any incremental reduction in manatee injuries will represent a cost savings.

(19) *Comment:* One reviewer commented that the manatee mortality statistics in the rule and Environmental Assessment are inaccurate.

Our Response: The statistics have been reviewed and have been revised in this final rule to be current and accurate at the time of publication.

(20) *Comment:* One reviewer commented that the refuge establishment will prevent dredging.

Our Response: Manatee-safe procedures are currently required for all dredging activities in Florida where manatees are found. The rule does not impose additional restrictions on dredging.

(21) *Comment:* Several comments stated that the rule should incorporate additional protected areas both within and beyond the refuge and noted that the Service is not closing access to the ''keyhole'' in Kings Spring, a marked corridor within the Banana Island Sanctuary that currently allows access to swimmers and divers while the sanctuary is in place.

Our Response: The Service does not believe that additional closures are warranted within the manatee refuge and closures outside of the manatee refuge are beyond the scope of this rule. The Service believes that the rule is sufficient to prevent the take of one or more manatees and is, therefore, compliant with our discretionary authority. We believe swimming and diving can be allowed in the ''keyhole'' without harassing manatees. However, should swimming, diving, or both in the keyhole prove to be a problem, the Service has authority to close public access without additional rulemaking, as this area is Federally-owned and administered by the Service.

(22) *Comment:* Several comments suggested additional rules for in-water behavior relative to specific approach distances, touching of manatees, gear requirements or prohibitions, and passive observation.

Our Response: In order for the Service to implement and enforce a restriction we must be able to demonstrate substantial evidence that the activity results in ''take.'' As such, the rule prohibits numerous types of contact with manatees that will result in take. However, we have no evidence that simply touching a manatee, or approaching a manatee within some specific proximity, or use of some specific types of gear near a manatee will necessarily result in take. The commenter also acknowledged that ''* * * interactions between certain manatees that invite contact with people may not annoy, disturb, or harm [manatees].'' Adding these prohibitions would thus exceed our authority under subpart J and MMPA. Conversely, all of the prohibitions in the rule can be shown to result in take and will collectively allow us to prevent illegal take, and violations can be successfully prosecuted.

(23) *Comment:* Some reviewers suggested that the Service delay implementation and create a stakeholder committee to develop a solution.

Our Response: Prior to development of this final rule, we held four public meetings and one public hearing. No specific alternative solutions were submitted during these public meetings, subsequent to these meetings, or during the public comment period, despite the request for such information. We coordinated with Law Enforcement, FWC, and the USCG. The Service

considered alternative configurations for the final rule in coordination with the USCG and incorporated the changes that maximize manatee protection while addressing human safety concerns that were brought to our attention during the proposed rule comment period. Finally, the Service, as part of our mission, supports fishing, boating, and other outdoor recreation. In the future, if there is a technological means or other alternative that will protect manatees to the extent provided in the rule and allow us to lift some or all of the prohibitions, we will modify the manatee refuge and/or its prohibitions.

Summary of Changes and Clarifications

(1) The proposed prohibition on use of mooring and float lines at paragraph (c)(14)(ix)(M) was removed. Entanglements are a threat to manatees in Kings Bay. In our attempts to clarify this proposed prohibition, we have recognized that this threat and solutions toward this threat need additional consideration. Implementing this provision at this time is not practical for several reasons (*e.g.,* uncertainty regarding identification and availability of appropriate materials, application for different uses, and enforceability). Our goal of the proposed prohibition was the removal of derelict line sources and to encourage all operators to regularly check lines that are secured in Kings Bay. Through improved outreach, we are going to encourage all operators to help us meet this goal. We intend to work with the community and researchers to assess and evaluate equipment (line, connections, traps) solutions that are feasible and evidence suggests will help reduce manatee entanglements. Until we can accomplish that, other measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide means for reducing the number of lines discarded in this area. Therefore, we have modified the rule to remove this proposed prohibition.

(2) The requirement at paragraph (c)(14)(ii)(A) in reference to Three Sisters Springs was changed from ''no entry'' to prohibiting all waterborne activities during nighttime hours. Additionally, the timeframe was revised from specific hours to ''sunset to sunrise.'' The reference to ''waterborne activities'' is necessary to ensure that we are within our authorities under subpart J. This minor revision in hours is necessary to accomplish the intent to restrict activities during darkness when manatees cannot be seen and avoided and human activities cannot be monitored by enforcement officials.

(3) As described in comment 6 and its response (above), we received numerous comments concerned that implementing a portion of the June 2011 proposed rule would result in human safety issues. The Service worked with the USCG (later confirmed by FWC) to evaluate the human safety aspects of the proposed rule and concluded that the proposed closure of the watersports zone is likely to result in the displacement of high-speed watercraft activity into the Gulf of Mexico and the connecting waters of Crystal River, with the latter being the more likely of the two options due to the 2-hour transit time from Kings Bay to the Gulf. Crystal River has a narrow high-speed channel, and we concluded that an increase in traffic such as might occur with implementation of our proposed rule is likely to result in unsafe conditions for watercraft operators by increasing the danger of boating safety infractions and marine accidents including vessel collisions, potentially involving serious bodily injury.

We, therefore, reconsidered the substantial evidence showing that such establishment is necessary to prevent the taking of one or more manatees, including manatee area and seasonal use within the Bay, and concluded that we could still meet the regulatory requirements of 50 CFR 17.100–108 while also considering human safety by modifying the proposed rule to continue to allow some level of high speed watercraft recreation in Kings Bay. The final rule reflects these modifications that are within the scope of the proposed rule. Specifically, watercraft will be able to operate at high speed, not to exceed 25 mph, in a portion of Kings Bay generally north of Buzzard Island from June 1 through August 15 during daylight hours (sunrise to sunset). Slow-speed operation is required from sunset to sunrise during this period and at all times from August 16 through May 31. Manatees in Kings Bay are known to approach anchored boats for various and sometimes unknown reasons (*e.g.,* to rub on the anchor line, seek cover, etc.). Therefore, we added protection measures in the high speed area through a prohibition against anchoring a vessel in the area (except in emergency situations) while the zone is in effect, which will avoid creating an attractive nuisance. A secondary benefit of this manatee protection measure is that it enhances the value of the area for safe waterborne recreation by precluding anchorage of vessels in the high-speed area during the defined time period. Currently, this area is a location where recreational vessels are anchored for extended periods and this situation effectively limits high-speed recreation in the widest portion of the Bay, causing recreationists to use the more constricted portions of the watersports area.

The modifications to the rule will allow continued use of a portion of Kings Bay for recreation and, therefore, are less likely to result in additional recreational pressure in Crystal River during this peak summer recreation period. The modifications also coincide with the period of least manatee use based on available occurrence data (Crystal River NWR 2011, unpublished data). The area north of Buzzard Island provides the most open space available for watercraft operation in Kings Bay and is of less value to manatees for feeding, breeding, and sheltering (Crystal River NWR unpublished data). The waters to the east, west, and south of Buzzard Island that will become a year-round slow-speed zone generally have a greater density of manatee occurrences during the summer months, are shallower, and likely contain more submerged aquatic vegetation than the waters to the north of the island. The final rule at paragraph (c)(14)(iii) contains these changes.

The rule greatly increases manatee protection over current conditions. The rule reduces the period of high-speed watercraft operation from 123 to 76 days. During the 76-day period (June 1 through August 15), it reduces the speed limit from 35 mph to 25 mph during the day and requires slow-speed operation at night. Based on aerial survey data (Crystal River NWR unpublished reports), this rule does not allow watercraft to travel at high speed where they are most likely to encounter manatees (*e.g.,* shallow, grassy areas). High-speed operation is confined to a timeframe and area when and where it is least likely to impact manatees. The rule allows high-speed watercraft operation during the peak human use period to prevent exacerbating human safety risks in Crystal River. It increases human safety associated with waterborne activities in portions of the manatee refuge immediately east, south, and west of Buzzard Island, which are the more confined and shallower areas of the State-designated watersports area (and where manatee use is most concentrated).

As was the case with the proposed rule, this rule does not supersede any more restrictive Federal, State, or local regulations currently in place nor does it preclude more restrictive future actions by these entities.

(4) The information standard for designating manatee protection areas is substantial evidence. As stated in 50 CFR 17.103, ''The Director may * * * establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.'' This is also the legal standard for emergency designations under section 17.106. There is no indication in the subpart J regulations that information to be considered is limited to scientific or commercial (i.e., species trade) data. The substantial evidence standard means that the Service can appropriately consider any valid, reliable evidence as long as it is relevant to the question of whether the establishment is ''necessary to prevent the taking of one or more manatees.''

The Service made a minor technical error in our proposed rule. In our opening summary section, we correctly stated the substantial evidence standard and shared a summary of the substantial evidence we used on page 36494 in our proposed rule. But, in the Public Comments Solicited section of the proposed rule, we incorrectly cited the use of only the best scientific and commercial data. While we certainly use up-to-date scientific data in our evaluation as part of the evidence we consider (for example, we would not establish a manatee protection area where manatees are not documented), the standard by which we designate manatee protection areas is that we have substantial evidence that designation of the area is necessary to prevent the taking of one or more manatee(s). We wanted to clarify this technical error in this final rule.

Kings Bay—Assessment of Current Conditions

Similar to previous circumstances that warranted increases in the level of protection for manatees in Kings Bay, the number of manatees using Kings Bay more than doubled since 1998 (from 250 animals to 516 animals in December 2010, with the highest count on record of 566 in January 2010; Kleen 2011, pers. com.); the number of residents, visitors, and boats increased; and the amount of space in the existing sanctuaries became insufficient to provide this number of manatees with shelter free from harassment. In addition, the number of manatees struck and killed by boats in Kings Bay has increased since 1999.

The manatee population in northwestern Florida grew at a rate of 4.0 percent per year through 2000, based on an assessment of adult survival rates (Runge *et al.* 2004, p. 371). Consistent with this rate of increase, the number of manatees counted in the region has increased, as well. Aerial counts were first conducted during the winter of 1983–1984, when 142 manatees were sighted in Citrus County; 124 of these animals were sighted in Kings Bay and Crystal River. In January 2010, Crystal River NWR researchers counted 646 manatees in Citrus County's coastal waters, including 566 manatees in Kings Bay. This is the highest number of manatees ever counted in this region and in Kings Bay (Kleen 2010, pers. com.). Aerial observations of manatees in Kings Bay during especially cold periods include sightings of manatees within the sanctuary areas and in smaller springs. In recent years, dozens of manatees are seen sheltering just outside of the sanctuary boundaries because the sanctuaries are overcrowded. Some animals shelter in some of Kings Bay's smaller, unprotected springs, including House Spring, Jurassic Spring, and a spring just east of the mouth of Three Sisters Springs run referred to in this rule as Idiot's Delight Number 2. As many as 20 animals have been seen in each of these sites on particularly cold days (Kleen 2010, pers. com.).

The number of Citrus County residents increased by 19.8 percent (an average annual growth rate of 2.5 percent per year), from 118,085 to 141,416, between 2000 and 2008 (U.S. Census Bureau 2010 Web site). Concurrent with this increase in number of residents, the number of boats registered in Citrus County increased by 36.2 percent at an average annual growth rate of 4.0 percent per year. In 2010, there were 16,901 boats registered in Citrus County, 3,975 more than the 12,926 vessels registered there in 2000 (FDHSMV 2011 Web site). While the number of visitor-owned watercraft that are used in Citrus County waterways including Kings Bay is unknown, this number is likely increasing based on county revenue trends that describe an increasing number of visitors to the area. Revenue trends associated with businesses that cater to visitors, including Citrus County lodging and food service revenues and tourist tax revenues, have increased by 178 percent and 214 percent, respectively, over the past 10 years, suggesting an increase in the number of visitors to the area (U.S. Census Bureau 2010 Web site). Tourism surveys suggest that about half of all visitors to the area come to Citrus County to enjoy water-based activities that include manatee viewing, snorkeling, and diving (Gold 2008, pp. 4–5).

From 1974 through 2010, collisions with watercraft killed 60 manatees in Citrus County waterways, including 13 manatees recovered within the boundaries of the Kings Bay manatee refuge, as established by this rule (FWC–FWRI Manatee Mortality Database 2011 Web site). All 13 deaths occurred since 1999. In 2008, FWC recorded the highest number (eight) of manatees ever killed by watercraft in Citrus County and three of these carcasses were recovered in Kings Bay (FWC–FWRI Manatee Mortality Database Web site).

While watercraft-related deaths occur throughout the year in Citrus County, 7 of the 13 watercraft-related deaths that were recovered in Kings Bay since 1999 took place during those times of the year when the watersports area was in effect (May 1 through August 31). In May 2004, observers witnessed a boat striking a manatee in the watersports area; a carcass was recovered nearby the following day (FWC–FWRI Manatee Mortality Database 2011 Web site). Researchers are currently working on determining manatee scar acquisition rates for the Crystal River/Kings Bay manatee population, but preliminary findings suggest that propeller wounds continue to be acquired during their residency in the area (R. Bonde, peer review 2011).

Every year, manatees are entangled in fishing line, float lines, anchor and mooring lines, and other types of gear. In extreme cases, entangled manatees can die when entangling gear cuts into their hide, causing sepsis and the occasional loss of limbs. In cases when animals are superficially entangled, entangling gear is removed and the animals are released onsite. In more severe cases, manatees are transported to rehabilitation facilities where they are treated for injuries and infections associated with entanglements. There are 30 known cases of manatee entanglements from Citrus County, including 10 from Kings Bay. Fourteen of these cases include manatees entangled in crab pot float lines, including four from Kings Bay. The remaining cases from Kings Bay include four from fishing lines and two from anchor lines. County-wide records of entanglements include 24 rescues and four deaths. More than half of these are known to have occurred during the past 15 years (U.S. Fish and Wildlife Service Manatee Rescue Rehabilitation and Release Program entanglements unpubl. data). However, measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide

means for reducing the number of lines discarded in this area.

Manatee harassment, largely associated with wintertime manatee viewing activities, occurs in Kings Bay; a variety of methods are being used to help prevent and minimize harassment from occurring. The Service, State, nongovernment organizations, and private companies prepare and distribute outreach materials to manatee-viewing recreationists to familiarize them with best practices to follow when in the water with manatees. Best practices include the ''Manatee Viewing Guidelines,'' developed by the Service and partners. Outreach materials include, among other things, handouts, kiosks, signs, and videos. The Crystal River NWR developed ''Manatee Manners,'' a video that dive shops and kayak outfitters are required to show their customers before they enter Kings Bay. These businesses take visitors to see manatees in Kings Bay, including Crystal River NWR. Under the National Wildlife Refuge System Improvement Act (16 U.S.C. 668dd–668ee), commercial interests conducting business within the NWR are required to obtain special-use permits (SUPs), which are conditioned to ensure that the permittees and their designees do not take manatees. Crystal River NWR also maintains a visitor center where guests are provided with outreach materials. The Crystal River Refuge's ''Manatee Watch'' volunteer network places volunteers in kayaks near the sanctuaries to educate visitors and report infractions when they occur.

Federal regulations include 50 CFR 17.100–108, which provide for enforcement of manatee protection measures, and State regulations include provisions of the State's Florida Manatee Sanctuary Act as codified in 68 C–22 of the Florida Administrative Code. State and Federal officers have been cross-deputized and can enforce both State and Federal regulations. The Service, State, and other law enforcement agencies actively enforce harassment regulations in Citrus County and in Kings Bay. Cited acts of harassment include trespass by manatee-viewing individuals into manatee sanctuaries where the Service has determined that any waterborne activity occurring within these areas would result in take of manatees, including but not limited to take by harassment. Indirectly, the presence of large numbers of people in the vicinity of manatees may cause some animals to abandon the area, another form of harassment. Outside of these areas, the public disturbs and occasionally harasses manatees while engaged in viewing and other waterborne activities. When observed, violators are warned or cited. State violations include boaters traveling at speeds in excess of those described by law within specific areas. Given variations in enforcement practices and recordkeeping systems, these records are not used to describe trends in harassment activity.

Summary

Based on current and historical data that document increasing numbers of manatees, waterway users, watercraft-related manatee deaths and injuries, and reports of manatee harassment in Kings Bay, we conclude that the take of manatees is occurring and increasing in this area. Sources of information include the U.S. Geological Survey, the FWC, manatee experts, the public, and peer-reviewed literature. Future take would occur without additional protection measures and we do not anticipate any alternative protection measures being enacted by other agencies in sufficient time to reduce the likelihood of take. For these reasons and based on this substantial evidence, we believe the establishment of an additional manatee protection area is needed to prevent the take of manatees. The Kings Bay manatee refuge covers the same geographical area as that defined by the November 9, 2010, emergency rule (75 FR 68719).

To prevent the take of manatees, the Service and the State of Florida have designated a network of manatee protection areas at sites throughout Florida where threats to manatees have been well-documented and where manatees are known to frequently occur. This network supports our goal of providing areas of protected habitat throughout peninsular Florida, adequate to satisfy the biological needs of the species. This network is enhanced by the establishment of an additional manatee protection area, i.e., a manatee refuge in Kings Bay, a waterbody located in Crystal River, Citrus County, Florida.

Kings Bay Manatee Refuge

Under the manatee refuge designation, specified restrictions will improve the Service's ability to address takings associated with watercraft and manatee viewing activities. Restrictions on watercraft operation will reduce the number of watercraft-related manatee deaths and injuries occurring in Kings Bay. Harassment associated with manatee viewing can be controlled through the establishment of no-entry areas not to exceed specified distances around existing manatee sanctuaries, the designation of no-entry areas at other springs when needed, and the identification of manatee refuge-specific prohibitions.

Location

The Service designates the waters of Kings Bay as a manatee refuge. These waters include that tract of submerged land that includes all waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00′00″ East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53′32″ North, approximate longitude 82°36′23″ West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53′38″ North, approximate longitude 82°36′16″ West). See Map ''Kings Bay Manatee Refuge''.

The manatee refuge encompasses seven existing Federal manatee sanctuaries, described in 50 CFR 17.108: The Banana Island Sanctuary (including King Spring), the Sunset Shores Sanctuary, the Magnolia Springs Sanctuary (including Gator Hole), the Buzzard Island Sanctuary, the Tarpon Springs Sanctuary, the Warden Key Sanctuary, and the Three Sisters Springs Sanctuary. The existing sanctuaries are in effect from November 15 through March 31 (referred to as the ''manatee season''). The manatee refuge measures would be in effect in Kings Bay as described below.

Manatee Refuge Measures

The manatee refuge measures, described in more detail below, include:

- Maintaining the seven existing manatee sanctuaries where all waterborne activities are prohibited November 15 through March 31;
- Regulating watercraft speeds throughout the manatee refuge at all times;
- Prohibiting anchorage (other than emergency anchorage) of watercraft in the high-speed (25 mph) area from June 1 through August 15;
- 12 specifically prohibited activities throughout the manatee refuge at all times;
- Temporary 'no-entry' areas adjacent to existing sanctuaries and specified additional springs during the manatee season (November 15 through March 31);
- Temporary 'no-entry' areas prior to or after the manatee season during unusual cold events; and
- Exceptions for adjoining property owners and their designees.

Existing Manatee Sanctuaries

All seven currently existing manatee sanctuaries in Kings Bay, where all waterborne activities are prohibited November 15 through March 31, will remain in effect.

Watercraft Speeds and Anchorage

To prevent the take of one or more manatees killed and injured by high-speed watercraft, operating speeds in Kings Bay are regulated throughout the year. Watercraft operation is restricted to slow speed throughout the manatee refuge unless otherwise marked. In some portions of the manatee refuge, State or local regulations require watercraft to travel at idle speed. For example, during summer holiday weekends, local ordinances and USCG regulations can require watercraft to travel at restricted speeds throughout Kings Bay due to human safety concerns regarding the high volume of watercraft activity, regardless of posted zones allowing greater speed. This rule allows watercraft to travel at speeds up to 25 mph during daylight hours (slow speed at night) in a portion of the manatee refuge from June 1 through August 15. The intent of regulating watercraft speeds and slowing all watercraft down in areas most frequented by manatees is to prevent the take of one or more manatees in Kings Bay from compliant watercraft operation. Some manatees in Kings Bay are known to approach anchored boats and, therefore, anchoring boats in the high-speed (25 mph) area is prohibited from June 1 through August 15. By prohibiting anchorage of boats in the high-speed (25 mph) area during this time period, manatees will not be attracted into harm's way by seeking cover around the boats, being attracted to the discharge of bilge water, chewing on anchor lines, etc.

Manatee Viewing and Other Waterborne Activities

To prevent the take of one or more manatees associated with manatee viewing and other waterborne activities, we specify prohibitions that would be in effect throughout the year. Pursuant to the ESA and MMPA, all takings, including takings by harassment, are prohibited throughout the year, wherever they may occur. In regard to these prohibited activities, we consider a resting manatee to be a mostly motionless manatee that rises to breathe from the water bottom, in the water column, or on the water's surface. While resting, a manatee may make minor changes in its posture and may slightly shift its position. Minor changes in posture occur when manatees breathe or roll. Resting manatees may also make slight movements with their flippers or tail to compensate for draft, etc. (Hartman 1979, pp. 82–84). To prevent the take of manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge, we specifically identify and prohibit the following activities:

(i) Chasing or pursuing a manatee(s).

(ii) Disturbing or touching a resting or feeding manatee(s).

(iii) Diving from the surface onto a resting or feeding manatee(s).

(iv) Cornering or surrounding or attempting to corner or surround a manatee(s).

(v) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch a manatee(s).

(vi) Poking, prodding, or stabbing or attempting to poke, prod, or stab a manatee(s) with anything, including your hands and feet.

(vii) Standing on or attempting to stand on a manatee(s).

(viii) Separating a mother and calf or attempting to separate a mother and calf.

(ix) Separating a manatee(s) from a group or attempting to separate a manatee(s) from a group.

(x) Giving a manatee(s) anything to eat or drink or attempting to give a manatee(s) anything to eat or drink.

(xi) Actively initiating contact with a belted and/or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, or antennae.

(xii) Interfering with rescue and research activities.

The following activities are prohibited within Three Sisters Springs from November 15 through March 31:

a. All waterborne activities in Three Sisters Springs from sunset to sunrise.

b. Scuba diving.

c. Fishing, including but not limited to fishing by hook and line, by cast net, and by spear.

Prohibited Anchoring in the High-Speed Area of Kings Bay

Some manatees in Kings Bay are known to approach anchored boats. To minimize the potential for attraction (manatees seeking cover, bilge water, etc.) into harm's way, anchorage (other than emergency anchorage) of watercraft is prohibited in the high speed (25 mph) area from June 1 through August 15.

Temporary No-Entry Areas (November 15 Through March 31)

Because there is insufficient space in the existing sanctuaries for all manatees that use Kings Bay to shelter, rest, and feed, free from harassment, we will create temporary no-entry areas outside of and adjacent to the existing sanctuaries to ensure adequate room for manatees wanting to access these sites when space is needed during the manatee season (between November 15 and March 31). This rule allows for creation of no-entry areas around one or more of the existing sanctuaries, as appropriate. The creation and removal of the temporary no-entry areas will be based on manatee usage data (such as aerial survey or on-the-water observations), current weather, and other sources of substantial information. We will also create no-entry areas around House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring when these springs are occupied by manatees in need of shelter free from harassment. With this rule, we have the ability to create temporary no-entry areas around any or all sanctuaries and specified springs for the manatee season, but we do not envision this will be necessary in all years. Temporary no-entry areas will be created at the distances specified in this rule to accommodate manatee biological needs as they use Kings Bay during cold events. The temporary no-entry areas will be posted for as long as they are necessary within the manatee season.

Temporary No-Entry Areas (April 1 Through November 14)

To prevent the take of manatees sheltering in Kings Bay from cold weather that occurs outside of the manatee season (November 15 through March 31), temporary no-entry areas under this rule can be put in effect during early onset and protracted cold weather events that occur outside of the manatee season. Manatees that appear in Kings Bay during cold fronts that pre-date the start of the manatee season are especially vulnerable to harassment because none of the sanctuaries and no-entry areas are in effect prior to November 15. Similarly, none of these measures are in effect after March 31, during those times when cold weather continues beyond this period of time. In April 2010, the Service asked the public to voluntarily stay out of existing manatee sanctuaries after the close of the manatee season due to protracted cold weather and the continued presence of manatees at these sites. While the public generally complied with the request, some people did not and manatees were harassed.

By designating temporary no-entry areas prior to November 15 and after March 31 during cold fronts when manatees are present, manatee harassment that could occur during

these times can be prevented. Designations would remain in effect for the duration of a cold front and only when there is regular manatee use; manatee presence at warm-water sites during unseasonal cold events typically lasts for several days or less. Temporary designations would remain in effect for no longer than 14 consecutive days.

Exceptions for Adjoining Property Owners and Their Designees

Public and private property owners who own property that adjoins designated no-entry areas, their guests, employees, and designees (including but not limited to contractors and lessees) will continue to be able to access their property by obtaining, at no charge, an exception from the Crystal River NWR that will allow them to operate watercraft within the adjoining no-entry area for purposes of access and property maintenance. The Crystal River NWR will continue to provide adjoining property owners and their designees with a no-cost sticker or letter of authorization that identifies their watercraft as authorized to access no-entry areas. Watercraft owned by excepted owners will be required to be marked by stickers and operate at idle speed while within a designated no-entry area. Designees with a letter of authorization would be required to have a copy of the letter in their possession and required to operate at idle speed while within a designated no-entry area.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action. OMB bases its determination on the following four criteria:

a. Whether the rule will have an annual economic impact of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. This section presents a screening level analysis of the potential effects of the designation of a manatee protection area on small entities. We certify that this rule would not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule would have a significant economic impact on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Small entities likely affected by the rule include entities whose businesses support high-speed recreational boating activities and commercial fishing. However, no current information is available on the specific number of small entities that would potentially be affected. This rule reduces the area and duration of high-speed activities from a previously existing summertime water-sports area and would add travel time to boating recreationists and commercial activities having to travel through the additional slow-speed zones. Because the only restrictions on recreational activity result from a reduction in time and space of the water-sports area and added travel time and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small businesses resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, we believe that any economic impact on small commercial fishing or charter boat entities would not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Is not expected to have an annual effect on the economy of $100 million or more. This rule may cause some inconvenience in the form of displacement and added travel time for recreationists and commercial fishing and charter boat businesses because of speed and access restrictions in this manatee refuge, but it should not translate into any significant business reductions for the many small businesses in Citrus County. Since the only restrictions on recreational activity would result from displacement and added travel time and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns would not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, we believe that any economic impact on small commercial fishing or charter boat entities would not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for

some areas when traveling to and from fishing grounds. However, this impact is likely to be limited.

c. Would 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. As stated above, this rule may generate some level of inconvenience to recreationists due to displacement and added travel time, but the resulting economic impacts are believed to be minor and would not interfere with the normal operation of businesses in the affected county. Added travel time to traverse some areas is not expected to be a major factor that would impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges imposes no substantial new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a significant regulatory action under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection area is located over Federal-, State-, or privately-owned submerged bottoms. Any property owners in the vicinity would retain navigational access and the ability to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, on the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain new collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has reviewed and approved the information collection requirements associated with special use permits and assigned OMB Control No. 1018–0102. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (42 USC 4321 *et seq.*). This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment and Finding of No Significant Impact has been prepared and is available on-line at *http://www.regulations.gov* (see **ADDRESSES**), or upon request (see **FOR FURTHER INFORMATION CONTACT**).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866, and it would only require vessels to proceed at slow or idle speeds (with the exception of a posted high-speed area available June 1 through August 15) or avoid no–entry areas in 530 acres of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

For a list of the references cited in this rule, see Docket No. FWS–R4–ES–2010–0079, available at *http://www.regulations.gov.*

Author

The primary author of this document is the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **ADDRESSES**).

Authority

The statutory authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.104 by revising paragraph (b) to read as follows:

§ 17.104 Prohibitions.

* * * * *

(b) *Manatee refuge.* It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area. Any take of manatees under the Acts (see § 18.3 of this chapter for a definition of ''take'' in regard to marine mammals), including take by harassment, is prohibited wherever it may occur.

* * * * *

■ 3. Amend § 17.108 by:

■ a. In paragraph (a)(3), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Magnolia Springs Manatee Sanctuary.'';

■ b. In paragraph (a)(4), removing the period at the end of the paragraph and

adding in its place a comma and the words ''to be known as the Buzzard Island Manatee Sanctuary.'';

■ c. In paragraph (a)(5), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Tarpon Springs Manatee Sanctuary.'';

■ d. In paragraph (a)(6), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Warden Key Manatee Sanctuary.'';

■ e. Revising paragraph (b) to read as set forth below; and

■ f. Adding paragraph (c)(14) to read as set forth below:

§ 17.108 List of designated manatee protection areas.

* * * * *

(b) *Exceptions.* (1) Adjoining property owners, their guests, employees, and their designees (including but not limited to contractors and lessees) may engage in watercraft access and property maintenance activities through manatee sanctuaries (set forth in paragraphs (a)(1) through (a)(11) of this section) and designated ''no-entry areas'' in the Kings Bay Manatee Refuge (set forth in paragraph (c)(14) of this section). Use of sanctuary and no-entry area waters is restricted to authorized individuals accessing adjoining properties, storing watercraft, and maintaining property and waterways. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(2) Authorized individuals must obtain a sticker or letter of authorization from the U.S. Fish and Wildlife Service identifying them as individuals authorized to enter no-entry areas that adjoin their property. Stickers must be placed in a conspicuous location to readily identify authorized watercraft. Individuals with a letter of authorization must have a valid letter in their possession when accessing no-entry areas.

(3) Authorized individuals must conduct any authorized boating activity within these areas at idle or no-wake speeds.

(c) * * *

(14) *The Kings Bay Manatee Refuge.* A tract of submerged land that includes all waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00′00″ East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53′32″ North, approximate longitude 82°36′23″ West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53′38″ North, approximate longitude 82°36′16″ West).

(i) *Area covered.* The Kings Bay Manatee Refuge encompasses existing manatee protection areas as described in paragraphs (a)(1) through (a)(7) of this section, and areas outside these sections as depicted on the map in paragraph (c)(14)(ii) of this section.

(ii) *Particular areas.* The following springs fall within the boundaries of the Kings Bay Manatee Refuge. A map showing the entire refuge, including these springs, follows:

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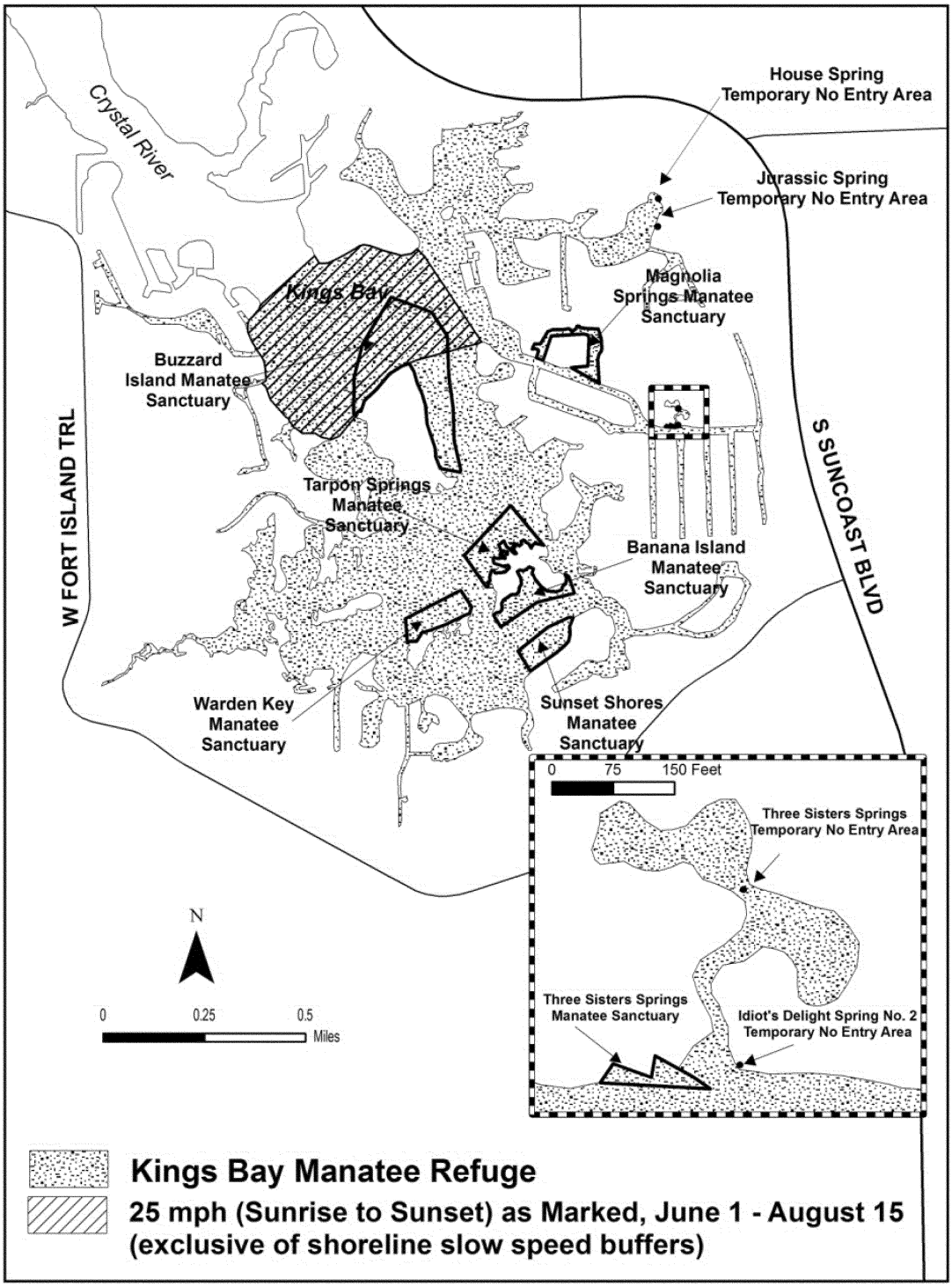

BILLING CODE 4310–55–C

(A) *Three Sisters Springs.* A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the northwest corner of said Section 28 in an east southeast direction to the canal that begins on the west side of Southeast Cutler Spur Boulevard and runs west-northwest to Kings Bay. The spring is north and east of the northern terminus of Southeast Paradise Avenue along the northern shore of said canal. Three Sisters Springs includes three main and numerous smaller spring vents and a spring run that connects the vents to said canal in Crystal River, Citrus County, Florida. This area is not the same as set forth in paragraph (a)(7) of this section. This area is behind the sanctuary (north from the mouth of the channel) as set forth in paragraph (a)(7) of this section.

(*1*) All waterborne activities in this specific area are prohibited from sunset to sunrise from November 15 through March 31 exclusive of the provisions of paragraph (c)(14)(v) of this section.

(*2*) Scuba diving and fishing (including but not limited to fishing by

hook and line, by cast net, and by spear) are also prohibited in this specific area from November 15 through March 31 exclusive of the provisions of paragraph (c)(14)(v) of this section.

(*3*) If the provisions of paragraph (c)(14)(vi) of this section are put in effect, all waterborne activities are prohibited in this specific area for the duration established under paragraph (c)(14)(vi) of this section.

(B) *House Spring.* A tract of submerged land, lying in Section 21, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 21 in an east-northeast direction to the northeasternmost corner of Hunter Spring Run. The spring is immediately west of and adjacent to Northeast 2nd Court in Crystal River, Citrus County, Florida.

(C) *Jurassic Spring.* A tract of submerged land, lying in Section 21, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 21 in an east northeast direction to the eastern shore of Hunter Spring Run. The spring is immediately west of the western terminus of Bayshore Drive in Crystal River, Citrus County, Florida.

(D) *Idiot's Delight Number 2 Spring.* A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the northwest corner of said Section 28 in an east southeast direction to the canal that begins on the west side of Southeast Cutler Spur Boulevard and runs west-northwest to Kings Bay. The spring is north and east of the northern terminus of Southeast Paradise Avenue along the northern shore of said canal just east of the southern terminus of the Three Sisters Springs run in Crystal River, Citrus County, Florida.

(iii) *Speed and anchoring restrictions.* (A) Throughout the entire year, watercraft speeds are restricted to slow speed throughout the manatee refuge with the following exceptions:

(*1*) A posted area generally north of Buzzard Island, exclusive of shoreline slow-speed buffer zones, where watercraft may travel at speeds up to 25 miles per hour during daylight hours (sunrise to sunset) from June 1 through August 15;

(*2*) Those areas where access is precluded (manatee sanctuaries, no-entry areas); or

(*3*) Areas where more restrictive speed restrictions are in effect.

(B) From June 1 through August 15, anchorage (other than emergency anchorage) of watercraft is prohibited in the posted high speed (25 miles per hour) area around Buzzard Island referenced in paragraph (c)(14)(iii)(A) of this section.

(iv) *Time and area prohibitions.* When the provisions of paragraphs (c)(14)(v) or (vi) of this section are in effect (November 15 through March 31 and April 1 through November 14, respectively), all waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing (including with hook and line, by cast net, or spear), and the use of water vehicles (including but not limited to boats powered by engine, wind, or other means; ships powered by engine, wind, or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited in areas that are adjacent to and within specified distances from the existing manatee sanctuaries located in Kings Bay (defined in paragraphs (a)(1) through (a)(7) of this section) and the springs defined in paragraph (c)(14)(ii) of this section: Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring.

(v) *Expanded temporary no-entry area (November 15 through March 31).* When manatees exceed the capacity of an existing manatee sanctuary or shift usage around an existing manatee sanctuary or shift usage to Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring, due to water or weather or other conditions, we will designate ''no-entry'' areas from November 15 through March 31 as appropriate and necessary around any of these sites. The determination to designate and subsequently remove no-entry areas around existing manatee sanctuaries and Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring within the Kings Bay Manatee Refuge will be based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. We will designate no-entry areas within Kings Bay Manatee Refuge and outside of existing sanctuaries as follows:

(A) For the sanctuaries set forth in paragraphs (a)(1) through (a)(6) of this section, to a distance not to exceed 100 feet from the existing sanctuary boundary.

(B) For the Three Sisters Springs Sanctuary, to a distance not to exceed 400 feet from the existing boundary. We do not intend to completely mark off the manmade channel. Expansions could occur directly around the existing sanctuary and north into the area locally known as Three Sisters Springs.

(C) For House Spring and Jurassic Spring, an area that does not exceed 100 feet from the associated spring vents.

(D) For Idiot's Delight Number 2 Spring, an area that does not exceed 25 feet from the associated spring vent. Any temporary designation will be configured to avoid the manmade channel in the canal and will not block access into Three Sisters Springs.

(vi) *Temporary no-entry areas (April 1 through November 14).* Temporary no-entry area designations may be made in the existing manatee sanctuaries located in Kings Bay defined in paragraphs (a)(1) through (a)(7) and paragraphs (c)(14)(v)(A) through (D) of this section prior to November 15 and after March 31 during cold fronts when manatees are present. Designations will remain in effect for the duration of a cold front and only when there is regular manatee use; temporary no-entry area designations will remain in effect for no longer than 14 consecutive days.

(vii) *Posting of temporary no-entry areas designated in accordance with paragraph (c)(14)(v) or (vi) of this section.* Additional temporary protection areas will be posted to distances as described in paragraph (c)(14)(v) of this section and identified by the following devices: buoys, float lines, signs, advisories from onsite Service employees and their designees, or other methods.

(viii) *Notifications of temporary no-entry areas designated in accordance with paragraph (c)(14)(v) or (vi) of this section.* When we determine that the provisions of paragraph (c)(14)(v) or (vi) of this section are appropriate, the temporary protection areas will be designated and posted to distances as described in paragraph (c)(14)(v) of this section. No-entry area designations will occur immediately. We will advise the public of designations through public notice(s) announcing and describing the measures in a local newspaper and other media, including but not limited to, local television and radio broadcasts, Web sites and other news outlets, as soon as time permits. Onsite Service employees and their designees, when

present, may also inform waterway users of designations.

(ix) *Prohibited activities (year-round).* We specifically identify and prohibit the activities set forth in this paragraph to prevent the take of one or more manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge. In regard to these prohibited activities, we consider a resting manatee to be a mostly motionless manatee that rises to breathe from the water bottom, in the water column, or on the water's surface. While resting, a manatee may make minor changes in its posture and may slightly shift its position. Minor changes in posture occur when resting manatees breathe or roll. Resting manatees may also make slight movements with their flippers or tail to compensate for drift, etc. Prohibited activities include:

(A) Chasing or pursuing manatee(s).

(B) Disturbing or touching a resting or feeding manatee(s).

(C) Diving from the surface on to a resting or feeding manatee(s).

(D) Cornering or surrounding or attempting to corner or surround a manatee(s).

(E) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch a manatee(s).

(F) Poking, prodding, or stabbing or attempting to poke, prod, or stab a manatee(s) with anything, including your hands and feet.

(G) Standing on or attempting to stand on manatee(s).

(H) Separating a mother and calf or attempting to separate a mother and calf.

(I) Separating manatee(s) from a group or attempting to separate manatee(s) from a group.

(J) Giving manatee(s) anything to eat or drink or attempting to give manatee(s) anything to eat or drink.

(K) Actively initiating contact with belted or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, or antennae.

(L) Interfering with rescue and research activities.

Dated: March 1, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–6055 Filed 3–15–12; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 77, No. 52
Friday, March 16, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0266; Directorate Identifier 2011–NM–061–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318, A319, and A320 series airplanes. This proposed AD was prompted by reports of unsuccessful slide deployments during scheduled deployment tests, and failed functional tests of the release travel of the slide release mechanism. This proposed AD would require inspecting the off-wing slide release cables on the left- and right-hand sides to determine whether a certain part number is installed, and replacement if necessary. We are proposing this AD to prevent non-availability of left- or right-hand off-wing exit slides that could impair emergency evacuation of the passengers and flightcrew, and could result in personal injuries.

DATES: We must receive comments on this proposed AD by April 30, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0266; Directorate Identifier 2011–NM–061–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0015, dated January 31, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several operators reported unsuccessful slide deployments during scheduled deployment tests and/or failed functional tests of the release travel of the slide release mechanism.
>
> Investigations revealed deformation of the PTFE (Teflon) ball guide strip of the release cable, Part Number (P/N) L32A319–160–001. In such a situation the travel of the cable could be insufficient to open the valve when opening the exit, thereby reducing the gas flow from the reservoir to the off-wing slide in automatic or manual mode. As a result, the aspirator will not ingest sufficient ambient air for slide inflation.
>
> This condition, if not corrected, could lead to the non-availability of LH [left-hand] and/or RH [right-hand] off-wing exit slides for evacuation that would impair emergency evacuation of the aeroplane occupants, possibly resulting in personal injuries.
>
> For the reasons described above, this [EASA] AD requires the identification [inspection] and replacement of both Left hand (LH) and Right Hand (RH) off-wing slide release cables P/N L32A319–160–001 with P/N L32A320–180, which have precise stainless steel ball bearing stripes instead of stamped PTFE stripes.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the service bulletins listed below. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.
- Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.
- Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.
- Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

• Airbus Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

This AD differs from the MCAI and/or service information as follows: Although the MCAI states that no person may install an off-wing slide release cable having P/N L32A319–160–001 on any airplane after the modifications specified in paragraphs (g) or (h) of this AD have been done, or on airplanes that do not have P/N L32A319–160–001 installed as of the effective date of the MCAI, this AD requires that, as of the effective date of this AD, no person may install an off-wing slide release cable having P/N L32A319–160–001 on any airplane.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 694 products of U.S. registry. We also estimate that it would take about 39 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $5,750 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,291,110, or $9,065 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0266; Directorate Identifier 2011–NM–061–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel tanks; 53: Fuselage.

(e) Reason

This AD was prompted by reports of unsuccessful slide deployments during scheduled deployment tests, and failed functional tests of the release travel of the slide release mechanism. We are issuing this AD to prevent non-availability of left- or right-hand off-wing exit slides that could impair emergency evacuation of the passengers and flightcrew, and could result in personal injuries.

(f) Compliance

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

(g) Inspection and Modification

Except as provided by paragraph (l) of this AD, within 36 months after the effective date of this AD, inspect the off-wing slide release cables on the left- and right-hand sides to determine whether part number (P/N) L32A319–160–001 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the off-wing slide release cables can be conclusively determined from that review. If any off-wing slide release cable has P/N L32A319–160–001, before further flight, replace with a new off-wing slide release cable having P/N L32A320–180, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010.

(h) Optional Modification

Installation of a shorter off-wing slide release cable having P/N L32A319–160–002 with relocated inflation bottle during installation of the additional center tank, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (h)(1) through (h)(4) of this AD, is acceptable for compliance with the requirements of paragraph (g) of this AD.

(1) Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.

(2) Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.

(3) Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.

(4) Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

(i) Parts Installation

As of the effective date of this AD, no person may install an off-wing slide release cable having P/N L32A319–160–001 on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if installation of off-wing slide release cables having P/N L32A320–180 was done before the effective date of this AD using the applicable service bulletin identified in paragraph (j)(1) through (j)(6) of this AD.

(1) Airbus Service Bulletin A320–53–1227, dated March 24, 2010.

(2) Airbus Service BulletinA320–28–1132, dated October 13, 2004.

(3) Airbus Service Bulletin A320–28–1132, Revision 01, dated October 12, 2006.

(4) Airbus Service Bulletin A320–28–1132, Revision 02, dated November 12, 2008.

(5) Airbus Service Bulletin A320–28–1132, Revision 03, dated October 5, 2009.

(6) Airbus Service Bulletin A320–28–1145, dated February 28, 2006.

(k) Exception

Provided that off-wing slide release cables have not been replaced with a slide release cable having P/N L32A319–160–001, airplanes having Airbus modification 150811, 26138, 37856, or 39673 installed in production are acceptable for compliance with the requirements of paragraph (g) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0015, dated January 31, 2011; and the service information specified in paragraphs (m)(1) through (m)(5) of this AD; for related information:

(1) Airbus Service Bulletin A320–28–1118, Revision 03, including Appendix 1, dated May 12, 2009.

(2) Airbus Service Bulletin A320–28–1132, Revision 04, including Appendices 1 and 2, dated February 1, 2010.

(3) Airbus Service Bulletin A320–28–1145, Revision 01, including Appendix 01, dated April 27, 2007.

(4) Airbus Service Bulletin A320–28–1154, Revision 01, dated April 7, 2008.

(5) Airbus Service Bulletin A320–53–1227, Revision 01, dated May 31, 2010.

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6465 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0288; Directorate Identifier 2008–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. That NPRM proposed to require modifying the fluid drain path in the wing leading edge area, forward of the wing front spar, and doing all applicable related investigative and corrective actions. That NPRM was prompted by a report of leaking fuel from the wing leading edge area at the inboard end of the number 5 leading edge slat. This action revises that NPRM by including installing new seal disks on the latches in the fuel shutoff valve access door as part of the modification and by specifying that certain inspections are detailed inspections. This action also revises the applicability to include additional airplanes. We are proposing this AD to prevent flammable fluids from accumulating in the wing leading edge, and draining inboard and onto the engine exhaust nozzle, which could result in a fire. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by April 30, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD (74 FR 15683, April 7, 2009), 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: Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton,

Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0288; Directorate Identifier 2008–NM–214–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 issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. That NPRM published in the **Federal Register** on April 7, 2009 (74 FR 15683). That NPRM proposed to require modifying the fluid drain path in the wing leading edge area, forward of the wing front spar, and doing all applicable related investigative and corrective actions.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (74 FR 15683, April 7, 2009), Boeing issued Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011, to add actions to the modification of the fluid drain path in the wing leading edge area, forward of the wing front spar. The additional actions are installing new seal disks on the latches in the fuel shutoff valve access door. Boeing Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011, also adds airplanes with line numbers 2438 through 3833 inclusive to the effectivity. The service information also changed the general visual inspection of the countersink diameter for the bonding jumper fastener hole to a detailed inspection.

Comments

We gave the public the opportunity to comment on the previous NPRM (74 FR 15683, April 7, 2009). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Extend Compliance Time

Air Transport Association, on behalf of its members American Airlines (AAL) and AirTran Airways, requested that we extend the compliance time of the proposed AD (74 FR 15683, April 7, 2009). AAL requested that the proposed compliance time of 24 months be changed to 72 months. AAL stated that the proposed compliance time of 24 months does not integrate into the current operator maintenance program without significant aircraft maintenance planning adjustments and additional costs. AAL stated that a 72-month compliance time would fit within the maintenance review board heavy C-check schedule.

We do not agree with the commenter's request to extend the compliance time. Extending the compliance time to 72 months would result in an unacceptable level of risk for the Model 737–600, –700, –700C, –800, –900, and –900ER fleet. We have determined that the compliance time of 24 months represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the modification is done. Under the provisions of paragraph (h) of this supplemental NPRM, however, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Request To Refer to Revised Service Bulletin

Boeing and the Air Transport Association, on behalf of its member AAL, requested that we refer to Boeing Special Attention Service Bulletin 737–57–1293, Revision 1, dated January 11, 2010, in order to incorporate new changes and to prevent issuance of alternative methods of compliance (AMOC).

We disagree with the request to refer to Boeing Special Attention Service Bulletin 737–57–1293, Revision 1, dated January 11, 2010. Since the date of the commenters' requests, Boeing has issued Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011 (described previously), which adds more new changes. We have changed paragraphs (c) and (g) of this supplemental NPRM to refer to Boeing Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the original NPRM (74 FR 15683, April 7, 2009). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1,072 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
Modification, Group 1 (734 airplanes)	50 work-hours × $85 per hour = $4,250	$1,262	$5,512	$4,045,808
Modification, Group 2 (58 airplanes)	27 work-hours × $85 per hour = $2,295	1,262	3,557	206,306
Modification, Group 3 (280 airplanes)	3 work-hours × $85 per hour = $255	94	349	97,720

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–2009–0288; Directorate Identifier 2008–NM–214–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of leaking fuel from the wing leading edge area at the inboard end of the number 5 leading edge slat. We are issuing this AD to prevent flammable fluids from accumulating in the wing leading edge, and draining inboard and onto the engine exhaust nozzle, which could result in a fire.

(f) Compliance

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

(g) Modification

Within 24 months after the effective date of this AD, modify the fluid drain path in the wing leading edge area, forward of the wing front spar, and do all applicable related investigative and corrective actions, by accomplishing all applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1293, Revision 2, dated September 28, 2011. Do all applicable related investigative and corrective actions before further flight.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Chris R. Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 23, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6468 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0036; Directorate Identifier 2009–NM–077–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. That NPRM proposed to require inspections for cracking and corrosion under the number 3 very high frequency (VHF) antenna, and corrective actions if necessary; and, for certain airplanes, replacing bonded skin panels with solid skin panels if not previously accomplished. That NPRM was prompted by reports of cracks in the skin and surrounding structure under the number 3 VHF antenna on the lower external surface of the airplane at buttock line 0.0, aft of the main landing gear wheel well. This action revises that NPRM by adding an optional preventive

modification, which would terminate the inspection requirements for certain airplanes; changing certain repairs; and adding inspections. We are proposing this supplemental NPRM to detect and correct cracks and corrosion of the skin and surrounding structure under the number 3 VHF antenna, which could result in separation of the antenna from the airplane, and rapid depressurization of the airplane. Since these actions impose an additional burden over that proposed in the original NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by April 30, 2012.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0036; Directorate Identifier 2009–NM–077–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 issued an NPRM to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. That original NPRM was published in the **Federal Register** on April 15, 2010 (75 FR 19564). That original NPRM proposed to require repetitive inspections for cracking and corrosion of the skin and surrounding structure under the number 3 VHF antenna, and corrective actions if necessary. Also, for certain airplanes, that original NPRM proposed to require replacing bonded skin panels with solid skin panels if not previously accomplished.

Actions Since Previous NPRM (75 FR 19564, April 15, 2010) Was Issued

The original NPRM (75 FR 19564, April 15, 2010) referred to Boeing Special Attention Service Bulletin 737–53–1287, dated March 11, 2009. Since we issued the original NPRM, we have reviewed Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010. Among other things, this service bulletin provides the following changes:

- Adds an optional preventive modification for certain airplane groups, which would eliminate the need for the repetitive inspections of those airplanes. The modification involves various high frequency eddy current (HFEC) and detailed inspections for cracking and corrosion of the skin, support channel, holes, and support structure in the area of the number 3 VHF antenna; and repair if necessary, or replacing a cracked or corroded support channel with a new or serviceable support channel, if necessary. The modification also entails installing antenna support structure.
- Reassigns certain airplanes to different groups.
- Gives instructions for doing repairs if a crack is found, for certain airplane groups and certain conditions.
- Adds HFEC inspections (that are done along with previously specified internal detailed inspections) with the antenna removed.
- Adds Group 7 airplanes (line numbers 1–291) and specifies that, for these airplanes, operators must contact Boeing for inspection, repair, and preventive modification instructions. These airplanes are subject to a prior or concurrent action of replacing bonded skin panels with solid skin panels, as specified in Part V of Boeing Service Bulletin 737–53A1042, Revision 9, dated July 25, 1991. (The actions specified in that service bulletin are already required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990)).

Comments

We gave the public the opportunity to comment on the original NPRM (75 FR 19564, April 15, 2010). The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Change Requirements for Certain Airplanes

Boeing submitted a comment related to the service information. However, the substance of the comment is addressed in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010 as discussed above in ''Actions Since Previous NPRM (75 FR 19564, April 15, 2010) Was Issued.''

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the original

NPRM (75 FR 19564, April 15, 2010). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the revised service information described previously, except as discussed under ''Differences Between the Supplemental NPRM and the Service Information.''

Differences Between the Supplemental NPRM and the Service Information

Where paragraph 1.A., ''Effectivity,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, places Model 737–200 and –200C airplanes having line numbers 1–291 into group 7, for purposes of this supplemental NPRM, these airplanes would be subject to the proposed requirements for Group 2, Configuration 1, 2, or 3, as applicable. There are no configuration differences for airplanes having line numbers 1–291 from the Group 2 airplanes.

Table 10 in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010; and Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010; specify post-repair/modification inspections at the number 3 VHF antenna location, which may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 129.109(c)(2)), but this supplemental NPRM does not propose to require those post-repair/modification inspections. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD will affect 629 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	Number of U.S.-registered airplanes	Cost on U.S. operators
Inspection	Up to 13 work-hours × $85 per hour = Up to $1,105 per inspection cycle.	None	Up to $1,105 per inspection cycle.	629	Up to $695,045 per inspection cycle.
Concurrent Replacement for Group 2 and Group 7 airplanes [1].	2,112 work-hours × $85 per hour = $179,520.	$35,000	$214,520	387	$83,019,240.

[1] The concurrent modification for Group 2 and Group 7 airplanes required by this proposed AD is already required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990). AD 90–06–02 mandated the skin replacement within 20 years of the manufacture date of the airplane. All Group 2 and Group 7 airplanes have exceeded the 20-year threshold.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

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–2010–0036; Directorate Identifier 2009–NM–077–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990), affects this AD.

(c) Applicability

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, –500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks of the skin and surrounding structure under the number 3 very high frequency (VHF) antenna on the lower external surface of the airplane at buttock line 0.0, aft of the main landing gear wheel well. We are issuing this AD to detect and correct cracks and corrosion of the skin and surrounding structure under the number 3 VHF antenna, which could result in separation of the antenna from the airplane, and rapid depressurization of the airplane.

(f) Compliance

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

(g) Inspections

Except as required by paragraph (i)(1) of this AD, at the applicable times specified in tables 1 through 9, paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Do the applicable inspections (external detailed and high frequency eddy current (HFEC), external detailed, external HFEC, or internal detailed and HFEC) for cracks or corrosion in the skin, support, frames, stringers, or antenna, as applicable. Do the inspections in accordance with Parts 1, 3, 4, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, except as required by paragraphs (i)(2) and (i)(3) of this AD. Repeat the applicable inspections thereafter at the applicable times specified in tables 1 through 9, paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, until the actions required by paragraph (j) of this AD are done.

(h) Repair

(1) If any crack or corrosion is found during any inspection required by paragraph (g) of this AD: Repair before further flight, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, except as required by paragraphs (i)(2) and (i)(3) of this AD. Repair of any crack or corrosion terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired area only.

(2) Operators must obtain an approved damage tolerance evaluation for any repair installed to comply with Section 121.1109(c)(2) or 129.109(c)(2) of the Code of Federal Regulations (14 CFR 121.1109(c)(2) or 129.109(c)(2)).

Note 1 to paragraph (h)(2) of this AD: Additional guidance on damage tolerance evaluation for repairs can be found in table 10 in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010; and Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(i) Exceptions

(1) Where Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, specifies a compliance time ''after the original issue date of this service bulletin:'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, specifies contacting Boeing for inspection or repair instructions: Do the applicable action using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(3) For Group 7 airplanes, as identified in paragraph 1.A., ''Effectivity,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Use the applicable instructions for Group 2, Configuration 1, 2, or 3, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(j) Optional Terminating Action

For Groups 1, 2, 3, 4, 6, and 7 airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Except as provided by paragraphs (i)(2) and (i)(3) of this AD, accomplishment of the preventive modification, including all applicable HFEC and detailed inspections for cracking or corrosion inside or outside the repair skin cutout area, in the frame fastener holes, or in the support channel; and all applicable repairs or replacements; as specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Terminates the repetitive inspection requirements of paragraph (g) of this AD.

(k) Concurrent Skin Panel Replacement

For Groups 2 and 7 airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Before or concurrently with accomplishing the requirements of paragraph (g) of this AD, do the replacement of the bonded skin panels with solid skin panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1042, Revision 9, dated July 25, 1991; except as required by paragraph (i)(3) of this AD. The actions specified in paragraph (k) of this AD are also required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990).

(l) Credit for Previous Actions

(1) This paragraph gives credit for the replacement required by paragraph (k) of this AD, if the replacement of bonded skin panels with solid skin panels was accomplished before the effective date of this AD using the Accomplishment Instructions of the service information identified in paragraphs (l)(1)(i), (l)(1)(ii), (l)(1)(iii), and (l)(1)(iv) of this AD:

(i) Boeing Service Bulletin 737–53A1042 Revision 5, dated October 5, 1984.

(ii) Boeing Service Bulletin 737–53A1042 Revision 6, dated August 10, 1989.

(iii) Boeing Service Bulletin 737–53A1042 Revision 7, dated October 19, 1989.

(iv) Boeing Service Bulletin 737–53A1042 Revision 8, dated July 19, 1990.

(2) This paragraph gives credit for the inspections required by paragraph (g) of this AD, if the inspections were accomplished before the effective date of this AD using the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, dated March 11, 2009.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the

availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6470 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0192; Directorate Identifier 2011–NM–225–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–200 and –200 freighter series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modification of the control circuit for the fuel pumps for the center fuel tanks for certain airplanes, and center and rear fuel tanks for certain other airplanes. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 30, 2012.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0192; Directorate Identifier 2011–NM–225–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0196, dated October 7, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> * * * [T]he FAA issued a set of new rules related to Fuel Tank Safety including Special Federal Aviation Regulation (SFAR) 88. In line with SFAR88, the JAA [Joint Aviation Authorities] issued policy JAA INT/POL 25/12 and recommended to the National Aviation Authorities (NAA) the application of a similar regulation.
>
> To ensure compliance with the requirements set by SFAR88 and JAA INT/POL 25/12, this [EASA] AD requires that Ground Fault Interrupters (GFI) are installed into the electrical power supply circuits of fuel pumps for which the canisters become uncovered during normal operation, taking into account normal fuel reserve or the fuel level, triggering the low fuel level warning.
>
> The function of this additional system protection is to electrically isolate the pump if a ground fault condition occurs downstream of the GFI. The GFI gives additional earth leakage protection to the downstream circuit.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action is modifying the control circuits of the fuel pump for the rear and center fuel tanks. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews

and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

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

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88 (66 FR 23086, May 7, 2001). (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

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

Relevant Service Information

Airbus has issued the following mandatory service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Mandatory Service Bulletin A330–28–3113, dated July 19, 2011 (for Model A330–200 and –200 freighter series airplanes).
- Airbus Mandatory Service Bulletin A340–28–4129, dated July 19, 2011 (for Model A340–200 and –300 series airplanes).
- Airbus Mandatory Service Bulletin A340–28–5051, dated September 1, 2011 (for Model A340–500 and –600 series airplanes).

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 29 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,480 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $125,570, or $4,330 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0192; Directorate Identifier 2011–NM–225–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, and –243 airplanes; all serial numbers; except those on which Airbus modification 200242 has been accomplished in production.

(2) Airbus Model A330–223F and –243F airplanes; all serial numbers; except airplanes on which Airbus modification 58623 has been accomplished in production and on which Airbus modification 200281 has not been accomplished in production; and airplanes on which modification 200242 has been accomplished in production.

(3) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes; all serial numbers; except airplanes on which Airbus modification 200242 has been accomplished in production.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Reason

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

(f) Compliance

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

(g) Actions

Within 48 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–200 and –200F series airplanes, and Model A340–200 and –300 series airplanes: Modify the control circuit for the fuel pump for the center fuel tank, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–28–3113, dated July 19, 2011 (for Model A330–200 and –200 freighter series airplanes); or A340–28–4129, dated July 19, 2011 (for Model A340–200 and –300 series airplanes).

(2) For Model A340–500 and –600 series airplanes: Modify the control circuit for the fuel pump for the rear and/or center fuel tanks, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–28–5051, dated September 1, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0196, dated October 7, 2011, and the service bulletins specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–28–3113, dated July 19, 2011.

(2) Airbus Mandatory Service Bulletin A340–28–4129, dated July 19, 2011.

(3) Airbus Mandatory Service Bulletin A340–28–5051, dated September 1, 2011.

Issued in Renton, Washington, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6461 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change date of public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to the deduction and capitalization of expenditures related to tangible property.

DATES: The public hearing originally scheduled for Wednesday, April 25, 2012, at 10 a.m. is rescheduled for Wednesday, May 9, 2012, at 10 a.m. Written or electronically submitted public comments along with requests to speak and outlines of topics to be discussed at the public hearing must be received by Tuesday, April 17, 2012.

ADDRESSES: The public hearing is being held in the auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

Due to building security procedures, visitors must enter at the Constitution Avenue entrance. Send submissions to: CC:PA:LPD:PR (REG–168745–03); Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–168745–03) Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, comments may be transmitted electronically via the Federal eRulemaking Portal at *www.regulations.gov.* (IRS–REG–168745–03).

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of change date of public hearing on proposed rulemaking appearing in the **Federal Register** on Monday, January 23, 2012 (77 FR 3210), announced that a public hearing relating to the deduction and capitalization of expenditures related to tangible property, would be held on Wednesday, April 25, 2012 at 10 a.m., in the auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

The date of the public hearing has been changed. The hearing is now scheduled for Wednesday, May 9, 2012, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building at 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of topics to be discussed at the public hearing must be received by Tuesday, April 17, 2012.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 2012–6371 Filed 3–15–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0046]

RIN 1625–AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Ocean City Maryland Offshore Grand Prix, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of special local regulations for one recurring marine event in the Fifth Coast Guard District, specifically, the ''Ocean City Maryland Offshore Grand Prix,'' hydroplane races on the North Atlantic Ocean near Ocean City, Maryland. The event consists of approximately 50 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course, this regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the North Atlantic Ocean near Ocean City, Maryland during the event.

DATES: Comments and related material must be received by the Coast Guard on or before April 5, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0046 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0046), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0046) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0046) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

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

Public Meeting

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

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

Basis and Purpose

Marine events are frequently held on the navigable waters within the boundary of Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to temporarily change the enforcement period of special local regulations for one recurring marine event within Fifth

Coast Guard District. This proposed regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

The Offshore Performance Association (OPA) Racing LLC annually sponsors the ''Ocean City Maryland Offshore Grand Prix'', on the waters of the North Atlantic Ocean near Ocean City, Maryland. This year, the event will be held on May 13, 2012. The regulation at 33 CFR 100.501 is effective annually for Ocean City Offshore Challenge marine event. The event consists of approximately 50 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is expected to gather near the event site to view the competition. Therefore, to ensure the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the hydroplane races. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 11 a.m. to 5 p.m. on May 13, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The Coast Guard is establishing a temporary special local regulation on specified waters of the North Atlantic Ocean, in Ocean City, Maryland. The regulated area will be established in the interest of public safety during the ''Ocean City Offshore Grand Prix'', and will be enforced from 11 a.m. to 5 p.m. on May 13, 2012. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule prevents traffic from transiting a portion of certain waterways during specified times, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit this section of the North Atlantic during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it. This regulation will not have a significant impact on a substantial number of small entities because: (i) It will be enforced only for a short period of time on two consecutive days; (ii) vessels may be granted the opportunity to transit the safety zone during the period of enforcement if the Patrol Commander deems it safe to do so; (iii) vessels may transit around the safety zone; and (iv) before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Christopher O'Neal. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. In § 100.501, suspend line No. 38 in the Table to § 100.501.

3. In § 100.501, add line No.(c.)24 in Table to § 100.501; to read as follows:

§ 100.501–35T05–0046 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

(C.) COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	*
24	May 13, 2012	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.

* * * * *

Dated: February 17, 2012.

Mark S. Ogle,

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

[FR Doc. 2012–6380 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900–AN79

Fisher House and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA medical facility. We intend that the proposed rule would update current regulations to better describe the application process for this assistance and clarify the distinctions between Fisher House and other temporary lodging provided by VA. The proposed rule generally reflects current VA policy and practice, and conforms to industry standards and expectations.

DATES: Comments must be received by VA on or before May 15, 2012.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN79, Fisher House and Other Temporary Lodging''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Amdur, Chief Consultant, Care Management and Social Work Service (11SW), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6780. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 1708, VA ''may furnish [certain] persons * * * with temporary lodging in a Fisher [H]ouse or other appropriate facility in connection with the examination, treatment, or care of a veteran under [chapter 17].'' This authority to provide temporary lodging assists VA in providing appropriate treatment and care to veterans. Individuals receiving such treatment or care often respond better when they are accompanied by relatives, close friends, or caregivers. Thus, the provision of temporary lodging can be an important element of the veteran's treatment. VA implemented its authority under section 1708 in current 38 CFR part 60. However, we have determined that the current rules can be improved to better distinguish between Fisher House and other types of temporary lodging, and to describe the application process in greater detail. This proposed rule would provide such clarification, adding details where necessary.

Section 60.1 Purpose and scope.

Proposed § 60.1 would state that part 60 applies to the use of Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility.

Section 60.2 Definitions.

Proposed § 60.2 would set forth definitions applicable to part 60. For the purpose of receiving temporary lodging from VA, current regulations use the terms ''eligible persons,'' ''a member of the family,'' people who ''provide the equivalent of family support,'' and ''caregivers,'' to refer to individuals permitted to accompany veterans during their episode of care. However, VA Form 10–0408A, the application form for Fisher House or other temporary lodging, uses the term ''accompanying individual'' to refer to such persons. For consistency of terms and to eliminate any ambiguity as to whether applicants must be related to the veteran, we propose to uniformly use the term ''accompanying individual.'' We propose to define the term to mean ''an individual seeking Fisher House or other temporary lodging, who provides familial support or the equivalent of familial support, to a veteran while the veteran is experiencing an episode of care.'' The regulation would specifically explain that the term is ''defined broadly to include relatives, close friends, and caregivers.'' This proposed definition would therefore provide for a broader class of individuals permitted to accompany veterans during an episode of care.

Current § 60.2 defines the term ''C&P examination.'' C&P is the acronym

commonly used to refer to VA's compensation and pension programs. We propose to use the term ''compensation and pension examinations'' instead of using the acronym. However, the proposed definition for ''compensation and pension'' examinations would be substantively identical to the definition in current § 60.2.

We also propose to utilize the term ''episode of care'' in lieu of ''VA medical or compensation and pension examinations.'' We propose to define an ''episode of care'' as ''a course of outpatient treatment, or a period of hospitalization, during which a veteran receives health care under 38 U.S.C. chapter 17, or 38 U.S.C. 8111 or 8153.'' Although this would be a new term in part 60, it is well recognized in the medical community and it is generally accepted, used, and understood by the medical community and by managers working in the Fisher House and other temporary lodging programs. Further, using the term ''episode of care'' in our regulations would be clearer than repeatedly attempting to describe the types of care for which VA may provide lodging assistance, which is how this concept is set forth in the current regulations.

For purposes of further clarification regarding the definition of ''episode of care,'' we propose to provide a non-exclusive list of examples of episodes of care. The first would be ''[a]n appointment at a VA health care facility to receive health care or a compensation and pension examination.'' This is consistent with our current regulations. *See* 38 CFR 60.1 (explaining that part 60 ''sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving * * * [compensation and pension] examinations * * *.''); *see also* 38 CFR 60.3(a) (explaining that veterans with an appointment at a VA health care facility for the purpose of receiving health care or a compensation and pension examination are eligible to stay in temporary lodging).

The second example would be as follows: ''Extended outpatient treatment, such as treatment associated with organ transplant, chemotherapy, or radiation.'' The use of Fisher House or other temporary lodging for such treatment is addressed in current § 60.7. These examples represent the most common episodes of care associated with applications for lodging, and the examples are consistent with current § 60.3.

The third example concerns hospitalizations for a critical injury or where death is imminent. In such cases, it can be helpful to the veteran to have friends or family present. The example would also include hospitalization ''where a veteran is unable to make medical decisions for him/herself and the accompanying individual is authorized to make such decisions on the veteran's behalf.'' In such cases, VA would consider an application for lodging by an accompanying individual who is authorized to make decisions for the veteran. We note that in most cases, such hospitalizations would also be considered hospitalizations for critical injury or illness. The purpose of this last example is to clarify that lodging may be provided for compassionate reasons, as well as logistically, medically, or legally necessary reasons.

We also propose to define ''Fisher House'' as ''a housing facility that is located at or near a VA health care facility and was constructed by and donated to VA by the Fisher House Foundation (formerly the Zachary and Elizabeth M. Fisher Armed Services Foundation).'' This definition would be consistent with the definition of the term in current 38 CFR 60.2. However, we would add that the term includes ''a facility that is treated as if it were Fisher House lodging under § 60.3.'' We discuss this proposed addition below under proposed § 60.3.

The definition of ''other temporary lodging'' would be slightly more detailed than the definition in current § 60.2, but it would not be substantively different. The definition conforms to current usage and practice.

''VA'' would be defined as ''the Department of Veterans Affairs.''

Section 60.3 Other donated temporary lodging.

Proposed § 60.3 would establish that ''[w]henever VA receives, from a source other than the Fisher House Foundation, an undesignated donation of lodging to be used on a temporary basis, the lodging will be designated as if it were Fisher House lodging or be treated as other temporary lodging based upon the types of lodging available in the area.'' Under 38 U.S.C. 8103(a)(2), the Secretary of Veterans Affairs (Secretary) may accept donations of ''any facility * * * that the Secretary considers necessary for use as a medical facility.'' *See also* 38 U.S.C. 8104(e) (authorizing VA to accept donations of medical facilities). 38 U.S.C. 8101(3) defines a ''medical facility'' as a facility used for the provision of health-care services and including any necessary associated buildings. We interpret this definition of ''medical facility'' as including lodging to be used on a temporary basis in connection with VA health care since the provision of temporary lodging can be an important element of a veteran's treatment.

Under proposed § 60.3, if the Secretary accepts a gift that specifies the terms of lodging to be provided, then the lodging would be used in the manner specified by the grantor of the gift. However, if no terms are specified, the Secretary would designate, based on consideration of the types of lodging available in the area, whether the gift would be treated as ''other temporary lodging'' or as if it were donated by the Fisher House Foundation. This is consistent with current VA practice.

Section 60.10 Eligibility criteria for Fisher House or other temporary lodging.

Proposed § 60.10 would set forth the eligibility criteria for lodging under part 60. It would include provisions from several current regulations. However, we propose to reorganize the information for clarity.

Proposed paragraph (a) would establish the general rule that ''[w]hile a veteran is undergoing an episode of care, VA may provide either Fisher House or other temporary lodging, as appropriate, if the application meets the requirements of this part 60. These are the only types of lodging provided by VA under this part.'' Proposed paragraph (a) is consistent with current § 60.3. We would also add a new note to paragraph (a), which would clarify that ''[l]odging provided for under this part will not be used by a person participating in a VA residential treatment program, or as a substitute for participation in such a program.'' This note would help ensure that temporary lodging is properly used for its intended purposes, and not as an alternative to proper residential care.

There are currently active duty servicemembers who receive care at VA facilities under the authority of 38 U.S.C. 8111. Under these circumstances we provide lodging in the same manner that lodging is provided for veterans and their accompanying individuals. Servicemembers would be subject to the same rules as veterans and they would be required to meet the same eligibility requirements concerning episodes of care.

Proposed paragraph (b) would set forth the general requirements for Fisher House and other temporary lodging. Further, proposed paragraph (b) would clarify the major distinction between Fisher House lodging and other temporary lodging. We have determined that current regulations lack sufficient clarity regarding these two different types of lodging. The primary

distinction is that Fisher House lodging is generally limited to accompanying individuals. It is not available for unaccompanied veterans.

Also, we propose to add a note to paragraph (b) to clarify that ''VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.'' This is consistent with VA's current general practice, which is to allocate lodging on a space-available basis.

Concerning the differences between Fisher House lodging and other temporary lodging provided by VA, proposed paragraph (b)(1) would clarify that Fisher House lodging is not used to lodge unaccompanied veterans or individuals in need of transitional or permanent housing. This distinction is essential to preserve the intent of the Fisher House Foundation, which is to provide support for families while a veteran experiences an episode of care. Because the purpose of Fisher House lodging is to provide a retreat for accompanying individuals from the medical care environment, Fisher House lodging is available only to accompanying individuals and, in limited circumstances of immediate need and no alternative temporary lodging, to veterans with accompanying individuals.

Proposed paragraph (b)(2) would discuss other temporary lodging. We would clarify in this paragraph that for an accompanying individual to stay in other temporary lodging, the veteran must also be staying in temporary lodging. We would further specify in a note to this paragraph that VA may, due to space restrictions, impose a limit on the number of accompanying individuals.

Proposed paragraph (c) would restate the requirement in current § 60.4(h) that the veteran be medically stable and capable of self-care or be accompanied by an individual who is able to provide all necessary care. The proposed rule would clearly state that this requirement applies to both Fisher House lodging and other temporary lodging. The current rule is ambiguous in this regard. The capacity for self-care is required because neither Fisher House lodging nor other temporary lodging is intended to be substitutes for, or supplements to, medical care.

Proposed § 60.10(d) would restate the existing travel time/distance requirement in current § 60.5, but would clarify that the distance requirement applies to both Fisher House and other temporary lodging. The current rule is ambiguous in this regard. Proposed paragraph (d) would permit the travel time/distance requirement to be applicable to ''the applicant,'' allowing this requirement to be considered for an accompanying individual as well as for a veteran. This is current VA practice when considering Fisher House applications from non-veterans accompanying veterans. It would also clarify that VA may waive the time/distance requirement under exceptional circumstances that apply to either the accompanying individual or the veteran.

In proposed paragraph (e) we would prescribe special consideration for organ donors and their accompanying individuals. Specifically, regarding individuals who wish to donate an organ to a veteran, we would explain that ''VA may provide Fisher House or other temporary lodging for individuals who must be present on site for evaluation, donation, and care related to their status as an organ donor for a veteran. VA may also provide Fisher House or other temporary lodging for the donor's accompanying individuals at all phases of the transplant process.'' This provision is based on clinical need pursuant to 38 U.S.C. 1710(a) regarding eligibility for hospital care and medical services and not on our temporary lodging authority under section 1708. Outcomes of transplantation are linked directly to the presence and competence of accompanying individuals who support the organ donor at all phases of the transplant process. In addition, this paragraph would recognize VA's obligations to living donors who give veterans the gift of life.

Section 60.15 Application process.

Proposed § 60.15 would prescribe the application process for Fisher House or other temporary lodging. Under current § 60.4, applications for lodging may be submitted by mail, telephone, facsimile, in person, or electronically. We intend to continue to provide for the same means of submissions. Proposed § 60.15(a) would simply restate a portion of current § 60.4. Under proposed § 60.15(a), we would refer to VA Form 10–0408A as the application and provide information about where to obtain the form. We would also specify where to submit the completed form. This additional information is intended to assist applicants. We do not intend any changes in the current application process.

In proposed paragraph (b), which is based upon current § 60.8 and 60.9, we would describe how VA processes applications and makes decisions to grant temporary lodging. However, we propose to add detail for purposes of clarification.

Paragraph (b)(1) would state that applications ''are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first-come, first-served basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation applications may be processed out of order.'' The general rule that applications would be processed in the order received would be based upon the last sentence of current § 60.8, which prescribes, ''[t]emporary lodging will be provided on a first-come, first-served basis.'' However, the proposed exceptions for circumstances involving imminent death, critical injury, or organ donation are new and we propose the exceptions because in these circumstances, we believe that family members and loved ones should be given every opportunity to be with the veteran and, likewise, that the veteran should be accompanied by such people.

Proposed paragraph (b)(2) would state that ''[t]emporary lodging is granted on a space-available basis, with some consideration given to the compatibility of the applicant(s) and the room(s) available.'' This general rule would be based upon current § 60.8. The proposed paragraph would provide, by way of example, that ''although VA may require an applicant to share a room with another veteran's accompanying individual, VA would not do so if the persons affected are not the same gender.''

Proposed paragraph (b)(3) would essentially restate the second sentence of current § 60.8. It is important that grants of temporary lodging at a VA health care facility, usually in non-utilized beds, be subject to the approval of the Director of the health care facility in order to avoid any negative impact on patient care. For example, a non-utilized bed that might not be provided to an accompanying individual could include a bed located in an intensive care unit or in an area of the hospital from which visitors are limited or barred. In addition, the proposed rule would add that ''[n]on-utilized beds provided to accompanying individuals must be reassigned to VA patients when necessary.'' If a patient needs to use a bed that was previously non-utilized and was provided to an accompanying individual, the patient would take priority over the accompanying individual and the bed would no longer be considered ''non-utilized.'' In such cases, VA would make every effort to relocate the accompanying individual into other temporary lodging.

Proposed paragraph (b)(4) would restate the funding limitation prescribed in current § 60.8, without substantive change.

Proposed paragraph (b)(5) would state that ''[s]ubject to all criteria provided in this part, the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging. These decisions are considered to be final VA decisions concerning individual medical treatment plans and the scheduling and use of VA lodging facilities, and they are not appealable to the Board of Veterans' Appeals.'' This general rule would be based upon current § 60.9, and would reflect current VA policy and practice. The Fisher House program is a unique private-public partnership between The Fisher House Foundation, Inc., and the Secretary of Veterans Affairs to provide temporary lodging for individuals who accompany a veteran during the veteran's hospitalization for an illness, disease, or injury. Fisher Houses are given to the U.S. Government as gifts, and VA subsequently is responsible for the operation and maintenance of Fisher Houses. Lodging in Fisher Houses and other facilities is not a VA benefit, but rather a temporary resource made available to veterans on a first-come first-serve basis, when necessary criteria under the rule are met. Section 1708 gives VA discretion to provide such lodging when appropriate and available, but does not establish a right to such lodging as a VA ''benefit.'' VA does not guarantee accommodations in VA Fisher Houses or in other temporary lodging facilities, and completion of the application process as described in the rule does not ensure temporary lodging would be provided. VA's determinations in providing such lodging are based in part on medical judgment regarding the course of a veteran's treatment and in part on administrative scheduling matters concerning the availability of space. These types of determinations generally are not subject to appellate review, nor could such review ordinarily be accompanied within the timeframes relevant to administering temporary lodging. Therefore, we do not interpret section 1708 as creating any benefit entitlement within the jurisdiction of the Board of Veterans' Appeals. Rather, lodging decisions made under this proposed rule would be final VA decisions.

Proposed paragraphs (b)(6) and (7) would reflect current practice not prescribed in current regulations. These paragraphs would explain that when VA cannot grant an application for one type of lodging, we would consider whether the applicant could qualify for the other type of lodging, regardless of any selection on the application. If the application cannot be granted for either type of lodging, we would send the application to a VA social worker to see if other arrangements can be made to assist the applicant.

Proposed paragraph (c) would restate current § 60.10, without substantive revision.

As indicated throughout this preamble, VA Form 10–0408A has been designated as the application form for Fisher House and Other Temporary Lodging. Current regulations do not refer specifically to VA Form 10–0408A. However, the form was approved by the Office of Management and Budget (OMB). Therefore, we intend to note in a parenthetical at the end of proposed § 60.15 that OMB has approved the collection of information under control number 2900–0630.

Section 60.20 Duration of Fisher House or other temporary lodging.

Proposed § 60.20 would be the final section in part 60 and it would concern the duration of lodging provided by VA under part 60. Substantively, proposed paragraphs (a) and (b) would be similar to current § 60.7, except that the proposed rule would use the term ''episode of care'' rather than describe specific types of medical treatment.

Proposed § 60.20(c) would permit an extension of a previous period of lodging. The duration of a period of lodging would be specific to each situation set forth on the application and, therefore, would generally be defined by the terms of the granted application. However, in certain cases we might need to provide exceptions, such as when a medical emergency occurs during a scheduled episode of care or when weather changes prevent departure from the lodging provided by VA.

Proposed paragraph (d) would authorize an indefinite period of lodging for individuals accompanying a veteran who is hospitalized for an indefinite period based on the treatment or rehabilitation needs of the veteran as determined by the veteran's health care team and based on the availability of Fisher House lodging or of funding for other temporary lodging. Lodging in non-utilized VA hospital beds would not be authorized for an indefinite period due to the administrative and medical needs of VA medical facilities.

Proposed paragraphs (e) and (f) would be consistent with current § 60.7. These paragraphs would restrict awards of temporary lodging to veterans who are unable to arrive for a scheduled appointment at the health care facility if they left their home after 8 a.m. or who would be unable to return home before 7 p.m. We believe that travel before 8 a.m. or after 7 p.m. may be more difficult or dangerous than travel during regular daylight hours.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent VA's implementation of its exclusive legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures would be authorized. All existing and subsequent VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

Although this document contains provisions constituting collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection provisions for this section are approved by OMB and have been assigned OMB control number 2900–0630.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities because the proposed rule would apply only to patients receiving care at VA facilities. Also, this proposed rule might have an insignificant impact on small entities involved in the lodging industry. However, any effect would be minuscule. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits

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

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 8, 2012, for publication.

List of Subjects in 38 CFR Part 60

Health care, Health facilities, Health records, Reporting and recordkeeping requirements, Housing, Travel, Veterans.

Dated: March 13, 2012.

Robert C. McFetridge,

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

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 60 as follows:

PART 60—FISHER HOUSES AND OTHER TEMPORARY LODGING

1. The authority citation for part 60 continues to read as follows:

Authority: 38 U.S.C. 501, 1708.

2. Part 60 is revised to read as follows:

Sec.
60.1 Purpose and scope.
60.2 Definitions.
60.3 Other donated temporary lodging.
60.10 Eligibility criteria for Fisher House or other temporary lodging.
60.15 Application process.
60.20 Duration of Fisher House or other temporary lodging.

§ 60.1 Purpose and scope.

This part applies to Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility.

(Authority: 38 U.S.C. 501, 1708).

§ 60.2 Definitions.

For the purposes of this part:

Accompanying individual means an individual seeking Fisher House or other temporary lodging, who provides familial support or the equivalent of familial support, to a veteran while the veteran is experiencing an episode of care. This term is defined broadly to include relatives, close friends, and caregivers.

Compensation and pension examination means an examination requested by VA's Veterans Benefits Administration to be conducted at a VA health care facility for the purpose of evaluating a veteran's claim.

Episode of care means a course of outpatient treatment, or a period of hospitalization, during which a veteran receives health care under 38 U.S.C. chapter 17, or 38 U.S.C. 8111 or 8153. Examples of episodes of care include (but are not limited to) the following:

(1) An appointment at a VA health care facility to receive health care or a compensation and pension examination.

(2) Extended outpatient treatment, such as treatment associated with organ transplant, chemotherapy, or radiation.

(3) Hospitalization for a critical injury or illness; where death is imminent; or where a veteran is unable to make medical decisions for him/herself and the accompanying individual is authorized to make such decisions on the veteran's behalf.

Fisher House means a housing facility that is located at or near a VA health care facility and was constructed by and donated to VA by the Fisher House Foundation (formerly the Zachary and Elizabeth M. Fisher Armed Services Foundation), or a facility that is treated as if it were Fisher House lodging under § 60.3.

Other temporary lodging includes:

(1) Lodging at a temporary lodging facility, other than a Fisher House, located at a VA health care facility (generally referred to as a ''hoptel'');

(2) A hotel or motel;

(3) Non-utilized beds at a VA health care facility designated as lodging beds; and

(4) Other donated lodging to be used on a temporary basis in accordance with 38 U.S.C. 1708.

VA means the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 1708)

§ 60.3 Other donated temporary lodging.

Whenever VA receives, from a source other than the Fisher House Foundation, an undesignated donation of lodging to be used on a temporary basis, the lodging will be designated as if it were Fisher House lodging or be treated as other temporary lodging based upon the types of lodging available in the area. If VA receives a gift that specifies the terms of the lodging provided, VA will use the lodging provided in the manner specified by the donor.

(Authority: 38 U.S.C. 501, 1708, 8103, 8104)

§ 60.10 Eligibility criteria for Fisher House or other temporary lodging.

(a) *General.* While a veteran is undergoing an episode of care, VA may provide either Fisher House or other temporary lodging, as appropriate, if the application meets the requirements of this part 60. These are the only types of lodging provided by VA under this part. **Note:** Lodging provided for under this part will not be used by a person participating in a VA residential treatment program, or as a substitute for participation in such a program.

(b) *Eligible persons.* (1) *Fisher House.* VA may provide Fisher House lodging to accompanying individual(s) and, in limited circumstances of immediate need and no alternative temporary lodging, to a veteran with one or more accompanying individual(s). Fisher House lodging will not be used to lodge unaccompanied veterans or individuals in need of transitional or permanent housing. **Note:** VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(2) *Other temporary lodging.* VA may provide other temporary lodging to a veteran or to a veteran and his or her accompanying individual(s). Accompanying individuals may not stay in other temporary lodging unless the veteran is also staying in temporary lodging. **Note:** VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(c) *Condition of the veteran.* Fisher House or other temporary lodging will not be provided to a veteran unless the VA official reviewing the application determines, based on the application and on any necessary clinical information, that the veteran is:

(1) Medically stable and capable of self-care; or

(2) Accompanied by an individual who is able to provide all necessary care.

(d) *Travel time/distance requirement.* Fisher House or other temporary lodging may be provided only if the applicant seeking lodging must travel at least 50 miles, or for 2 hours, from his or her home to the VA health care facility. VA may waive these requirements based on exceptional circumstances, such as when the physical condition of an accompanying individual and/or the veteran, inclement weather, road conditions, or the mode of transportation, make it difficult or dangerous to travel to or return from the VA health care facility without an overnight stay.

(e) *Special authority for organ transplant cases.* Notwithstanding any other provision of this part, VA may provide Fisher House or other temporary lodging for individuals who must be present on site for evaluation, donation, and care related to their status as an organ donor for a veteran. VA may also provide Fisher House or other temporary lodging for the donor's accompanying individuals at all phases of the transplant process.

(Authority: 38 U.S.C. 501, 1708, 1710(a))

§ 60.15 Application process.

(a) *Obtaining and submitting the application.* VA Form 10–0408A is the application for Fisher House and other temporary lodging. Applications may be submitted by mail, telephone, facsimile, in person, or electronically. VA Form 10–0408A is available from any VA medical center or may be obtained online at *http://vaww4.va.gov/vaforms/medical/pdf/vha-10-0408A-fill.pdf.* The completed application must be submitted as follows:

(1) For Fisher House lodging, to the Fisher House Manager at the VA medical center of jurisdiction.

(2) For other temporary lodging, to the temporary lodging program coordinator at the VA medical center of jurisdiction.

(b) *Processing applications.* (1) Applications are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first come first serve basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation applications may be processed out of order.

(2) Temporary lodging is granted on a space-available basis, with some consideration given to the compatibility of the applicant(s) and the room(s) available. For example, although VA may require an applicant to share a room with another veteran's accompanying individual, VA would not do so if the persons affected are not the same gender.

(3) Temporary lodging at a VA health care facility, such as non-utilized beds in a VA medical facility, may be made available only if not barred by law and if the Director of the medical facility determines that such action would not have a negative impact on patient care. Non-utilized beds provided to accompanying individuals must be reassigned to VA patients when necessary.

(4) The Director of the VA Medical Center of jurisdiction will determine whether local funding is sufficient to allow the use of temporary lodging in hotels and motels.

(5) Subject to all criteria provided in this part, the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging. These decisions are considered to be final VA decisions concerning individual medical treatment plans and the scheduling and use of VA lodging facilities, and they are not appealable to the Board of Veterans' Appeals.

(6) If VA denies an application for one type of lodging, such as at a Fisher House, the application will be considered for other temporary lodging and vice versa, if the applicant is eligible.

(7) If VA denies the application for all types of temporary lodging, VA will refer the application to a VA social worker at the VA medical center of jurisdiction to determine if other arrangements can be made.

(c) Costs for Fisher House and other temporary lodging under this part are borne by VA.

(Authority: 38 U.S.C. 501, 1708)

(The Office of Management and Budget has approved the information collection requirements in this section under OMB control number 2900–0630)

§ 60.20 Duration of Fisher House or other temporary lodging.

Fisher House or other temporary lodging may be awarded for the following periods:

(a) While the veteran is undergoing an episode of care.

(b) While the veteran is hospitalized, if the veteran is admitted to a VA medical facility while undergoing an outpatient episode of care for which temporary lodging was already provided.

(c) As extended by the appropriate VA clinician or social worker based on an emergency situation or unforeseen circumstances.

(d) For an indefinite period for accompanying individuals who are visiting veterans hospitalized for an indefinite period, provided that the accompanying individual is not using a VA medical facility bed. Whether a veteran is hospitalized for an indefinite period will be based upon the treatment or rehabilitation needs of the veteran as determined by the veteran's health care team.

(e) Temporary lodging may be furnished the night before the day of a scheduled appointment if, the veteran leaving home after 8 a.m., would be

unable to arrive at the health care facility by the time of the scheduled appointment.

(f) Temporary lodging may be furnished the night of the scheduled appointment if, after the appointment, the veteran would be unable to return home before 7 p.m. When a veteran is undergoing outpatient treatment or procedures the veteran and accompanying individual(s) may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section.

(Authority: 38 U.S.C. 501, 1708)

[FR Doc. 2012–6397 Filed 3–15–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0062; FRL–9648–1]

RIN 2060–AR30

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the definition ''regulated NSR pollutant'' contained in two sets of Prevention of Significant Deterioration (PSD) regulations and in the EPA's Emission Offset Interpretative Ruling. This revision would correct an inadvertent error made in 2008 when the EPA issued its final rule to implement the new source review (NSR) program for fine particles with an aerodynamic diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$). Effectively, this revision would reestablish the interpretation that for measurement of ''particulate matter emissions'' in the context of the PSD and NSR regulations there is no explicit requirement to include measurement of condensable PM. However, the condensable portion would continue to be required for emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10}) and $PM_{2.5}$.

DATES: Comments must be received on or before May 15, 2012.

Public Hearing. If anyone contacts the EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by March 26, 2012, the EPA will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0062, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the applicable docket. The 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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The 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) 566–1742, and the telephone number for the Air Docket is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or email address: *deroeck.dan@epa.gov.*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups that emit particulate matter:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122
Petroleum refining	32411

Industry group	NAICS [a]
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Natural gas liquids	211112
Natural gas transport	48621, 22121
Pulp and paper mills	32211, 322121, 322122, 32213
Paper mills	322121, 322122
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213
Pharmaceuticals	325411, 325412, 325413, 325414

[a] North American Industry Classification System.

Entities affected by this rule also include state, local, and tribal reviewing authorities responsible for implementing Clean Air Act (CAA or Act) stationary source permitting programs.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit information containing CBI to the EPA through *www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA–HQ–OAR–2003–0062. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

E. How is this preamble organized?

The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information
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B. What should I consider as I prepare my comments for EPA?
C. Where can I get a copy of this document and other related information?
D. How can I find information about a possible public hearing?
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II. Purpose
III. Background
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I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VI. Statutory Authority

II. Purpose

The purpose of this rulemaking is to revise the definition ''regulated NSR pollutant'' contained in the regulations for PSD at 40 CFR 51.166 and 52.21, and in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51 Appendix S. This revision will correct an error that occurred when the regulations were revised in 2008. The existing definition was changed in 2008 to require that particulate matter emissions, PM_{10} emissions and $PM_{2.5}$ emissions—representing three separate size ranges or indicators of particles—must include ''gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures,'' i.e., condensable particulate matter. *See* existing 40 CFR 51.166 (b)(49)(vi) and 52.21(b)(50)(vi). Previously, EPA's regulations did not require particulate matter emissions to include condensable particulate matter; consistent with the applicable New

Source Performance Standards (NSPS) for PM and the corresponding compliance test method, only the filterable fraction had been considered for NSR purposes. The 2008 change therefore imposed an unintended new requirement on state and local agencies and the regulated community. As described in more detail in section IV of this preamble, in the 2008 final rule we did not intend that the term ''particulate matter emissions'' include the condensable PM fraction of primary PM; the EPA no longer regulates the ambient indicator, total suspended particulate (TSP), with which the indicator ''particulate matter emissions'' was originally associated, and there is no compelling reason for requiring that the condensable PM portion be counted toward the measure of ''particulate matter emissions'' from stationary sources for PSD applicability determinations and in establishing emissions limitations.

If these proposed revisions are finalized, they will ensure that our approach for regulating the three indicators for particulate matter under the PSD program is codified as originally intended. This would mean that ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions'' would be regulated as criteria pollutants (that is, under the portion of the definition that refers to ''[a]ny pollutant for which a national ambient air quality standard has been promulgated * * *''), and would be required to include the condensable PM fraction emitted by a source. Also, ''particulate matter emissions'' would be regulated as a non-criteria pollutant (that is, under the portion of the definition that refers to ''[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act''), without a general requirement to include the condensable PM fraction emitted by a source.

III. Background

A. National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM)

Sections 108 and 109 of the CAA govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list ''air pollutants'' that ''in his judgment, may reasonably be anticipated to endanger public health and welfare'' and whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those pollutants that are listed. Section 109 directs the Administrator to propose and promulgate primary and secondary NAAQS for pollutants listed under section 108 to protect public health and welfare, respectively. Section 109 also requires review of the NAAQS at 5-year intervals.

''Particulate matter'' is a term used to define an air pollutant that consists of a mixture of solid particles and liquid droplets found in the ambient air. Particulate matter occurs in many sizes and shapes and can be made up of hundreds of different chemicals. As explained further in the discussion that follows, the EPA has regulated several size ranges of particles, e.g., $PM_{2.5}$, referred to as indicators of particles [1], which has required that test methods be developed to capture the appropriate size particles that occur in the ambient air or that are being emitted directly from a source. In some cases, the EPA regulates certain species of particles as separate ''air pollutants.'' For example, lead, beryllium, fluorides, and sulfuric acid mist are constituents of particulate matter that are also regulated separately under New Source Performance Standards (40 CFR part 60) or National Emissions Standards for Hazardous Air Pollutants (40 CFR parts 61, 63 or 65).

Particles as measured in the ambient air consist of both primary and secondary particles. Primary particles are emitted directly from sources, and may include gaseous emissions, which, when emitted from the stack of a source, condense under ambient conditions to form particles. Primary particles directly emitted by a source as a solid or liquid at the stack and captured on the filter of a test train are referred to as the ''filterable'' PM fraction. The gaseous emissions that form particles upon condensing under ambient conditions following release from the stack are referred to as ''condensable'' PM. Other types of particles, known as secondary particles, are formed from precursors of PM, e.g., SO_2 and NO_X, at a distance from their point of release as a result of complex reactions in the atmosphere.

Initially, the EPA established NAAQS for PM on April 30, 1971, under sections 108 and 109 of the Act. *See* 36 FR 8186. Compliance with the original PM NAAQS was based on the measurement of particles in the ambient air using an indicator of particles measuring up to a nominal size of 25 to 45 micrometers (μm) in the ambient air. The EPA used the indicator name ''total suspended particulate'' or ''TSP'' to define the particle size range that was being measured. Total suspended particulate remained the indicator for the PM NAAQS until 1987 when the EPA revised the NAAQS in part by replacing the TSP indicator for both the primary and secondary standards with a new indicator that includes only those particles with an aerodynamic diameter smaller than or equal to a nominal 10 μm (PM_{10}).

On July 18, 1997, the EPA made significant revisions to the PM NAAQS in several respects. While the EPA determined that the PM NAAQS should continue to focus on particles less than or equal to 10 μm in diameter, the EPA also determined that the fine and coarse fractions of PM_{10} should be considered separately. Accordingly, on July 18, 1997, the EPA added a new indicator for fine particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm ($PM_{2.5}$), and continued to use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10}. *See* 62 FR 38652.

In the next periodic review, the EPA concluded, on October 17, 2006, that it was necessary to revise the primary and secondary NAAQS for PM to provide increased protection of public health and welfare. *See* 71FR 61144. The EPA retained the two separate indicators—PM_{10} and $PM_{2.5}$—for determining compliance with the revised standards for PM, so both continue to be regarded as criteria pollutants.

B. Measuring and Reporting Emissions of Particulate Matter (PM)

Section 110 of the Act requires that state and local air pollution control agencies develop and submit plans, known as state implementation plans or SIPs, for the EPA approval that provide for the attainment, maintenance and enforcement of the NAAQS. An essential component of each SIP is the emissions reduction strategy, including emissions limitations and other control measures (as set forth in SIPs and in individual source permits) designed to control the emissions of pollutants that contribute to the air quality against which the NAAQS are measured. For many years, most control measures for PM were generally focused on primary PM—specifically, the filterable PM fraction. Accordingly, the early EPA test methods for quantifying amounts of PM emitted by sources generally were based on the collection of the filterable PM fraction.

In support of state obligations to develop emissions reduction strategies, section 111 of the Act requires the EPA to adopt technology-based standards of performance that focus on sources that cause or contribute significantly to ''air pollution which may reasonably be

[1] The ''indicator'' of a standard defines the chemical species or mixture that is to be measured in determining whether an area (in the case of an ambient standard) or a source (in the case of an in-stack standard) attains that standard.

anticipated to endanger public health and welfare.'' Such standards, referred to as NSPS, are emissions standards that are intended to reflect the degree of air pollution emission limitation attainable through the application of the best system of emission reduction (taking into account the cost of achieving such reduction and any non-air quality health and energy requirements) that the Administrator determines has been adequately demonstrated. Accordingly, the EPA historically has developed NSPS (and corresponding compliance test methods) under 40 CFR part 60 to provide emissions standards that address, among other pollutants, the control of PM.

When the EPA promulgated the first set of NSPS for PM in 1971, only the filterable PM fraction was regulated. The EPA simultaneously promulgated a test method, known as Method 5, as the NSPS compliance test method for PM. Once available, Method 5 was often also used for permitting purposes to quantify the in-stack PM emissions that represented the particles in the atmosphere expressed in terms of the ambient indicator, TSP—the original indicator for the PM NAAQS. Thus, the filterable PM emissions collected by Method 5 or other similar source test methods were sometimes referred to as ''TSP emissions,'' even though it was recognized that Method 5 actually collected particles that exceeded the TSP size range (25–45 μm), and did not include the condensable PM fraction. Today, Method 5 continues to serve as the performance testing procedure for most NSPS for PM.

With the promulgation of the PM_{10} NAAQS in 1987, the annual source emissions reporting of ''particulate matter emissions'' (required under 40 CFR 51.322 and 51.323) ended with the state reporting of calendar year 1987 emissions, and the required reporting of PM_{10} emissions began with state reporting of calendar year 1988 emissions. In the absence of a standard reference test method, states were instructed to choose an appropriate method of determining PM_{10} emissions for each source. On April 17, 1990, the EPA promulgated Method 201A to provide the states with a standard means of measuring filterable PM_{10} emissions contained in the stack. Later in the same year, noting that condensable PM emissions form very fine particles in the PM_{10} size range and are considered PM_{10} emissions, the EPA proposed to add a test method to provide states with a means of measuring condensable PM emissions from stationary sources. *See* 55 FR 41546, October 12, 1990. The test method for condensable PM emissions, known as Method 202, was promulgated on December 17, 1991, in Appendix M of 40 CFR part 51. With the new focus on the PM_{10} indicator, the EPA also began to emphasize the relevance of condensable PM emissions,[2] and encouraged states to consider the condensable PM fraction where it was considered to be a significant contributor to an area's PM_{10} nonattainment status. However, there were only a few nonattainment areas where control of the condensable PM portion was actually required in order to achieve attainment.

Even before the EPA's introduction of the $PM_{2.5}$ indicator for the PM NAAQS in 1997, the EPA published information on $PM_{2.5}$ emissions in its National Emission Inventory Database (NEI).[3] With the assistance of information gained through speciation analyses of $PM_{2.5}$, the EPA recognized that condensable PM could be a substantial portion of the total $PM_{2.5}$ emitted by certain source categories. Beginning with the 1999 NEI, the EPA began including the condensable PM fraction of the total $PM_{2.5}$ emitted by certain source categories, and encouraged states to consider the condensable PM fraction for the development of emissions inventories for $PM_{2.5}$ SIPs.[4] The EPA also provided condensable PM emission factors for various sources in AP–42 so that those state and local air control agencies having the responsibility to report emission inventories would have the tools needed to estimate and report those emissions to the EPA.

In 2002, the EPA issued a rule known as the Consolidated Emissions Reporting Rule (CERR), which, among other things, established requirements for the reporting to the EPA of $PM_{2.5}$ emissions. In conjunction with the new reporting requirements, the EPA added definitions of ''primary PM,'' ''primary PM_{10},'' and ''primary $PM_{2.5}$,'' all of which included both the filterable and condensable PM fraction. *See* 67 FR 39602, June 10, 2002. The CERR required states to report emissions of primary PM_{10} and primary $PM_{2.5}$, and listed as optional the reporting of emissions of primary PM. However, when the EPA amended those rules in 2008, it dropped the definition ''primary PM'' and the listing of ''primary PM'' as an optional pollutant, eliminating the requirement for reporting ''PM'' (as opposed to PM_{10} and $PM_{2.5}$). *See* 73 FR 76539, December 17, 2008.

In November 2005, the EPA proposed requirements that states must fulfill in developing their implementation plans for the attainment of $PM_{2.5}$ NAAQS. *See* 70 FR 65984, November 1, 2005. With the historical emphasis on controlling the filterable PM fraction—even when the shift occurred to control PM_{10} emissions—it became apparent that in many cases it could be necessary to take a closer look at the control of the condensable PM fraction in order to attain the $PM_{2.5}$ NAAQS in some areas.[5] The preamble highlighted the importance in certain cases of controlling the condensable PM fraction to help ensure the attainment of the new NAAQS. It was acknowledged at that time that most stationary source test methods specified in state rules did not provide for the measurement of condensable PM emissions. Instead, it was found that most source test methods referenced in SIPs provided a measurement of only the filterable fraction of PM. The EPA further noted that ''these filterable particulate matter test methods are either identical or very similar to one of the ten Federal test methods published in Appendix A of 40 CFR Part 60 and used to determine compliance with New Source Performance Standards (NSPS).'' Id at 66049. The EPA indicated that states needing to adopt local control measures for primary $PM_{2.5}$ in nonattainment areas would need to revise their stationary source test methods to focus on the $PM_{2.5}$ indicator, including the condensable PM fraction.[6]

On March 25, 2009, the EPA proposed to modify existing Method 201A to allow for measurement of filterable $PM_{2.5}$. In fact, the proposed modification offered the ability to measure filterable PM_{10}, filterable $PM_{2.5}$, or both filterable PM_{10} and filterable $PM_{2.5}$ from

[2] ''Condensable particulate matter is of potential importance because it usually is quite fine and thus falls primarily within the PM_{10} fraction.'' *See,* ''PM–10 SIP Development Guideline'' (June 1987) at p. 5–32.

[3] The EPA's NEI contains information about sources that emit criteria pollutants and their precursors, and hazardous pollutants. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources. The NEI currently contains information on PM with regard to the criteria indicators PM_{10} and $PM_{2.5}$.

[4] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze,'' EPA–454/R–99–006 (April 1999).

[5] ''The inclusion of condensable emissions in a source's $PM_{2.5}$ emissions is of increasing importance with the change in the indicator for particulate matter to $PM_{2.5}$. Condensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ than of TSP or PM_{10}.'' 70 FR 65984 (November 1, 2005) at p. 66039.

[6] The EPA did indicate that ''test methodologies that measure only filterable particulate matter would be acceptable in areas where no additional reductions of primary $PM_{2.5}$ and particulate precursor emissions are required to project attainment of the $PM_{2.5}$ NAAQS.'' Id at 66049.

stationary sources. At the same time, the EPA proposed amendments to Method 202 to improve the precision of the method for measuring condensable PM and to provide for more accurate overall quantification of primary emissions of PM_{10} and $PM_{2.5}$ to the ambient air. Method 202 contained several optional procedures that were intended to accommodate the various test methods used by state and local regulatory entities at the time Method 202 was being developed. The inclusion of the optional procedures in 1991 ultimately proved problematic in that each of them resulted in a different emissions value. To address this issue, the EPA explored the influence of the optional procedures to identify the ones that would result in a biased measurement. In December 2010, the EPA promulgated an improved Method 202 eliminating options that would produce different measures of emissions.

C. New Source Review Program for PM

The NSR program is a statutorily based preconstruction permitting program that applies when a stationary source of air pollution proposes to construct or undergo modification. The NSR program consists of three different preconstruction permit programs: (1) PSD; (2) nonattainment NSR; and (3) minor NSR. We often refer to the PSD and nonattainment NSR programs together as the major NSR program because those permit programs regulate the construction of new major stationary sources and major modifications to existing major stationary sources.

The nonattainment NSR program applies in advance of construction to new major stationary sources and major modifications of sources of a pollutant that locate in an area that is designated ''nonattainment'' for that pollutant. As such, the nonattainment NSR program applies only with respect to criteria pollutants, i.e., pollutants (or indicators thereof) for which EPA has promulgated NAAQS. On the other hand, the PSD program is a statutorily based preconstruction review and permitting program that applies to new or modified major stationary sources proposing to locate in an area meeting the NAAQS (''attainment'' areas) and areas for which there is insufficient information to classify them as either attainment or nonattainment (''unclassifiable'' areas).

Like the nonattainment NSR program, the applicability of the PSD program to a major stationary source or major modification must be determined in advance of construction and is pollutant-specific. However, unlike the nonattainment NSR program, the PSD requirements are applied on a pollutant-specific basis for any ''air pollutant'' that is ''subject to regulation'' under the Act. Thus, the PSD program is not restricted to criteria pollutants.[7] Once a major source is determined to be subject to the PSD program (PSD source) for a particular air pollutant, among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) to minimize the emissions of each affected pollutant, and that the emissions of each pollutant will not cause or contribute to a violation of any applicable NAAQS or any applicable maximum allowable increase in a pollutant concentration (PSD increment).

Consistent with the original NAAQS and PSD increments for PM, the PSD program established pollutant applicability requirements for PM on the basis of the TSP indicator. Accordingly, the PSD regulations defined a ''significant'' increase in emissions of PM as 25 tons per year (tpy). When the EPA revised the PM NAAQS in 1987, establishing a new PM_{10} indicator, two indicators for particles were recognized as being regulated under the Act because the statutory PSD increments for PM were still expressed in terms of TSP. The addition of the new PM_{10} indicator also necessitated a distinction between those emissions of PM that should be used to determine a source's compliance with the new PM_{10} NAAQS and those emissions of PM that should be used to determine a source's compliance with the existing TSP-based increments. Hence, in 1987, the EPA adopted the term ''particulate matter emissions'' to help clarify the distinction between the original TSP indicator for the NAAQS and the new PM_{10} indicator. *See* 52 FR 24672, July 1, 1987. Accordingly, the original significant emissions rate of 25 tpy was retained and applied to the newly-defined term ''particulate matter emissions'' (associated with the ambient TSP indicator), and simultaneously a significant emissions rate of 15 tpy was defined in association with the term ''PM_{10} emissions.'' *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i).

In 1993, under authorization contained in the CAA Amendments of 1990, EPA adopted increments for PM that were expressed in terms of ambient concentrations of PM_{10}, and substituted those increments for the original statutory increments for PM based on the TSP indicator. *See* 58 FR 31622, June 3, 1993. As a result, both the NAAQS for PM and the PSD increments for PM were henceforth measured by the PM_{10} indicator and, once states revised their SIPs to incorporate the new PM_{10} NAAQS and PM_{10} increments, the TSP indicator was no longer considered a regulated indicator of particles. However, because the NSPS for PM commonly measured performance standard compliance based on emissions of PM using the indicator that was roughly associated with the original ambient TSP indicator, the EPA stated in the preamble to the 1993 final rule promulgating new PSD increments based on PM_{10} that the agency would continue to regulate ''particulate matter emissions'' (25 tpy significant emissions rate) separately from ''PM_{10} emissions'' (15 tpy significant emissions rate) for purposes of PSD applicability determinations. Id at 31629.

Finally, in a final rule issued on May 16, 2008, titled, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321), the EPA identified the major source threshold and significant emissions rate for $PM_{2.5}$ to reflect the indicator for the PM NAAQS that were issued in 1997. *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i). Hence, three separate indicators for emissions of PM are currently being regulated under the PSD program. Those indicators include PM_{10} and $PM_{2.5}$, both of which are indicators reflecting the way the NAAQS for PM are currently measured, and ''particulate matter emissions,'' which is a term that signifies the indicator of PM that is measured under various NSPS for PM (40 CFR part 60).[8] All three of the indicators for PM are considered separately as regulated NSR pollutants subject to review under the PSD program, which means that proposed new and modified sources must treat each indicator of PM as a separate pollutant for applicability determinations, and must then apply the PSD requirements, as appropriate, independently for each indicator of PM.

The 2008 final rule also added a provision to the definition ''regulated NSR pollutant'' in the PSD regulations and the Emission Offset Interpretative Ruling that requires the inclusion of the

[7] ''Particulate matter emissions'' are regulated under the PSD program as a regulated NSR pollutant, but not under the nonattainment NSR program because nonattainment designations apply only with regard to criteria pollutants (pollutants for which NAAQS exist, e.g., PM_{10} and $PM_{2.5}$) and ''particulate matter emissions'' are not considered a criteria pollutant.

[8] In addition to the NSPS for PM, it is noted that states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

condensable fraction of PM for all three indicators of PM. Accordingly, the determination of the potential emissions (for permit applicability determinations), and the setting of emissions limitations and in-stack pollutant measurements (for source compliance purposes) would involve the inclusion of the condensable fraction of PM for each of the three PM indicators.

For reasons to be explained, this proposed rulemaking would remove ''particulate matter emissions'' from that provision defining ''regulated NSR pollutant'' in the aforementioned regulations, so that the relevant provision would require the inclusion of the condensable fraction of PM only with regard to emissions of PM_{10} and $PM_{2.5}$.

IV. Why is EPA proposing to change the definition ''regulated NSR pollutant'' with regard to PM?

When we proposed to amend the PSD rules to address new requirements for $PM_{2.5}$ in 2005, we proposed to revise the definition ''regulated NSR pollutant'' to add $PM_{2.5}$ as a regulated criteria pollutant and to require that, for purposes of determining PSD applicability and setting emissions limitations for a particular proposed source or modification, emissions of PM_{10} and $PM_{2.5}$ included the condensable portion of particulate matter that could be emitted by the source or modification. Specifically, the proposed regulatory text provided that ''Particulate matter (PM_{10} and $PM_{2.5}$) emissions include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.'' *See,* e.g., 70 FR 65984 at 66067. In that text, we had not intended to include the PM indicator referred to as ''particulate matter emissions''; instead, we intended the proposed text as a ''shorthand'' terminology encompassing both ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions.'' Moreover, we did not receive any comments suggesting that the ''PM emissions'' indicator should be included in the provision requiring the inclusion of condensable PM. Nevertheless, in the final stages of preparing the 2008 final rule, the proposed text ''Particulate matter (PM_{10} and $PM_{2.5}$) emissions,'' was revised to read ''Particulate matter (PM) emissions, PM_{10} emissions and $PM_{2.5}$ emissions.'' Thus, the inadvertent editorial change made in the final rule added ''Particulate matter (PM) emissions'' as a third indicator for PM to the sentence for which the PSD regulations would require that condensable PM be included.

The preamble discussion in both the NPRM and the final rulemaking, designed to describe the new provision under the definition ''regulated NSR pollutant,'' supports the position that our objective was to ensure that the condensable PM fraction was included in measurements of emissions of PM_{10} and $PM_{2.5}$. For example, the preamble to the NPRM stated the following: ''The EPA has issued guidance clarifying that PM_{10} includes condensable particles and that, where condensable particles are expected to be significant, States should use methods that measure condensible emissions.'' 70 FR 65984 at 66039 (citing a March 31, 1994, EPA memo to the Iowa Department of Natural Resources). With regard to $PM_{2.5}$, we stated ''[c]ondensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ emissions than of TSP or PM_{10} emissions.'' Ibid. In the 2008 final rule, we clearly stated in the preamble that ''EPA will require that all NSR applicability determinations for $PM_{2.5}$ and PM_{10} address condensable emissions as applicable * * *.'' 73 FR 28321 at 28335.

We also note that the 2008 final rule added the term ''particulate matter (PM) emissions'' to the definition ''regulated NSR pollutant'' at 40 CFR part 51 Appendix S (the EPA's ''Emission Offset Interpretative Ruling''). This was clearly a mistake because that rule pertains to new source review in nonattainment areas (and to sources locating outside nonattainment areas that impact air quality in a nonattainment area). That being the case, Appendix S is not intended to address noncriteria pollutants, since nonattainment areas apply only to criteria pollutants. To further illustrate this point, the definition ''regulated NSR pollutant'' under the nonattainment area NSR requirements at 40 CFR 51.165 does not include the term ''particulate matter emissions.'' We have already explained that ''particulate matter emissions'' refers to the noncriteria indicator for PM subject to regulation under various NSPS. Accordingly, EPA is also proposing to revise the definition ''regulated NSR pollutant'' under Appendix S to remove the term ''particulate matter emissions.'' *See* proposed 40 CFR part 51 Appendix S, Section III.A.31(ii).

It is important to note that the proposed change would not totally exempt the inclusion of the condensable PM fraction as part of ''particulate matter emissions.'' The proposed revision accounts for the fact that, in some cases, the condensable PM fraction should be counted. The first case is where the applicable NSPS requires that the condensable PM fraction be included in the determination of compliance with the performance standard for PM.[9] The second case is where the applicable SIP already requires that the condensable PM fraction be included in the measurement of PM. Finally, in the case of any source emitting a pollutant that is regulated under section 111 of the Act, but is not itself subject to an NSPS, the reviewing authority may determine the applicable test method to be used to determine that source's compliance.

Thus, we are also proposing to clarify the text contained in the definition ''regulated NSR pollutant'' to indicate that for pollutants regulated under section 111 of the Act, which includes ''particulate matter emissions,'' the applicability of the PSD requirements to that pollutant should be determined in a manner consistent with the test method prescribed for that particular NSPS or applicable SIP. *See* proposed 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii). In cases where the proposed source or modification of PM is not regulated by any NSPS, but is nevertheless required to consider its potential to emit that pollutant, we intend to require under the federal PSD requirements at 40 CFR 52.21 that the applicable measurement will be determined by the Administrator. In the case of ''particulate matter emissions,'' we generally intend to rely on the common practice of the NSPS to require that the applicable measure should be the filterable PM only, based on a compliance test method appropriate for such source, e.g., Method 5. Under the PSD regulations at 40 CFR 51.166, we propose that states, as the reviewing authority, may establish their own policy for applying the PSD requirements for ''particulate matter emissions'' to sources for which the NSPS does not apply.

The primary objective of our decision to propose this revision is to ensure to the extent practicable that we are not unnecessarily imposing a new requirement on state/local agencies and the regulated community that has little if any effect on preventing significant air

[9] In developing the NSPS for Wool Fiberglass Insulation Manufacturing facilities (Subpart PPP), the EPA determined that the control device could effectively reduce both the solid particles and the condensable PM, and promulgated the PM standard based on the measurement of both filterable solid particles and condensable PM. In addition, the agency established a variant of Method 5, referred to as Method 5e, to measure the filterable PM and the total organic carbon portion of the impinger catch. *See* 50 FR 7694, February 25, 1985.

quality deterioration or on efforts to attain the primary and secondary PM NAAQS. That is, we do not intend to require the inclusion of condensable PM in measurements of ''particulate matter emissions'' where that has not been a common practice in state and local control agencies and there are no ambient standards against which ''particulate matter emissions'' are to be compared. Proposed new or modified stationary sources of PM typically will be subjected to the PSD requirements on the basis of their potential to emit PM_{10} or $PM_{2.5}$ emissions and will be required to install controls for their emissions of PM_{10} and/or $PM_{2.5}$, both of which must consider the condensable fraction. We also recognize that in some cases, some states have chosen to regulate the condensable PM when determining the amount of a source's ''particulate matter emissions.'' As already explained, the proposed revision would allow states to continue that practice by providing the necessary discretion to the reviewing authority, but we do not intend to impose such a new PSD requirement where it is not otherwise being practiced by the states already.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposal only removes the requirement to include condensable PM when quantifying ''PM emissions'' from proposed new major stationary sources and major modifications subject to the PSD program. The proposed change would eliminate a requirement that was not intended.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, which proposes only to remove an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action would not impose any enforceable duty on any state, local or tribal governments or the private sector. This action proposes only to remove an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications. Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it does not propose any regulatory requirements that might significantly or uniquely affect small governments. This action proposes only to remove an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications.

E. Executive Order 13132—Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule proposes only to remove the unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modification. The requirement was inadvertently included in the 2008 final rule for Implementation of the $PM_{2.5}$ NSR Program. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA plans to specifically solicit comment on the proposed rule from state and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule proposes only to remove the requirement to include condensable PM when quantifying ''PM emissions'' from proposed new major stationary sources and major modification. The requirement was inadvertently included in the 2008 final rule for Implementation of the $PM_{2.5}$ NSR Program.

The Act provides for states to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the Act gives tribes the opportunity to develop and implement Act programs to attain and maintain the $PM_{2.5}$ NAAQS, but leaves to the discretion of the tribes the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This proposed action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the

Agency does not believe the environmental health or safety risks addressed by this action to eliminate an unintended requirement present a disproportionate risk to children. The removal of this requirement would not affect one of the basic requirements of the PSD program that new and modified major sources must demonstrate that any new emissions do not cause or contribute to air quality in violation of the NAAQS.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule to remove an unintended requirement will not have adverse human health or environmental effects on minority or low-income populations because it does not appreciably affect the level of protection provided to human health or the environment.

VI. Statutory Authority

The statutory authority for this proposed action is provided by sections 101, 160, 163, 165, 166, 301, and 307(d) of the Act as amended (42 U.S.C. 7401, 7470, 7473, 7475, 7476, 7601, and 7607(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

Dated: March 12, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 51.166 is amended by revising paragraphs (b)(49)(i) and (ii) and removing (b)(vi) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated;

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included;

(*b*) Any pollutant identified under this paragraph (b)(49)(i)(*b*) as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act, as required to be measured by the applicable performance standard for that pollutant. For sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the reviewing authority;

* * * * *

3. Appendix S to Part 51 is amended revising paragraph II.A.31(ii) and by removing paragraphs II.A.31(iii) and (iv) to read as follows:

and

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

31. * * *

(i) * * *

(ii) Any pollutant for which a national ambient air quality standard has been promulgated;

(*1*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*2*) Any pollutant that is identified under this paragraph II.A.31(ii)(*2*) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*a*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*b*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

* * * * *

PART 52—[Amended]

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

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

Subpart A—[Amended]

5. Section 52.21 is amended by revising paragraphs (b)(50)(i) and (ii) and removing paragraph (b)(50)(vi) to read as follows:

and

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(50) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated;

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

(*b*) Any pollutant identified under this paragraph (b)(50)(i)(*b*) as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act, as required to be measured by the applicable performance standard for that pollutant. For sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the Administrator;

* * * * *

[FR Doc. 2012–6429 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1207]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On August 3, 2011, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 76 FR 46701. The table provided here represents the flooding sources, location of referenced elevations, and effective and modified elevations for the City of Cadiz, Kentucky. Specifically, it addresses the flooding sources Little River (backwater effects from Lake Barkley) and Little River Tributary 1 (backwater effects from Lake Barkley).

DATES: Comments are to be submitted on or before June 14, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1207, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 76 FR 46701, in the August 3, 2011, issue of the **Federal Register,** FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''City of Cadiz, Kentucky'' addressed the flooding sources Little River (backwater effects from Lake Barkley) and Little River Tributary 1 (backwater effects from Lake Barkley). That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for those flooding sources.

In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published for the City of Cadiz, Kentucky.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of Cadiz, Kentucky					
Kentucky	City of Cadiz	Little River (backwater effects from Lake Barkley).	Approximately 3.7 miles upstream of the Lake Barkley confluence to approximately 4.5 miles upstream of the Lake Barkley confluence.	None	+375
Kentucky	City of Cadiz	Little River Tributary 1 (backwater effects from Lake Barkley).	Approximately 500 feet upstream of the Little River confluence to approximately 1,678 feet upstream of the Little River confluence.	None	+375

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Cadiz

Maps are available for inspection at 63 Main Street, Cadiz, KY 42211.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 1, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–6356 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[WT Docket No. 12–40; RM–11510; FCC 12–20]

Cellular Service, Including Changes in Licensing of Unserved Area; Interim Restrictions and Procedures for Cellular Service Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; interim procedures.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to amend the rules governing the 800 MHz Cellular Radiotelephone Service (Cellular Service). In the Notice of Proposed Rulemaking (*NPRM*), the Commission proposes to transition the Cellular Service from a site-based licensing model to a geographic-based model by offering an ''overlay'' license for every Cellular Market Area (CMA) and corresponding channel block (Block A or Block B), in two stages, via auction. The Overlay Licensees would be obligated to protect existing licensees' Cellular operations from harmful interference. The *NPRM* also includes proposals to update various other Cellular Service rules. The Commission seeks comment on all its proposals as well as on alternative proposals. The companion *Order* imposes certain interim procedures, including a freeze on the filing of certain Cellular applications in certain markets and

other interim procedures regarding currently pending applications to help ensure an orderly and efficient rulemaking proceeding while the Commission considers changes to the Cellular Service rules.

DATES: Submit comments on or before May 15, 2012, and reply comments are due on or before June 14, 2012. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 15, 2012.

ADDRESSES: Parties may submit comments to the Secretary of the Federal Communications Commission, identified by WT Docket No. 12–40; FCC No. 12–20, by any of the following methods:

▪ *Electronic Filers:* Comments may be filed electronically using the Internet: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, OMB, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Nina Shafran, Wireless Telecommunications Bureau, Mobility Division, at 202–418–2781 or by email to *Nina.Shafran@fcc.gov.* For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Order (*NPRM and Order*) in WT Docket No. 12–40, FCC 12–20, adopted and released on February 15, 2012. The full text of the *NPRM and Order,* including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The complete text of the *NPRM and Order* may be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-20A1.doc.* In addition, the complete text of the *NPRM and Order* as well as links to Cellular Service coverage maps and interactive map files are available at: *http://www.fcc.gov/rulemaking/12-40.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Paperwork Reduction Act of 1995 Analysis

This document contains potential new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the potential information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. Since its inception roughly 30 years ago, the Cellular Service has been instrumental in transforming the communications landscape by making mobile services broadly available to the American public. As discussed in Section III below, based on our data, only limited area not yet licensed (Unserved Area) remains outside of Alaska and certain rural markets in the western United States. At this advanced stage of the Cellular Service, the site-based aspect of this licensing model is yielding diminished returns. The significant administrative burdens on licensees associated with the site-based model no longer appear to be outweighed by the public benefits produced. In addition, the Cellular Service stands apart from virtually all other commercial wireless services by not yet transitioning to a geographic-based model, which offers greater flexibility and reduced regulatory requirements. Thus, consistent with its regulatory reform agenda, the Commission proposes to revise the Cellular licensing regime to a geographic-based approach, in two stages, through competitive bidding, as explained in detail in Section III, below.

2. The Commission also proposes to update the Cellular Service rules, including, for example, streamlining application requirements and deleting certain data collection requirements that may no longer be necessary going forward. Consistent with other flexibly licensed commercial wireless services, the Commission proposes to establish a signal field strength limit. Finally, we seek comment on whether to move the part 22 Cellular rules, as well as the part 24 rules, to part 27. We seek comment on all aspects of our proposals, and on the alternative transition proposals discussed in the *NPRM,* including those of CTIA—The Wireless Association (CTIA), as set forth in its initial petition for rulemaking filed in February 2008, and its revised proposal submitted in September 2010, and those of the National Telecommunications Cooperative Association (NTCA), The Rural Telecommunications Group (RTG), and others on the record. (All commenters are listed in Appendix A of the *NPRM and Order.*)

II. Background

3. *Brief History of Cellular Service Licensing.* The Commission adopted initial rules governing allocation of spectrum for commercial Cellular service, including the establishment of two channel blocks (Blocks A and B), in 1981. The Commission established in phases 734 Cellular Market Areas (CMAs) for the purpose of issuing licenses to two Cellular providers per market (herein, ''Original System Licensees'' (OSLs)), one on each Block, without competitive bidding. Every OSL was given the exclusive right, for a five-year period from the date of grant of the initial construction authorization for that CMA Block, to build out anywhere within the CMA boundary. The area timely built out during that five-year period became the licensee's initial Cellular Geographic Service Area (CGSA), the licensed area entitled to protection from harmful interference, while any area not built out by the five-year mark was automatically relinquished for re-licensing as Unserved Area on a site-by-site basis by

the Commission. Under site-based licensing, any interested party may request authorization to construct at a specific transmitter location (or multiple locations) in Unserved Area, and may only construct authorized transmitters. For all CMA Blocks except one (Chambers, Texas, discussed in detail below), licenses have been issued to OSLs and the initial five-year periods have expired.

4. The Commission established two phases for applicants seeking to provide Cellular service in Unserved Area for each CMA Block: Phase I and Phase II. As of late 2007, the Phase I filing window had ended in all licensed Blocks. Under current rules, Phase II lasts indefinitely. Phase II applications specify the area to be licensed and are subject to a 30-day public comment period during which petitions to deny and mutually exclusive applications may be filed. In the event that mutually exclusive applications are filed for a particular Unserved Area, they are resolved through competitive bidding in closed auctions. Licenses granted in Phase II are subject to a one-year construction deadline for the authorized site and the licensee must be providing service to subscribers by the end of the one-year period; failure to build out results in automatic termination of the authorization for that site, and the Unserved Area again is subject to the filing of site-based applications.

5. *Summary of Industry Proposals on the Record.* In October 2008, CTIA filed a Petition requesting that the Commission change Cellular licensing from a site-based regime to a geographic area-based regime in all markets and to assign to incumbents, without using competitive bidding, all remaining Unserved Area. The Wireless Telecommunications Bureau (Bureau) subsequently issued a Public Notice seeking comment on CTIA's Petition. (*See* 24 FCC Rcd 27 (WTB 2009).) Ten parties filed comments, six (including CTIA) filed reply comments, and two (including CTIA) filed *ex parte* letters. In September 2010, CTIA submitted a revised proposal (CTIA Revised Plan) which it asserts ''takes into account the objectives and concerns raised by commenters in this proceeding.'' RTG filed comments specifically addressing the CTIA Revised Plan. In May 2011, CTIA, GCI Communication Corp. (GCI), NTCA, and RTG met with Commission staff to express their additional views regarding transition approaches for Cellular licensing and, accordingly, filed *ex parte* letters. Subsequently, in February 2012, CTIA, AT&T, Inc. (AT&T) and Verizon Wireless met with Commission staff to express their additional views regarding transition approaches for Cellular licensing and CTIA filed *ex parte* letters accordingly.

6. In its Revised Plan, CTIA appears to be proposing that the Commission change the Cellular Service to geographic area-based licensing and terminate site-based access to Unserved Area on a rolling basis, as CMA Blocks become ''Fully Served.'' CTIA defines a Fully Served Block as one where either: (1) 90 percent of the land area is served; or (2) there is no parcel of Unserved Area measuring at least 50 contiguous square miles. Under both prongs, CTIA proposes to exclude ''government lands, but not tribal areas.'' All Unserved Area in Fully Served Blocks would be assigned to existing incumbents ''on a proportional basis'' without the use of competitive bidding. Disputes over existing CGSA boundaries and the distribution of the remaining Unserved Area to incumbents would, under CTIA's Revised Plan, need to be resolved through cooperation among licensees and in the event that such cooperative efforts fail, by referral to arbitration at the expense of the referring party. So long as a CMA Block is ''under-served'' (*i.e.,* not Fully Served), CTIA proposes that it remain under site-based licensing rules.

7. AT&T and Verizon Wireless generally endorse CTIA's Petition; they have not submitted comments specifically addressing CTIA's Revised Plan. In response to the CTIA Petition, Verizon Wireless offers various additional proposals, including a staggered transition process based on regional groupings of CMA Blocks; establishment of a 40 dBμV/m median field strength limit; the provision of public notice of, and opportunity to comment on, claimed licensed area boundaries; and a plan for informal dispute resolution of boundary claims (more detailed than in CTIA's Petition), in which a *de minimis* discrepancy standard would be applied.

8. In contrast, commenters representing the interests of smaller and rural providers generally favor indefinite retention of the current site-based licensing regime. These commenters include Commnet Wireless, LLC (Commnet), GCI, NTCA, the Rural Independent Competitive Alliance (RICA), RTG, and United States Cellular Corporation (USCC). RTG, for example, criticizes CTIA's Revised Plan by asserting that it provides no incentive to serve areas obtained through the proposed proportional allotment and that its definition of Fully Served ''could leave large areas * * * without service indefinitely.'' NTCA claims that its members are asked by their communities to ensure that hikers, hunters, and others enjoying the most rural territory can complete a call in an emergency. Commnet continues to send technicians to Unserved Area to determine if there is demand for service and claims that with most of its Unserved Area applications, the OSL could have applied for that spectrum ''over at least sixteen years'' but did not do so. GCI, which operates in Alaska, urges continuation of site-based licensing and is concerned it will be unable to improve (or even maintain) its network if the Commission adopts CTIA's proposal.

9. The smaller and more rural providers largely reject CTIA's statistics. According to RTG, for example, CTIA's Petition misleadingly ''undercounts actual use of the [site-based licensing] process'' by reporting only grants, not filings, and only new applications, not modification applications. RICA, GCI, and NTCA make similar arguments. Several of these commenters are also skeptical of CTIA's proposed mechanisms for resolving disputes that may arise between adjacent licensees concerning license boundaries. USCC argues that a voluntary consultation process is unworkable for dispute resolution without legal standards.

10. While preferring retention of the existing paradigm, some rural commenters state that they could accept, in the alternative, a limited transition to geographic-area licensing. Their suggestions, however, are not highly detailed and contain ambiguities. GCI, for example, indicates support for issuance of a CMA-based license if the CGSA is coterminous with the CMA boundary or if Unserved Area in the CMA Block is less than 50 square miles but does not specify how the small areas would be licensed. NTCA suggests that, if an incumbent's ''actual service area'' is *not* coterminous with the CMA Block boundary, or if there is an Unserved Area parcel that is 50 square miles or larger, the Commission could establish a geographic license but based only on the territory ''actually served by the licensee.'' RTG states that Cellular licensees could ''elect * * * to transition to some form of market-based licensing,'' but only where the new market-based license ''would encompass the areas they actually serve.'' USCC, a mid-sized carrier, states that issuance of a CMA-based license may be appropriate in limited circumstances, but argues that site-based licensing should be retained at least in any market with at least one Unserved Area Licensee (defined in the *NPRM and Order* as a licensee that has established a Cellular system solely

through the Unserved Area application process following expiration of the OSL's exclusive five-year initial build-out period), so that OSLs and Unserved Area Licensees have equal opportunity to expand their systems.

11. Commenters differ on the issue of how to assign geographic area licenses. MetroPCS Communications, Inc. (MetroPCS), another mid-sized carrier, advocates a transition to geographic-area licensing via auction. AT&T states broadly that, for CMA Blocks with over 50 contiguous square miles of Unserved Area, the Commission should ''license that area through an auction or some other process.'' In response, USCC argues that an auction is unnecessary in light of the existing normal closed auction process for mutually exclusive Unserved Area applications. In *Ex Parte* letters filed by CTIA to document various meetings with Commission staff in early 2012, which involved representatives of AT&T and Verizon Wireless as well, CTIA expresses concerns of CTIA, AT&T and Verizon Wireless with an overlay auction approach for markets that are not substantially served. Commnet emphasizes that the Commission used competitive bidding in prior transitions to geographic area licensing.

III. Notice of Proposed Rulemaking

12. Based on the record, it appears that site-based licensing may unduly limit licensees' ability in many markets to adapt to technological and marketplace changes, which burdens licensees and consumes FCC staff resources, as application filings are required for even minor technical system changes. These problems can be addressed by moving to a geographic-based model, which would bring the Cellular Service into greater harmony with the more flexible licensing schemes used successfully by other similar mobile services, such as the Broadband Personal Communications Service (PCS) and the 700 MHz Service. At the same time, we propose to preserve direct access to Unserved Area through the existing site-based application process for an appropriate period in Cellular Service markets that are less substantially built out.

13. In anticipation of releasing the *NPRM,* the Commission undertook the task of creating a digital version of every existing CGSA based on maps accompanying Cellular applications. The data, which the Commission used to calculate licensed and Unserved Area, is available at the Commission's Web site (*see http://www.fcc.gov/rulemaking/12-40*). It is clear from our data that the vast majority of CMA Blocks already are substantially built out. (Maps illustrating the data are provided at Appendices B and D of the *NPRM and Order.*) Licensees in these markets, which we term ''Substantially Licensed'' as set forth below, have faced increasing regulatory challenges, however. Among other things, they do not have the ability to modify and expand their systems without Commission filings, and must seek prior Commission approval through filings if the CGSA would be expanded, even for minor adjustments to their systems. We believe that it would serve the public interest to reduce administrative burdens for these licensees (as well as for Commission staff) by providing Cellular licensees in such markets with greater flexibility to modify their operations to respond more quickly to market conditions. Moreover, the Commission has long held that market-based licensing regimes are simpler to administer for all parties.

14. We recognize that, with direct access to Unserved Area through the site-based licensing regime, licensees and prospective new entrants are free to respond to market changes by filing an application on an as-needed basis (for a filing fee) without use of competitive bidding in most cases. We believe that there are public interest benefits of preserving such direct access by all interested parties, for some defined period, to any Unserved Area in CMA Blocks that are less substantially built out (*i.e.,* not Substantially Licensed under our proposed test). While site-based application filings would continue to be required for some period going forward in these markets, there is a significantly smaller volume of system modification filings in areas that are less built out.

15. Additionally, in developing a new model aimed at transitioning the Cellular Service to a geographic-based model, we must keep in mind long-held Commission policies governing spectrum assignment. The Balanced Budget Act of 1997 (BBA) revised the Commission's auction authority by substantially amending sections 309(j)(1) and (2) of the Communications Act of 1934, as amended (Act). (*See* 47 U.S.C. 309(j)(1), (2).) Under section 309(j)(1), with limited exceptions that are not applicable here, the Commission is required to license spectrum through competitive bidding whenever it accepts mutually exclusive applications for initial licenses or permits. The Commission has determined that applications are ''mutually exclusive'' if the grant of one application would effectively preclude the grant of one or more of the other applications, *i.e.,* when acceptable, competing applications for the same license are filed. (When, however, the Commission receives only one application that is acceptable for filing for a particular license that is otherwise subject to auction, there is no mutual exclusivity, and thus, the Commission is not required to conduct an auction for that license.) Consistent with the Commission's policy that competitive bidding places licenses in the hands of those that value the spectrum most highly, we believe that it would be in the public interest to adopt the transition described below, which allows the filing of mutually exclusive applications that would be resolved through competitive bidding.

16. In light of the above-described goals and considerations, we propose to issue CMA-based Overlay Licenses for all Blocks via Stage I and Stage II auctions, thus making immediately available to the Overlay Licensee, for primary service, all Unserved Area remaining in the particular Block as of an established cut-off date. An overlay license is issued for the entire geographic area (in this case, the entire CMA Block), but requires the overlay licensee to provide interference protection to incumbent operations (in this case, Cellular Service incumbents' CGSAs existing as of a certain cut-off date). In Stage I, we would offer Overlay Licenses only for those CMA Blocks that either: (1) As of a certain cut-off date, are Substantially Licensed pursuant to certain benchmarks (described below); or (2) have Cellular service that has been authorized solely under interim operating authority (IOA) (*i.e.,* for which no primary license has been issued). All other Blocks would remain subject to the current site-based Unserved Area licensing system until we implement Stage II of the transition and offer Overlay Licenses for these remaining CMA Blocks. We seek comment on whether seven years is the appropriate timeframe before initiation of Stage II. As explained below, we propose to exempt from the transition the Gulf of Mexico Service Area (GMSA).

17. We invite comment on all aspects of our proposals, as well on the expected costs and benefits (to the extent applicable) of operating under our proposal. For example, would the resulting lack of data that would otherwise be collected and available to the public through the Commission's Universal Licensing System and other databases (*i.e.,* data that is currently available regarding major and minor CGSA modification applications, grants, construction notifications, etc., indicating the location of Cellular

Service transmitter sites) constitute a detrimental cost? If so, to what extent? Would the cost be outweighed by the benefits associated with the reduction in regulatory burdens, paperwork, and other aspects of our proposal? By reducing the filing burdens on many Cellular providers, we would expect resulting lower costs for the providers, and in turn, we would expect such lower costs to have a positive effect on service to subscribers. We seek comment on these cost considerations, including quantification of expected savings (in terms of monetary and human resources, for example) resulting from no longer having to submit certain applications once fixed boundaries have been established. We also seek comment on the extent to which expected savings might be passed on to subscribers. We hope these proposals will also promote enhanced competitive options for consumers and we seek comment on any additional steps the Commission could take, in this proceeding, to promote this policy priority.

A. Stage I Transition

1. Substantially Licensed CMA Blocks

18. We propose to treat a CMA Block as Substantially Licensed if *either* of the following benchmarks is met: (1) At least 95 percent of the total land area is licensed; or (2) there is no unlicensed parcel within the Block at least 50 contiguous square miles in size. An analysis of Cellular licensed area by Block reflects that only about 20 percent of the 1,468 CMA Blocks are geographically licensed between less than 10 percent up to roughly 94 percent. The vast majority of all Blocks (approximately 80 percent) fall at or above the 95 percent licensed threshold, representing in our view a logical breaking point for inclusion in Stage I of the proposed transition. We also recognize, however, that a Block that has less than 95 percent of its total land area licensed might not have sufficient size parcels of Unserved Area to warrant exclusion from transition in Stage I. Our current rules prohibit a new entrant from applying to serve an area smaller than 50 contiguous square miles. We therefore propose that a Block be deemed Substantially Licensed if it does not have even one remaining unlicensed parcel that is at least 50 contiguous square miles in size, regardless of the percentage of licensed area. (The small number of CMA Blocks in this category does not affect the approximate 80 percent/20 percent split between the Stage I and Stage II Blocks under our proposal.)

19. Specifically, 601 of the 734 Block A markets appear to meet the proposed test, and 596 of the 734 Block B markets appear to meet the proposed test, for a total of 1,197 of 1,468 Blocks. The maps provided in Appendix D (*see* full text of the *NPRM and Order*) illustrate, for each Block, which markets appear to meet the proposed test and which markets, while served, do not.

20. We propose to include *total* land area without exclusions in our calculation of licensed area and Unserved Area. We propose to treat government lands differently in this Cellular Service transition, compared to our treatment in the 700 MHz Service, for two reasons. First, the 700 MHz Service ''government lands'' exclusion was adopted in conjunction with the imposition of aggressive construction benchmarks, which for the first time included mandatory coverage of geography (rather than population). In our proposed Cellular Service transition, the calculation is not based on a consideration of compliance with future construction benchmarks but is solely for purposes of determining whether a CMA Block meets our test for inclusion in Stage I. Second, in our analysis of digitized CGSAs, we observed that Cellular licensees have frequently applied to provide service to federal lands, as the demand for Cellular service has increased in areas such as national parks. We believe that permitting the exclusion of lands that are already being served as part of a Cellular licensee's CGSA would provide inaccurate results as to which markets are in fact Substantially Licensed for purposes of inclusion in the appropriate transition stage.

21. Through our proposed transition, an Overlay Licensee would not only have the flexibility to extend service into currently Unserved Area, but also would be able to do so without filing modification applications, with limited exceptions. In addition, in the event that all or a portion of an incumbent's CGSA is relinquished by that incumbent (*e.g.,* through license cancellation, reduction in CGSA, permanent discontinuance of operations, or failure to renew a license), the Overlay Licensee of that CMA Block would no longer be required to protect the relinquished area and could immediately provide service on a primary basis in that area (sometimes known among industry stakeholders as ''reversionary rights''). We believe that auctioning, instead, only the remaining Unserved Area in a particular Block without overlay licensing rights could result in incumbents' relinquished areas being held in the Commission's auction inventory and only accessible via a future auction. In contrast, our Overlay License proposal will facilitate prompt service to such areas through reduced administrative burdens.

22. Under our proposal, just as incumbents that do not become Overlay Licensees would be assured continued protection from harmful interference within their CGSA footprint as of an established cut-off date, they would in turn be obligated to protect the Overlay Licensees from harmful interference. Non-Overlay licensees' CGSA boundaries would be permanently fixed, insofar as such licensees would not be permitted to expand their CGSAs in Blocks included in the auction, except through contractual arrangements with other licensees. To foster secondary market transactions, we propose to continue to allow licensees to partition their CGSAs and/or disaggregate their authorized spectrum, as well as enter into leasing arrangements. We seek comment on this proposal. Non-overlay licensees will also be free to modify their systems in response to market demands without Commission filings, so long as the CGSA would not be expanded (other than through contractual arrangements) or reduced as a result, and subject to any obligations imposed on all licensees. (For example, certain other filings, such as administrative updates, license renewals, and filings required under the rules implementing the National Environmental Policy Act of 1969, as amended (NEPA) would still be required for all licensees.)

23. We recognize that in Substantially Licensed markets included in our Stage I transition, the new Overlay Licenses awarded in the auction will be heavily encumbered by the incumbents, whose CGSAs would continue to be entitled to protection from harmful interference. A prospective Overlay Licensee would therefore need to be familiar with incumbent operations and should take care to understand how such operations may affect its ability to execute its business plan. Under delegated authority, the Bureau will determine, prior to conducting the auctions, what procedures (if any) are warranted to resolve discrepancies and other anomalies in the licensing data in order to establish definitive boundaries of existing authorized CGSAs as of certain cut-off dates. The Bureau will also issue the appropriate Public Notice(s) regarding such procedures. We recognize that, in some Blocks, the remaining Unserved Area as of the auction date may be very small, fragmented, and/or not immediately servable.

2. Interim Operating Authority Block (Chambers, Texas, Block A—CMA 672A)

24. Chambers, Texas, Block A (Chambers) is the only Block for which a Cellular license has never been issued. AT&T Mobility of Galveston LLC (AT&T Galveston) holds an interim operating authorization and provides Cellular service to nearly all of the area in this Block under Call Sign KNKP971. Notably, neither AT&T nor any other commenter has mentioned this unlicensed market thus far in this proceeding. We propose that Chambers be licensed on a geographic area (CMA Block) basis and that it be included in Stage I described above.

25. For Chambers, we propose not to apply our existing rules concerning the various build-out and application phases that have been applicable to other Cellular markets. For example, we propose not to subject Chambers to the Phase I or Phase II licensing processes (and because Phase I has terminated for all other CMA Blocks, we are proposing to delete the provisions that address Phase I applications, and references thereto, throughout the part 22 subpart H rules and applicable part 1 rules). As no primary license has ever been issued for Chambers, the initial five-year build-out period that is described in § 22.947 of our rules has never commenced. We propose not to apply to Chambers this five-year build-out period (and because it has expired for all other CMA Blocks, we are proposing to delete the provisions that address the five-year period, and references thereto, throughout the part 22 subpart H rules and applicable part 1 rules). Consistent with our treatment of newly authorized markets in the 700 MHz proceeding, we propose that the Overlay License for Chambers will terminate automatically if the licensee fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization within four years of initial license grant and to at least 70 percent of the geographic area of its license authorization by the end of the license term. We further propose that, after the build-out requirement has been met, the Chambers Overlay Licensee should be subject to the same rules and obligations that we apply to those that are awarded the Overlay Licenses for all Substantially Licensed Blocks. AT&T Galveston does not have primary authority to operate and would not be afforded incumbent status with respect to any Overlay Licensee resulting from our proposed competitive bidding process.

26. We believe this proposal provides the most efficient and effective means to foster the provision of additional advanced wireless service by a primary licensee to this Texas market. We also believe that our proposed performance obligations are appropriate given the increased regulatory flexibility afforded any Chambers Overlay Licensee under our transition proposal, including the ability to modify system parameters and expand service without application filings in most instances. In short, we believe that our proposal serves the public interest, and we seek comment on all aspects of the proposal, including any foreseeable costs. Commenters that oppose our proposed approach for Chambers should offer a detailed alternative proposal that is consistent with the goals of this proceeding and the Commission's policies as set forth herein, as well as an analysis of the costs and benefits of the alternative proposal.

B. Stage II Transition

27. As stated above, based on our preliminary data, approximately 20 percent of all CMA Blocks currently do not meet either of the two benchmarks of our proposed Substantially Licensed test. We believe that the public interest is best served by retaining the existing site-based licensing scheme in these Blocks—primarily Alaska and rural areas out west—to preserve direct access to such area through the Commission's Unserved Area application process during a defined transition period. The reduction in administrative burdens identified above for Stage I markets is substantially smaller for these Blocks that are less built out and have relatively more Unserved Area remaining. In rural areas, service tends to become economically feasible gradually, and modification and new-system applications are filed to a much lesser extent than modification applications in the Blocks that are already substantially built out. Our proposal will allow all interested parties, including new entrants, the opportunity to identify the specific areas they wish to serve as service becomes economically feasible in such markets due to changing demographics, technologies, or other factors. Under our current site-based rules, the one-year construction requirement will ensure prompt build-out of areas in these Blocks where licensees seek authorization to provide service.

28. We recognize the public interest benefits of having all CMA Blocks under a single geographic area licensing scheme, and therefore we propose to retain the site-based licensing model only for a defined period. Specifically, we propose to continue this model for a period of seven years from the date on which revised Cellular Service rules take effect in this proceeding (Effective Date). We seek comment on our Stage II proposal and specifically on our proposed seven-year transitional time period. While we wish to effectuate prompt build-out in the CMA Blocks that do not currently meet the Substantially Licensed test, we recognize that certain markets may present increased challenges to widespread deployment in the near term. We seek comment on whether seven years is the appropriate timeframe that takes into account the goal of ensuring prompt build-out of systems and economic forces that might delay deployment in certain markets or any alternate proposals commenters may have. We also ask that commenters address the costs and benefits of a seven-year transition period, or for any alternate proposals set forth.

29. *Possible Exception for Alaska.* It is likely to be many years before the Alaskan CMA Blocks are substantially built out. We seek comment on whether we should simply retain the *status quo* site-based scheme for Alaska indefinitely, rather than including it with other Blocks in Stage II. Even if we include Alaska in the proposed transition in Stage II, we seek comment on whether it is appropriate to revise the one-year build-out requirement for Alaska so long as it remains subject to site-based licensing. In addressing these issues, we also seek feedback on the costs and benefits of including Alaska in the Stage II transition, as well as revision to the one-year build-out requirement.

30. *Possible Other Exceptions.* We seek comment on whether public interest considerations warrant any exception that we have not considered, *e.g.,* an especially challenging rural market that might require, for example, an extended build-out period, or another kind of exception altogether. Commenters proposing an exception should include details and supporting rationale consistent with the goals of this proceeding and the Commission's policies as set forth herein.

C. Performance Requirements

31. We are mindful of our statutory obligation and overarching policy goal of ensuring that the spectrum is used effectively and efficiently to provide valuable services to the American public, including those residing in rural areas, and that the spectrum not be warehoused when it could be deployed using new technologies and services.

We also recognize that the Cellular Service has, in most CMAs across the country, already resulted in significant levels of system deployment during the past few decades. Indeed, the level of build-out far exceeds even the most stringent geographic-based construction benchmarks the Commission has imposed on any wireless service to foster public interest goals. In the markets not Substantially Licensed—20 percent of the CMA Blocks—the current level of build-out varies significantly, as discussed above, with most above 70 percent geographic coverage, and a few below 10 percent geographic coverage (*e.g.,* certain Alaskan CMA Blocks), with the rest somewhere in between.

32. We seek comment on whether we should adopt any performance benchmarks for Overlay Licenses to promote build-out in areas covered by these licenses where spectrum is unused and the costs and benefits of doing so. If we decide to adopt performance benchmarks, what would the measures be? Would it be appropriate to establish build-out requirements that vary depending on the amount of Unserved Area remaining, or for CMA Blocks that face particular construction challenges (*e.g.,* Alaska)? In seeking comment, we note that the Commission has never established performance requirements in similar services mandating 100 percent build-out of all areas or population centers in a geographic-based license.

33. We also seek comment on whether, in place of or in addition to performance build-out requirements, we should require an Overlay Licensee to make unused spectrum available in the secondary market to entities that have need for it. Specifically, we request comment on various possible approaches for facilitating secondary market transactions for use of spectrum that the Overlay Licensee is not using or may not be inclined to use. As one possible approach, we seek comment on whether Overlay Licensees that continue to hold unused spectrum after a certain period of time should be required to make that information publicly available, in some readily accessible and transparent fashion, so that any party interested in using that spectrum can more easily seek to take advantage of the opportunity to gain access to the spectrum. If we were to require the licensee to provide information on unused spectrum, how should this information be made publicly available? We also seek comment on the possible costs and benefits of pursuing this secondary market transparency approach.

34. As another possible approach, should Overlay Licensees be required to participate in good faith negotiations with a party expressing an interest in spectrum leasing, partitioning, or disaggregating spectrum in a CMA Block? Or, should we consider a modified version of negotiation methodologies employed in other wireless services, possibly involving phases of voluntary negotiations, followed by mandatory negotiations? What are the relative benefits and costs to such an approach in the context of Overlay Licenses?

35. In considering various approaches, we request that commenters address any difficulties they may have experienced when seeking to access unused spectrum in secondary markets transactions that could inform our decision-making and could improve the workings of secondary markets with respect to unused spectrum associated with Overlay Licenses. Finally, we seek comment on any other approach that commenters may suggest that could facilitate secondary market transactions that help ensure that valuable spectrum resources do not needlessly lie fallow.

D. Competitive Bidding Procedures

36. As stated above, consistent with the Commission's approach in prior transitions of other services from site-based to geographic area-based overlay licensing, we believe that it serves the public interest to accept competing, mutually exclusive applications in our proposed transition of Cellular licensing that will be resolved by competitive bidding. We reiterate that we are interested in reducing regulatory burdens and affording increased system flexibility (including deployment of broadband service) within fixed boundaries for Cellular licensees, but in a manner that is consistent with Commission precedent and spectrum management policies. No commenter has offered a justification for departing from a transition approach under which we accept mutually exclusive applications. Competitive bidding should place Cellular Overlay Licenses in the hands of those that value them most.

37. In other competing commercial wireless services, the Commission implemented geographic-based licensing, rather than a site-based model, from the inception of the radio service, particularly in PCS, the Advanced Wireless Service (AWS), and the 700 MHz Service. In these radio services, the existing incumbents (*e.g.,* microwave, government, and broadcasters) were to be relocated. In other commercial wireless services where incumbents were originally licensed on a site-by-site basis but were permitted to remain in the band, the Commission also chose to transition to geographic-based overlay licensing including, for example, the 800 MHz specialized mobile radio service, the 220 MHz private land mobile radio service, and the 929–931 MHz paging services. In each instance, the Commission determined that the geographic-area licensing model afforded licensees increased flexibility to construct and operate facilities within a larger geographic area and commence operations without prior Commission approval, thereby reducing regulatory burdens.

38. In the event we adopt our proposal for a transition entailing competitive bidding, we propose to apply the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, substantially consistent with the bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the Part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in the future. In addition, consistent with our long-standing approach, auction-specific matters such as the competitive bidding design and mechanisms, as well as minimum opening bids and/or reserve prices, would be determined by the Bureau pursuant to its delegated authority. We invite comment on this proposal. In particular, we request comment on whether any of our part 1 competitive bidding rules or other auction procedures would be inappropriate or should be modified for an auction of Cellular licenses in the context of this proceeding.

39. *Provisions for Designated Entities.* In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' In addition, section 309(j)(3)(B) of the Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide

variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' One of the principal means by which the Commission fulfills these mandates is through the award of bidding credits to small businesses. The Commission's experience with numerous auctions has demonstrated that bidding credits for designated entities afford such entities substantial opportunity to compete with larger businesses for spectrum licenses and provide spectrum-based services.

40. The Commission has stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Although it has standardized many of its auction rules, the Commission has determined that it will continue a service-by-service approach to defining small businesses.

41. We propose to employ the following three small business definitions for auctions of these licenses. We seek comment on whether we should define an entrepreneur as an entity with average gross revenues for the preceding three years not exceeding $40 million, a small business as an entity with average gross revenues for the preceding three years not exceeding $15 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding $3 million. As provided in § 1.2110(f)(2) of our rules, we seek comment on whether we should offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent. Commenters are encouraged to provide feedback on the costs and benefits of these proposed definitions and bidding credit designations. We also invite input on whether alternative size standards should be established in light of the particular circumstances or requirements that may apply to the proposed Cellular Overlay Licenses. Commenters advocating alternatives should explain the basis for their proposed alternatives, including whether anything about the characteristics or capital requirements of providing Cellular service or other considerations require a different approach, as well as the costs and benefits of the alternatives.

E. Gulf of Mexico Service Area

42. Cellular service in the Gulf of Mexico Service Area (GMSA) (CMA Blocks 306A and 306B) is subject to special licensing rules. The GMSA is divided by rule into two zones: the Coastal Zone (GMCZ) in the Eastern Gulf region and the Exclusive Zone (GMEZ). The existing Cellular licensing regime for the GMSA was carefully developed by the Commission after taking into account many prior disputes between Gulf-based and adjacent land-based carriers, multiple prior Commission decisions, court litigation and judicial rulings, as well as the unique circumstances of providing Cellular service in the Gulf region. We propose not to alter the existing regime, except that we propose to subject GMSA licensees to our proposed field strength limit, discussed below. We also believe that GMSA licensees may benefit from certain other rule changes proposed in the *NPRM.* We seek comment on our proposed exemption of the GMSA from a Cellular licensing transition at this time, including comment on which (if any) individual rule changes should be applied to GMSA licensees.

F. Signal Field Strength Limit Proposal

43. The Commission believes that a median field strength limit of 40 dBμV/m is appropriate for the Cellular Service and proposes that all Cellular licensees be subject to this limit in all CMA Blocks. With an established field strength limit applicable to all Cellular licensees, the current rule governing Service Area Boundary (SAB) extensions (*see* 47 CFR 22.912) would be unnecessary, even in those CMA Blocks that remain subject to the current site-based licensing rules for Unserved Area. In the latter class of CMA Blocks, however, SABs and CGSAs (for new systems and expansions of existing systems) would still be calculated under the provisions currently set forth in § 22.911. We seek comment on our proposal.

44. An appropriate field strength limit allows a licensee to transmit at a signal strength sufficient to provide reliable service right up to the license boundary, while preventing the licensee from transmitting at a signal strength that is excessive for that purpose. Having a 47 dBμV/m field strength limit for PCS, for example, has worked effectively as a limit on the amount of signal incursion a licensee may have into an adjacent licensed area, and we believe that a 40 dBμV/m field strength limit will be similarly effective for the Cellular Service. We do not anticipate a notable increase in boundary disputes if we adopt our proposal. There is no evidence of a causal relationship between boundary disputes and a field strength limit if the limit applies equally to all licensees in a given service.

45. We believe that co-channel licensees are in the best position to negotiate placement and parameters of facilities near the boundary of another licensee's protected area, taking into account the factors unique to their systems and the area involved, including, for example, technologies, traffic loading, topography, and location of major roads. Thus, consistent with the PCS field strength limit rules, we also propose to allow Cellular licensees to negotiate contractual agreements specifying field strength limits different from the limit established by rule. We emphasize, however, that Commission rules do not allow licensees to agree to transmit their signals at a power level that is higher than the applicable power limit set forth in the rules.

46. Even with full compliance with the proposed field strength limit, licensees operating in proximity to each other will still need to coordinate channel usage in order to avoid mutually destructive interference. Section 22.907 of our rules requires that interference problems (and any possible problems with traffic capture) in the Cellular Service be avoided by coordination between or among licensees. We propose to retain the requirements for mandatory coordination that are currently set forth in § 22.907.

47. We encourage parties to address all aspects of our proposal concerning a field strength limit and continued mandatory licensee coordination. Interested parties that offer a counter-proposal, whether for a different field strength limit or non-use of any signal field strength limit, should be specific and explain how their proposal better serves the public interest, including whether it would be more cost effective.

G. Other Alternatives to the Commission's Proposed Transition

48. *Single-stage Transition for All Blocks.* We seek comment on the possibility of eliminating the site-based licensing scheme and transitioning expeditiously, via a *single* auction, all CMA Blocks to a geographic-based model. Commenters should address the impact of such a proposal on rural service and rural interests in particular, given that once an Overlay License is offered at auction, the Unserved Area in that particular Block would no longer be available under site-based licensing, even if the Overlay License returns to the Commission for re-licensing. For example, if there is no successful bidder at auction, or if a successful bidder is awarded the Overlay License but then, years later, fails to renew, the only methodology for re-licensing is to offer

the Overlay License again at a subsequent Commission auction. We seek comment on these considerations under this alternate approach.

49. *A Three-Stage Transition.* As another alternative, we could subdivide the Blocks that do not now meet the Substantially Licensed test into two groups, as there may be some markets that need even more time, such as those in Alaska and other very rural areas with similar construction challenges, resulting in a third stage in the Cellular licensing transition. We seek specific comment on this approach as well. For example, what benchmarks should be used to distinguish the Stage II Blocks from the Stage III Blocks, and what is the basis for choosing such benchmarks? What would be an appropriate dividing line in terms of licensed area? What should the trigger dates be for Stage II and Stage III, and what would be the rationale? We also seek comment on whether all Blocks with unique construction challenges should be subject to an extended build-out requirement while they remain under the site-based licensing regime.

50. *Other Alternatives.* We also welcome submission of alternatives that we have not considered herein. Commenters who oppose our two-stage proposal and advocate an alternative need to address details of implementation and should demonstrate how their alternative serves the public interest and is cost effective.

H. Proposed Amendments to Rules and Possible Rule Relocation

1. Proposed Amendments

51. *Transition-related proposed amendments.* Proposed new and revised rules to reflect the proposed two-stage transition of Cellular licensing are set forth in Appendix E of the *NPRM and Order.* We urge all parties to review Appendix E closely and submit detailed comments. Our proposals introduce some new terminology, including for incumbent operations, and we also propose revisions and some deletions regarding the definitions in § 22.99.

52. *Other Deletions and Updates.* Although we are not proposing immediate fundamental changes to the rules for CMA Blocks that are not to be included in the Stage I transition (except for the proposed establishment of a signal field strength limit), we have reviewed all the subpart H rules as well as certain part 1 rules applicable to Cellular licensing in an effort to streamline or update them, and we propose certain changes. We have also reviewed these rules to determine whether any should be deleted as obsolete or, going forward, no longer necessary. For example, we believe that certain items required under §§ 22.929 and 22.953(a) of our rules will no longer be routinely of interest to the Commission's engineering staff in their review of Cellular applications in the future, and accordingly, we propose to streamline these requirements in a revised § 22.953 (and a corresponding deletion of § 22.929). In addition, we discuss below a proposal regarding § 22.901(b). The results of our review are reflected in the proposed rules set forth in Appendix E of the *NPRM and Order.* We invite all commenters to review each of the proposed revisions, additions, and deletions and comment on them with specificity. If there are other rules that commenters believe should be revised, deleted or added as part of our effort to streamline and update the rules that govern Cellular licensees, we welcome suggestions regarding such revisions. Commenters should be specific in their proposals, providing proposed language for the rule itself as well as the rationale for the change.

53. *AMPS Sunset Certifications: Termination of Collection; Deletion of Section 22.901(b).* On June 15, 2007, the Commission released an Order declining to extend the sunset of the Cellular analog service requirement set forth in § 22.901(b) of our rules. *See* 22 FCC Rcd 11243 (2007). Pursuant to such *2007 AMPS Sunset Order,* on November 16, 2007, the Bureau released a Public Notice (*see* 22 FCC Rcd 19922 (WTB 2007)) with instructions for Cellular licensees on how to file a one-time Cellular Coverage Certification (AMPS Sunset Certification), which would certify that discontinuance of analog service would not result in any loss of wireless coverage throughout the CGSA. By filing an AMPS Sunset Certification, licensees could preserve the rights associated with their previously determined CGSAs on file with the Commission as of the AMPS Sunset Certification's filing date. The overwhelming majority of Cellular licensees have opted to file an AMPS Sunset Certification. We believe that all Cellular licensees have had ample time—more than four years since the *AMPS Instructions Notice*—to make their choice and file either the one-time AMPS Sunset Certification or the appropriate revised CGSA showing. Accordingly, we propose to terminate the Commission's collection of such Certifications and to delete § 22.901(b). We welcome comment on these proposals.

2. Possible Relocation of Part 22 Cellular and Part 24 PCS Rules to Part 27

54. In light of our proposal to revise the Cellular licensing rules to bring them in line with the more flexible rules that govern other wireless services, we take this opportunity to invite comment on placement of revised rules that may ultimately be adopted in this proceeding. Specifically, in the event that we adopt a geographic area regime that includes Overlay Licenses, should the new Cellular rules be incorporated into part 27, which houses the existing rules for certain other flexible wireless services, such as AWS, rather than in subpart H of part 22? If the revised Cellular rules are to be incorporated into part 27, we believe that the rules for part 24 PCS—which is already a flexible service governed by geographic area-based licensing—should then also be moved into part 27. Should the Commission initiate a separate rulemaking to revise the part 27 rules and reserve the possible relocation of Cellular and PCS rules to that separate proceeding? We welcome comment on such relocations and the optimal timing for them.

3. Proposed Correction of Section 1.958(d)

55. We take this opportunity to propose correction of a clerical error in the distance computation formula in § 1.958(d) of our rules. The error was introduced in the process of moving the provision containing the formula from part 22 (§ 22.157) to subpart F of part 1. The proposed correction is included in Appendix E of the *NPRM and Order.*

IV. Order

56. To facilitate the orderly and effective resolution of the fundamental changes and issues raised in the *NPRM,* and consistent with our actions in numerous prior proceedings, the Commission adopts a companion *Order* on February 15, 2012 in which it imposes an immediate freeze on the acceptance of certain Cellular applications in certain markets, as explained below, and imposes other interim procedures for certain Cellular applications, as also explained below. The Commission's decision to impose a freeze and other interim procedures is procedural and therefore not subject to the notice and comment or effective date requirements of the Administrative Procedure Act. (*See* 5 U.S.C. 553(b)(A), (d). *See also, e.g., Bachow Communications, Inc.* v. *FCC, 237 F.3d 683 (D.C. Cir. 2001)).* The tailored freeze and other interim procedures are

effective as of February 15, 2012 until further notice.

A. Suspension of Certain Filings

57. Rather than imposing a freeze on all modification and new-system applications, the Commission has tailored the freeze in this proceeding to: (1) provide for the continued expansion of service to consumers during the pendency of this proceeding; and (2) help the Commission identify Unserved Area and inform potential bidders of encumbrances well in advance of the auction. A tailored freeze will facilitate much needed network changes. We conclude that the benefits described above outweigh the limited potential costs of this tailored freeze.

58. As of the Adoption Date (February 15, 2012) and until further notice, we have suspended acceptance of certain Cellular applications claiming Unserved Area in ''Covered'' CMA Blocks. We wish to allow licensees to continue limited expansion of existing systems necessary to respond to customer needs by addressing technical changes at the periphery of their current CGSAs without facing strike applications, *i.e.,* applications filed primarily to block such service during a transition to geographic area licensing. Moreover, accepting and processing all applications in the normal course under our current rules would arguably be inconsistent with our goal of changing to a less burdensome licensing system.

59. Covered Blocks include: (i) Those we preliminarily determine to be Substantially Licensed under either benchmark of our proposed test (listed in Appendix C of the *NPRM and Order*); and (ii) those we preliminarily determine to be more than 90 percent but less than 95 percent licensed (listed in Appendix F of the *NPRM and Order*). In Covered Blocks, we prohibit the filing of applications for: (a) new-system Cellular licenses; and (b) major modifications to expand existing systems if claiming Unserved Area that is not contiguous to the existing CGSA. The prohibition applies even if a portion of the area to be claimed as CGSA lies in a non-Covered Block. Thus, for example, if a proposed new-system or major modification application proposes to claim (as CGSA) Unserved Area that straddles a CMA boundary, where the CMA Block on one side of the boundary is Covered while the Block on the other side of the boundary is non-Covered, the entire application will be treated as if solely for Unserved Area in a Covered Block. Any applications prohibited under the *Order* that are received on or after the Adoption Date are to be dismissed by the Bureau as unacceptable for filing.

60. We are permitting major modification applications that propose CGSA expansion in, or into, Covered Blocks only if claiming Unserved Area that is contiguous to the existing CGSA. (If an application proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, the application will be treated as if the entire claimed area is in a Covered Block.) Also, as of the Adoption Date and until further notice, we are using a ''same-day filing group'' for purposes of determining mutual exclusivity of permissible Cellular applications that entail Unserved Area in Covered Blocks. We will dismiss any mutually exclusive applications claiming Unserved Area in Covered Blocks that are received on or after the Adoption Date rather than conduct closed auctions to resolve such applications. We will permit major amendments to permissible major modification applications only so long as the proposed CGSA expansion in the amendment is claiming Unserved Area that is contiguous to the existing licensed CGSA. (If the amendment proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, it will be treated as if the entire claimed area is in a Covered Block.) Also, for such major amendments filed on or after the Adoption Date and until further notice, we will use a ''same-day filing group'' for purposes of determining mutual exclusivity, and we will dismiss any such mutually exclusive major amendments rather than conduct closed auctions to resolve them.

61. These interim filing procedures do not affect applications claiming Unserved Area solely in non-Covered CMA Blocks, which we will continue to accept and process under current rules and procedures, nor do they affect any applications that do not propose a new Cellular system or a CGSA expansion (*e.g.,* renewals, transfers, assignments, modifications that do not extend a CGSA boundary, administrative updates, and required notifications), no matter the Block. Applications for renewal must comply with any applicable provisions of the Notice of Proposed Rulemaking released by the Commission in the Wireless Radio Services (WRS) proceeding in May 2010. (*See generally WRS NPRM, 25 FCC Rcd 6996 (2010). See also* 47 CFR 1.939.) We advise all parties, however, that although minor modification applications (regardless of market) are not affected by the freeze imposed under this *Order,* we know from experience that staff might find on review that a purported minor modification application submitted on or after the Adoption Date is in fact a major modification application. If such an application is for Unserved Area (in whole or in part) in a Covered CMA Block, the application will be subject to the same procedures and restrictions described above (including dismissal if an impermissible filing under this *Order*).

62. In the following Section B, we discuss how we will process currently pending new-system and CGSA-expansion applications in Covered CMA Blocks.

B. Currently Pending Non-Mutually Exclusive Applications in Covered CMA Blocks

63. *New-System and Major Modification Applications.* Currently pending applications (*i.e.,* filed prior to the Adoption Date) that propose either a new Cellular system or a modification that would expand an existing system's CGSA boundary in, or into, Covered CMA Blocks fall into one of two categories: (1) Those accepted for filing and placed on public notice at least 30 days before the Adoption Date; and (2) those for which the 30-day public comment period has not yet expired as of the Adoption Date. We will treat non-mutually exclusive applications in the first category (including pending applications that would be impermissible under this *Order* if filed on or after the Adoption Date) under existing rules and will process them in the normal course as expeditiously as possible, subject to certain interim procedures regarding major amendments. Specifically, for pending modification applications proposing expansion of an existing CGSA, we will permit major amendments on or after the Adoption Date subject to the same interim procedures described above in Section IV.A. For pending new-system applications, we will permit major amendments on or after the Adoption Date only so long as the proposed new-system CGSA in the amendment is claiming Unserved Area that is contiguous to the CGSA proposed in the application that was pending as of the Adoption Date. (If an application proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, the application will be treated as if the entire claimed area is in a Covered Block.) For such amendments, we will use a ''same-day filing group'' for purposes of determining mutual exclusivity, and we

will dismiss any such mutually exclusive major amendments claiming Unserved Area in Covered Blocks that are received on or after the Adoption Date rather than conduct closed auctions to resolve them. On balance, rather than holding them in abeyance until conclusion of this proceeding, we concluded that processing pending applications in the first category under existing rules, subject to the interim procedures described herein, will not sacrifice the goals we seek to accomplish in this proceeding.

64. Pending new-system and major modification applications in the second category (*i.e.,* filed prior to the Adoption Date but for which the 30-day comment period has not expired) claiming any Unserved Area in Covered CMA Blocks will be deemed mutually exclusive only if a competing application was filed prior to the adoption date of the *Order.* Applications in the second category that are not mutually exclusive will be processed under our current rules, except that we will only permit the filing of major amendments subject to the same interim procedures described above regarding major amendments to applications in the first category.

65. *Minor Modifications.* As explained above, applications submitted as minor modifications of an existing CGSA are sometimes found by staff to be major modification applications. During the pendency of this proceeding, a minor modification application submitted prior to the Adoption Date that is determined to be proposing a major modification claiming (as CGSA) Unserved Area in a Covered Block will be treated the same as a pending major modification application in accordance with the interim procedures described above.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

66. The proceeding that the *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Procedures

67. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. *All comments and reply comments should refer to WT Docket No. 12–40.* Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

68. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Analysis of the Notice of Proposed Rulemaking and Order

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

70. In the *NPRM,* the Commission proposes a transition for the 800 MHz Cellular (Cellular) Service from site-based licensing to geographic-area licensing. The proposed transition would occur in two stages, via Commission auction. We believe that the current site-based paradigm is outdated and hinders carriers from being able to respond quickly to changing market conditions and consumer demands. We also believe it is contrary to the public interest to maintain a burdensome system to preserve extremely limited Unserved Area licensing opportunities. The Commission's early key goal of creating a seamless and integrated nationwide Cellular Service has been achieved throughout the vast majority of our nation. The Commission has long held that market-based licensing regimes are

simpler to administer for all parties concerned. The proposed transition would reduce administrative burdens for licensees as well as Commission staff. The proposed transition is consistent with the Commission's ongoing regulatory reform agenda and also supports the Commission's Data Innovation Initiative, launched in June 2010, by reducing information collection burdens under the Paperwork Reduction Act. We anticipate that, with the proposed additional flexibility provided to licensees, the regulatory and compliance costs associated with service provision would be reduced. These changes would also put Cellular licensees more on par with other wireless telecommunications licensees and further the Commission's goal of rule harmonization for the different wireless services.

71. As detailed in Section III, we propose a transition in two stages. Consistent with precedent, we would accept competing applications for Overlay Licenses, and resolve them via auction, for each CMA Block. In Stage I, the Commission would offer Overlay Licenses for all CMA Blocks that are ''Substantially Licensed'' or authorized solely under interim operating authority (IOA). We propose the following test to determine if a CMA Block is Substantially Licensed: *either* (1) at least 95 percent of the total land area in the CMA Block is licensed; *or* (2) there is no parcel within the Block at least 50 contiguous square miles in size that is not licensed. We believe it is appropriate to include *total* land area without exclusions in calculating the licensed area. If a CMA Block meets either benchmark as of an established date, it would be deemed Substantially Licensed and included in the Stage I transition. We propose, however, that the Gulf of Mexico Service Area (GMSA) be exempt from the transition because it is governed by a specialized licensing regime.

72. All CMA Blocks that do not meet the Substantially Licensed test would remain under site-based licensing until Stage II is triggered. In Stage II, the Commission proposes to offer Overlay Licenses for all remaining CMA Blocks (except the GMSA), regardless of the percentage of total land area licensed, and terminate site-based licensing. In the *NPRM,* we propose to continue the site-based model for seven years before Stage II is triggered, and we seek comment on whether this is the appropriate period of time. We believe that the public interest is best served by preserving the current scheme's direct spectrum access through site-based applications in Blocks that are not yet Substantially Licensed, primarily rural areas out west, for a defined period of time. This will allow all interested parties to have the opportunity to identify the specific areas they wish to serve as demographics change or service otherwise becomes economically feasible in such markets. Moreover, site-based licensing in such Blocks will ensure build-out within one year of authorization of such areas.

73. Overlay Licensees would be obligated to protect incumbent licensees' operations from harmful interference. That obligation would cease with respect to any incumbent's licensed area relinquished for any reason in the future (*e.g.,* through failure to renew the license). Such relinquished areas would not be returned to the Commission's auction inventory but, rather, could by served immediately by the Overlay Licensee on a primary basis without being subject to competitive bidding.

74. The Chambers, Texas Block-A market (Chambers) is the only CMA Block for which a license has never been issued; the market is served solely under IOA. We propose to include Chambers in the Stage I auction and award an Overlay License consistent with the process described for the Substantially Licensed Blocks, but subject to specific build-out requirements for the Chambers Overlay Licensee, as explained in Section III.A.2. We believe this is the most efficient and effective way to resolve the continued lack of a licensee and help bring additional advanced service to this Texas market.

75. We also propose that all Cellular licensees, regardless of Block, should be subject to a field strength limit at their respective license boundaries, similar to licensees in other flexible services such as PCS, certain AWS, etc. The *NPRM* proposes a median field strength limit of 40 dBμV/m for the Cellular Service. We also propose certain other revisions in individual Cellular rules to reflect the proposed transition, and to delete provisions that we deem obsolete or unnecessary going forward, including certain application requirements and other filings, and to streamline certain other provisions. The proposed rules are set forth in Appendix E and we encourage all interested parties to review them carefully. We seek comment on how the proposals will impact the amount of information available to regulated entities and the public.

Legal Basis

76. The proposed action is taken under sections 1, 2, 4(i), 301, 303, 307, 309, 319, 324, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 309, 319, 324, and 332.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

77. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

78. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

79. *Wireless Telecommunications Carriers (except Satellite).* The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this

total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. The Commission's own data—available on its Spectrum Dashboard—indicate that, as of February 9, 2012, there are 347 Cellular licensees that will be affected by this *NPRM.* The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

80. In the *NPRM,* the Commission seeks to reduce filing burdens and recordkeeping for all Cellular licensees by changing from site-based to geographic area licensing. We propose that, in the Blocks for which an Overlay License is offered, the CGSA boundaries of incumbents that do not become Overlay Licensees would be permanently fixed insofar as such incumbents would not be permitted to expand their CGSAs, except through contractual arrangements with other licensees. They would, however, be free to modify their systems in response to market demands without Commission filings in most cases, so long as the CGSA would not be changed as a result, and subject to any obligations we impose on all Cellular licensees.

81. Under our proposal, in most cases Overlay Licensees would be free as well to modify their systems without Commission filings, thereby minimizing their regulatory burdens. In addition, while Overlay Licensees would be obligated to protect incumbent licensees' operations from harmful interference, that obligation would cease with respect to any incumbent's licensed area (CGSA) or portion thereof that is relinquished for any reason in the future (*e.g.,* through failure to renew the license). Such relinquished areas would not be returned to the Commission's auction inventory but, rather, could be served by the Overlay Licensee on a primary basis immediately, without being subject to competitive bidding.

82. Once an Overlay License is granted via auction for Chambers, we propose not to subject the Licensee to the existing rules concerning the five-year build-out phase or the Phase I or Phase II license application processes that have been applicable to other CMA Blocks. Instead, we propose that the Chambers Overlay Licensee be required to demonstrate that it has built out a Cellular system that is providing signal coverage and offering service over at least 35 percent of the geographic area of its license authorization within four years of initial license grant and at least 70 percent of the geographic area of its license authorization by the end of the license term, with failure to meet these build-out deadlines resulting in automatic forfeiture of the license. We further propose that, after the build-out requirements have been met, the Chambers Overlay Licensee should be subject to the same rules and obligations that we apply to the other Overlay Licenses issued in Stage I of the transition. For example, we seek comment in the *NPRM* on whether Overlay Licensees should be subject to performance requirements.

83. The Commission also proposes that all Cellular licensees be subject to a field strength limit at their respective license boundaries and that a median field strength limit of 40 dBμV/m is appropriate for the Cellular Band. Coordination among co-channel licensees regarding channel usage will remain essential in actually preventing harmful interference. We therefore propose to retain the current Cellular Service rule mandating coordination in certain circumstances (§ 22.907), but we also propose to allow Cellular licensees to negotiate contractual agreements specifying different field strength limits. This will provide licensees with additional flexibility in their operations.

84. In the *NPRM,* we also propose various other changes in parts 1 and 22 of the Commission's rules that apply to Cellular Service licensees. For example, we propose to streamline the application requirements for site-based Unserved Area applications, notably § 22.953 (deleting certain technical data requirements that, going forward, we believe will no longer be routinely necessary). We also propose to delete provisions that we believe are obsolete going forward, such as those requiring certifications associated with cessation of analog service, often referred to as the ''analog sunset.'' Here too, our proposals are consistent with the Commission's regulatory reform agenda and its Data Innovation Initiative. The proposed rules are set forth in Appendix E and we encourage all interested parties to review them carefully and comment on them with specificity.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

85. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

86. The *NPRM* discusses several alternatives to the proposed two-stage transition. These include, for example, alternatives that would entail transition via auction in more than two stages as well as possible exemption for certain extremely rural markets such as Alaskan markets and others with special build-out challenges. The *NPRM* also discusses proposals put forth by industry stakeholders thus far in this proceeding, including an approach that would not entail competitive bidding. The *NPRM* specifically invites interested parties to comment on these various alternatives and to suggest other alternative proposals. At this time, the Commission has not excluded any alternative proposal from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

87. The Commission believes that the proposed transition to a geographic-area licensing system for the Cellular Service in two stages via auction will benefit all Cellular incumbents and entrants, regardless of size. The proposed scheme would put Cellular licensees on a regulatory par with other wireless licensees that hold geographic area licenses, such as PCS and certain AWS licensees, thus easing the regulatory burden of compliance by eliminating discrepancies in competing services. The Commission has historically valued harmonization in the rules for wireless licensees by eliminating burdensome requirements, as appropriate. Furthermore, we anticipate that the modernized licensing scheme will encourage Cellular licensees to invest in and deploy ever more advanced technologies as they evolve. By reducing the paperwork burden on Cellular providers, we would also expect their resulting lower costs to have some positive effect on the rates paid by subscriber groups, including small businesses that rely on Cellular service.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

C. Initial Paperwork Reduction Analysis

88. This document contains potential new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the potential information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

VI. Ordering Clauses

89. Pursuant to sections 1, 2, 4(i), 301, 302, 303, 308, 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 308, 309(j), and 332, this *Notice of Proposed Rulemaking and Order* are hereby *adopted.*

90. Pursuant to sections 4(i), 301, 303, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303, 308, and 309, that effective as of the date of the adoption of this *Notice of Proposed Rule Making and Order,* THE FEDERAL COMMUNICATIONS COMMISSION WILL NOT ACCEPT FOR FILING ANY APPLICATIONS for licenses in the Cellular Band that are inconsistent with the terms of the application freeze discussed herein. This suspension is effective until further notice and applies to any such applications received on or after the date of adoption of this *Notice of Proposed Rulemaking and Order.*

91. NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this *Notice of Proposed Rulemaking* and that comment is sought on these proposals.

92. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements, Rural areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 22 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

§ 1.919 [Amended]

2. Amend § 1.919 by removing and reserving paragraph (c).

3. Amend § 1.929 by revising paragraph (b)(1), removing and reserving paragraph (b)(3), and adding paragraph (b)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(b) * * *

(1) Request for an authorization or an amendment to a pending application that would expand the Cellular Geographic Service Area (CGSA) of an existing cellular system or, in the case of an amendment, as previously proposed in an application, in a CMA Block that has not been included in an auction for Cellular Overlay Authorizations under § 22.985.

* * * * *

(4) Request for a Cellular Overlay Authorization. *See* § 22.985.

* * * * *

4. Amend § 1.958 by revising paragraph (d) to read as follows:

§ 1.958 Distance computation.

* * * * *

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

$$KPD_{lon} = 111.41513 \cos ML - 0.09455 \cos 3ML + 0.00012 \cos 5ML$$

* * * * *

PART 22—PUBLIC MOBILE SERVICES

5. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

6. Amend § 22.99 by:

a. Removing the definitions ''Build-out transmitters,'' ''Extension,'' ''Five year build-out period,'' and ''Partitioned cellular market'';

b. Revising the definitions *''Cellular Geographic Service Area,'' and* ''Cellular markets''; and

c. Revising the term ''Unserved areas'' to read ''Unserved Area'' and revising the first sentence of its definition;

d. Adding definitions ''*Cellular area-based authorization,'' ''Cellular Licensed Area,'' ''Cellular Overlay Authorization (COA),'' ''Cellular Overlay Licensee,'' ''Cellular site-based authorization,'' ''CMA Block,'' and ''Substantially Licensed CMA Block''.*

The revisions and additions read as follows:

§ 22.99 Definitions.

* * * * *

Cellular area-based authorization. An authorization in the Cellular Radiotelephone Service where the licensed area is a specified fixed geographic area other than a CGSA (*e.g.,* a CMA, as in the case of a Cellular Overlay Authorization) irrespective of the locations and technical parameters of base stations (cell sites), in a CMA Block included in an auction under § 22.985.

Cellular Geographic Service Area (CGSA). The licensed geographic area, determined by the specified locations and technical parameters of base stations (cell sites) pursuant to the procedures set forth in § 22.911, within which a cellular system is entitled to protection and adverse effects are recognized, for the purpose of determining whether a petitioner has standing, in the Cellular Radiotelephone Service.

Cellular Licensed Area. The geographic area within which the cellular licensee is permitted to transmit, or consent to allow other cellular licensees to transmit, electromagnetic energy and signals on the assigned channel block, in order to provide cellular service.

Cellular Market Area (CMA). A standard geographic area used by the FCC for administrative convenience in the licensing of cellular systems; a more recent term for ''cellular market'' (and includes Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs)). *See* § 22.909.

Cellular markets (obsolescent). See definition for ''Cellular Market Area (CMA)''.

* * * * *

Cellular Overlay Authorization (COA). A cellular area-based authorization in a CMA Block included in an auction under § 22.985, where the cellular licensed area is the geographic area within the CMA boundary (Channel Block A or B), subject to the requirement to protect incumbent licensees' operations from harmful interference under applicable rules.

Cellular Overlay Licensee. The holder of a Cellular Overlay Authorization.

* * * * *

Cellular site-based authorization. An authorization in the Cellular Radiotelephone Service where the Cellular Licensed Area is determined by the specified locations and technical parameters of base stations (cell sites), pursuant to the procedures set forth in § 22.911.

* * * * *

CMA Block. In the Cellular Radiotelephone Service, a CMA considered in regard to a specified channel block, *i.e.,* either Channel Block A or Channel Block B (*see* § 22.905).

* * * * *

Substantially Licensed CMA Block. A CMA Block (A or B) where at least 95 percent of the total land area is Cellular Geographic Service Area or which contains no contiguous parcel of Unserved Area larger than 130 square kilometers (50 square miles).

* * * * *

Unserved Area. With regard to a channel block allocated for assignment in the Cellular Radiotelephone Service: Geographic area in the District of Columbia, or any State, Territory or Possession of the United States of America that is not within any Cellular Geographic Service Area of any cellular system authorized to transmit on that channel block. * * *

7. Amend § 22.131 by revising paragraphs (c)(3)(iii) and (d)(2)(iv) to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

* * * * *

(c) * * *

(3) * * *

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used.

* * * * *

(d) * * *

(2) * * *

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911) in a CMA Block that has not been included in an auction under § 22.985.

* * * * *

8. Amend § 22.165 by revising paragraph (e) to read as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(e) *Cellular Radiotelephone Service.* (1) In a CMA Block that has not been included in an auction under § 22.985, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the CGSA; the licensee must seek prior approval (using FCC Form 601) regarding any transmitters to be added under this section that would cause a change in the CGSA boundary. *See* § 22.953.

(2) With regard to an incumbent's CGSA in a CMA Block that has been included in an auction under § 22.985, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the incumbent's CGSA.

(3) A Cellular Overlay Licensee is permitted to expand into any Unserved Area within its licensed CMA Block so long as it protects existing cellular licensees from harmful interference.

* * * * *

§ 22.228 [Removed]

9. Remove § 22.228.

10. Revise § 22.901 to read as follows:

§ 22.901 Cellular service requirements and limitations.

Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two-way radiotelephone, dispatch, one-way or two-way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed services are provided, they are considered to be co-primary services. In providing cellular service, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

11. Revise § 22.909 to read as follows:

§ 22.909 Cellular market areas (CMAs).

Cellular market areas (CMAs) are standard geographic areas used by the FCC for administrative convenience in the licensing of cellular systems. CMAs comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). All CMAs and the counties they comprise are listed in: ''Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,'' *Public Notice,* Report No. CL–92–40, 6 FCC Rcd 742 (1992).

(a) *MSAs.* Metropolitan Statistical Areas are 306 areas, including New England County Metropolitan Areas and the Gulf of Mexico Service Area (water area of the Gulf of Mexico, border is the coastline), defined by the Office of Management and Budget, as modified by the FCC.

(b) *RSAs.* Rural Service Areas are 428 areas, other than MSAs, established by the FCC.

§ 22.912 [Removed]

12. Remove § 22.912.

§ 22.929 [Removed]

13. Remove § 22.929.

14. Revise § 22.946 to read as follows:

§ 22.946 Construction period for cellular systems under site-based authorizations.

The construction period applicable to specific new or modified cellular facilities for which a site-based authorization is granted is one year, beginning on the date the authorization is granted. To satisfy this requirement, a cellular system must be providing service to mobile stations operated by subscribers and roamers. The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met. *See* § 1.946 of this chapter. GMEZ cellular systems are not subject to construction period requirements. *See* § 22.950.

15. Revise § 22.947 to read as follows:

§ 22.947 Build-out period for CMA Block 672A (Chambers, TX).

This rule section applies only to cellular systems operating on Channel Block A in CMA 672 (Chambers, Texas).

(a) A licensee that holds the Cellular Overlay Authorization for CMA Block 672A (Chambers, Texas) initially awarded via auction (*i.e.,* the CMA Block for which cellular service was authorized solely under interim operating authority prior to the Stage I auction described in § 22.985) must be providing signal coverage and offering service over at least 35 percent of the geographic area of the CMA Block within four years of the grant of the authorization, and over at least 70 percent of the geographic area of its license authorization by the end of the license term. In applying this geographic benchmark, the licensee is to count total land area.

(b) The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met and must include with its notification(s) GIS map files and other supporting documents showing compliance with the construction requirement. *See* § 1.946 of this chapter. *See also* § 22.953.

(c) Failure to meet the requirements in this section by the deadline will result in automatic termination of the authorization and such licensee will be ineligible to regain it.

16. Revise § 22.948 to read as follows:

§ 22.948 Geographic partitioning and spectrum disaggregation.

Cellular licensees may apply to partition their cellular licensed area or to disaggregate their licensed spectrum at any time following the grant of their authorization(s). Parties seeking approval for partitioning and disaggregation shall request from the FCC an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. *See also* paragraph (f) of this section.

(a) *Partitioning.* Applicants must file FCC Form 603 pursuant to § 1.948 of this chapter. The filing must include the attachments required under § 22.953, including GIS map files and a reduced-size PDF map, for both the assignor and the assignee.

(1) Within a CMA Block that has not yet been included in an auction under § 22.985, partitioning of a CGSA must be on a site-by-site basis; *i.e.,* the partitioned area must comprise only the area resulting from one or more cell sites pursuant to § 22.911. At least one entire cell site must be partitioned. If all cell sites are assigned, it is not partitioning, but rather a full assignment of authorization.

(2) Partitioning of the licensed area of a cellular area-based authorization (including, *e.g.,* the licensed area of a Cellular Overlay Authorization) to a licensee in a CMA Block that has not yet been included in an auction under § 22.985 must be on a site-by-site basis; *i.e.,* the partitioned area must comprise CGSA resulting from one or more cell sites pursuant to § 22.911.

(3) Partitioning of the licensed area of a cellular area-based authorization within the same CMA Block that has been included in an auction under § 22.985, or to a licensee in another CMA Block that has also been included in such an auction (including, *e.g.,* the partitioning of a Cellular Overlay Authorization area by one Cellular Overlay Licensee to another Cellular Overlay Licensee), may involve any proportion of division. If all of the licensed area is assigned, it is not partitioning, but rather a full assignment of authorization.

(b) *Disaggregation.* Spectrum may be disaggregated in any amount.

(c) *Combined partitioning and disaggregation.* The FCC will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(d) *Field strength limit.* For purposes of partitioning and disaggregation, cellular systems must be designed so as not to exceed a median field strength level of 40 dBμV/m at or beyond the boundary of the Cellular Licensed Area, unless all affected adjacent service area licensees agree to a different signal level. *See* § 22.983.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum will be the remainder of the original license term.

(f) *Spectrum Leasing.* Cellular spectrum leasing is subject to the provisions of paragraphs (a)(1) through (a)(3), (b), and (c) of this section, except that applicants must file FCC Form 608 (not FCC Form 603), as well as all applicable provisions of subpart X of part 1 of this chapter.

17. Revise § 22.949 to read as follows:

§ 22.949 Unserved Area licensing process for site-based systems.

This section sets forth the process for licensing Unserved Area in CMA Blocks not yet included in an auction pursuant to § 22.985. The licensing process in this § 22.949 allows eligible parties to apply for any Unserved Area that remains in such CMA Blocks.

(a) The Unserved Area licensing process described in this section is on-going and applications may be filed at any time, until the CMA Block is included in an auction pursuant to § 22.985.

(b) There is no limit to the number of Unserved Area applications that may be granted on each CMA Channel Block that remains subject to the procedures of this section. Consequently, such Unserved Area applications are mutually exclusive only if the proposed CGSAs would overlap. Mutually exclusive applications are processed using the general procedures in § 22.131. *See also* § 22.961.

(c) Unserved Area applications under this section may propose a CGSA covering more than one CMA. Each such Unserved Area application must request authorization for only one CGSA.

(d) Settlements among some, but not all, applicants with mutually exclusive applications for Unserved Area (partial settlements) under this section are prohibited. Settlements among all applicants with mutually exclusive applications under this section (full settlements) are allowed and must be filed no later than the date that the FCC Form 175 (short-form) is filed.

18. Amend § 22.950 by revising paragraphs (c) and (d) to read as follows:

§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA).

* * * * *

(c) *Gulf of Mexico Exclusive Zone (GMEZ).* GMEZ licensees have an exclusive right to provide cellular service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior FCC approval. There is no Unserved Area licensing procedure for the GMEZ.

(d) *Gulf of Mexico Coastal Zone (GMCZ).* The GMCZ is subject to the Unserved Area licensing procedure set forth in § 22.949.

19. Revise § 22.953 to read as follows:

§ 22.953 Content and form of applications for cellular authorizations.

Applications for authority to operate a new cellular system or to modify an existing cellular system must comply with the specifications in this section.

(a) *New Systems.* In addition to information required by subparts B and D of this part and by FCC Form 601, applications for a site-based authorization to operate a cellular system must comply with all applicable requirements set forth in part 1 of this chapter, including the requirements specified in §§ 1.913, 1.923, and 1.924, and must include the information listed below, in numbered exhibits. Geographical coordinates must be correct to ±1 second using the NAD 83 datum.

(1) *Exhibit I—Geographic Information System (GIS) map files.* The FCC will specify the file format required for the Geographic Information System (GIS) map files that are to be submitted electronically via the Universal Licensing System (ULS). In addition to GIS map files submitted electronically, the FCC reserves the right to request a full-size paper map from the applicant. The scale of the full-size paper map must be 1:500,000, regardless of whether any different scale is used for the reduced-size PDF map required in Exhibit II. In addition to the information required for the GIS map files, the paper map, if requested, must include all the information required for the reduced-size PDF map (*see* paragraph (a)(2) of this section).

(2) *Exhibit II—Reduced-size PDF map.* This map must be 8½ × 11 inches (if possible, a proportional reduction of a 1:500,000 scale map). The map must

have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations), the service area boundaries of additional and modified cell sites, the entire CGSA, extensions of the composite service area beyond the CGSA (*see* § 22.911), and the relevant portions of the CMA boundary.

(3) *Exhibit III—Antenna Information.* In addition, upon request by an applicant, licensee, or the FCC, a cellular applicant or licensee of whom the request is made shall furnish the antenna type, model, the name of the antenna manufacturer, antenna gain in the maximum lobe, the beam width of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, the maximum effective radiated power, and the electric field polarization of the wave emitted by the antenna when installed as proposed to the requesting party within ten (10) days of receiving written notification.

(4) through (10) [Reserved].

(11) *Additional information.* The FCC may request information not specified in paragraphs (a)(1) through (3) of this section as necessary to process an application.

(b) *Existing systems: major and minor modifications.* Licensees making major modifications pursuant to § 1.929(a) and (b) of this chapter, and licensees making minor modifications pursuant to § 1.929(k) of this chapter, must file FCC Form 601 and comply with the requirements of paragraph (a) of this section.

(c) [Reserved].

§ 22.960 [Removed]

20. Remove § 22.960.

21. Add § 22.961 to read as follows:

§ 22.961 Cellular licenses subject to competitive bidding.

The following mutually exclusive initial applications for cellular licensed area authorizations are subject to competitive bidding, and unless otherwise provided by this subpart, the general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply:

(a) Mutually exclusive initial applications for cellular site-based authorizations; and

(b) Mutually exclusive initial applications for Cellular Overlay Authorizations.

§§ 22.962 through 22.967 [Removed and Reserved]

22. Remove and Reserve §§ 22.962 through 22.967.

§ 22.969 [Removed]

24. Remove § 22.969.

25. Add § 22.983 to read as follows:

§ 22.983 Field strength limit.

The predicted or measured median field strength at any location on or beyond the boundary of any Cellular Licensed Area must not exceed 40 dBμV/m, unless the adjacent cellular service licensee(s) on the same Channel Block agree(s) to a different field strength. This value applies to both the initially authorized areas and to partitioned areas.

26. Add § 22.985 to read as follows:

§ 22.985 Geographic area licensing via auctions.

The licensing procedures in this section do not apply to any CMA Block in the GMSA (*see* § 22.950).

(a) *Determination of licensing status of CMA Blocks.* The FCC will determine whether each CMA Block is Substantially Licensed. A CMA Block will be deemed Substantially Licensed if, as of a cut-off date established by the FCC, either:

(1) At least 95 percent of the total land area in the CMA Block is already licensed as CGSA; or

(2) The CMA Block contains no contiguous parcel of Unserved Area that is larger than 130 square kilometers (50 square miles).

(b) *Stage I Auction.* Any auction to resolve mutually exclusive applications filed with respect to CMA Blocks that are included in Stage I for the assignment of Cellular Overlay Authorizations shall be conducted pursuant to the procedures set forth in part 1, subpart Q of this chapter. Any eligible entity may bid in the Stage I auction. A CMA Block is eligible to be included in the Stage I auction if either:

(1) The CMA Block is determined by the FCC to be Substantially Licensed; or,

(2) The CMA Block has cellular service that has been authorized solely under interim operating authority (*i.e.,* for which no license has ever been issued).

(c) *Stage II Auction.* Any auction to resolve mutually exclusive applications filed with respect to CMA Blocks that are included in Stage II for the assignment of Cellular Overlay Authorizations in such Blocks shall be conducted pursuant to the procedures set forth in part 1, subpart Q of this chapter. Any eligible entity may bid in the Stage II auction.

27. Add § 22.986 to read as follows:

§ 22.986. Designated Entities.

(a) *Eligibility for small business provisions in the Cellular Radiotelephone Service.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(b) *Bidding credits in the Cellular Radiotelephone Service.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

[FR Doc. 2012–5689 Filed 3–15–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2404, 2406, 2407, 2409, 2415, 2416, 2417, 2419, 2426, 2427, 2428, 2432, 2437, 2439, 2442, and 2452

[Docket No FR–5571–P–01]

RIN 2501–AD56

Amendments to the HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the HUDAR to implement miscellaneous changes. These changes include, for example, such amendments as removing provisions that are now obsolete, refining provisions to approve

requests for deviation from the HUDAR, updating provisions that address the organizational structure of HUD, and adding provisions on contractor record retention.

DATES: *Comment Due Date:* May 15, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (Fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elie F. Stowe, Assistant Chief Procurement Officer for Policy, Oversight, and Systems, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number 202–708–0294, fax number 202–708–8912 (these are not toll-free numbers). Persons with hearing or speech impairments may access that number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 121(c)); and the general authorization in FAR 1.301. HUDAR was last revised by final rule published on January 13, 2006 (71 FR 2432).

II. This Proposed Rule

This proposed rule would amend the HUDAR as follows:

Sections 2401.403 (Individual deviations) and 2401.404 (Class deviations) are proposed to be revised to move procedural requirements on requesting deviations from the FAR. These requirements are proposed to be moved to a new 2401.471, entitled ''Requests for Deviations—FAR and HUDAR,'' which would contain requirements for both FAR and HUDAR deviation requests. As proposed, 2401.403 and 2401.404 would be revised to remove procedural guidance and merely state the designation of the Senior Procurement Executive (SPE) as the approving authority.

A new 2401.470, ''Deviations from the HUDAR,'' is proposed to be added to state the SPE's authority to approve deviations from the HUDAR. Previously, this authority was comingled with the SPE's authority as the agency head's designee to authorize FAR deviations in sections 2401.403 and 2401.404.

In subpart 2401.6 (Career Development, Contracting Authority and Responsibilities), (b)(1) of 2401.602–3 (Ratification of unauthorized commitments) is proposed to be revised to remove obsolete language concerning HUD's former field contracting organizational structure. Paragraph (b)(3) is revised also to authorize the SPE to delegate approval of lower-dollar value ratifications down to Assistant Chief Procurement Officer level. Paragraph (c)(7), which provided guidance to HUD personnel on the internal processing of requests for ratifications, has been removed in its entirety. That guidance is now contained in internal acquisition policy directives.

In part 2402, ''Definitions of Words and Terms,'' subpart 2402.1, ''Definitions,'' 2402.101, ''Definitions,'' is proposed to be revised to add a definition of *contracting activity,* and change the definitions of the *head of the contracting activity (HCA)* and *legal counsel* to reflect the current Departmental organizational structure. The Office of the Chief Procurement Officer (OCPO) is now responsible for all HUD acquisition, and the Chief Procurement Officer (CPO) serves as the sole HCA. The revised HCA definition authorizes the CPO to delegate HCA authority down to, but not below, the level of the Assistant CPOs when the FAR and HUDAR permit such delegation.

In part 2403, ''Improper Business Practices and Personal Conflicts of Interest,'' subpart 2403.4, ''Contingent Fees,'' 2403.405((b)) is proposed to be revised to remove language that is redundant to FAR 3.405.

In part 2404, ''Administrative Matters,'' a new subpart 2404.7, entitled ''Contractor records retention,'' is proposed to be added. Within this new subpart, 2404.7001, ''Contract Clause,'' is proposed to be added to prescribe the use of a new contract clause at 2452.204–70, *Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats).* The clause would be added to ensure that contractors preserve information and provide it to HUD upon request for the purpose of discovery required by actual or anticipated litigation.

In part 2406, ''Competition Requirements,'' subpart 2406.3, ''Other than Full and Open Competition,'' 2406.302–2, ''Unusual and compelling urgency,'' is proposed to be added to authorize the HCA to act as the agency head with regard to making

determinations required by FAR 6.302–2(d)(1)(ii).

Section 2406.304–70, ''Approval of the justification—field procurements,'' is removed in its entirety. As currently written, 2406.304–70 requires that justifications for other than full and open competition exceeding $1 million arising in OCPO's field offices be approved by the Deputy Chief Procurement Officer. This requirement reflects a former organization of HUD's contracting activities and is now obsolete. All HUD contracting personnel are now part of a single OCPO. Consequently, the processing requirements for justifications are the same for all OCPO offices. Furthermore, this lower approval threshold does not correspond to the approval thresholds set forth in FAR 6.304.

In subpart 2406.5, ''Competition Advocates,'' 2406.501, ''Requirement,'' is proposed to be revised to remove the requirement for publication of a notice in the **Federal Register** when appointing a Competition Advocate. The section is also revised to clarify that the SPE is the head of the agency for the purposes of FAR 6.501.

In part 2407, ''Acquisition Planning,'' subpart 2407.1, ''Acquisition Plans,'' 2407.102, ''Policy,'' is proposed to be revised to remove an obsolete reference to the Department's Advance Acquisition Planning System, which is no longer used.

In part 2409, ''Contractor Qualifications,'' a new subpart 2409.4, ''Debarment, Suspension, and Ineligibility,'' is proposed to be added, and the content currently under 2409.7001, ''HUD regulations on debarment, suspension, and ineligibility,'' would be moved to this new subpart and redesignated. Additionally, 2409.405, ''Effect of listing,'' and 2409.407–1, ''General,'' would be added to delegate agency head authorities to the SPE. The content of current 2409.7001 is proposed to be moved to the new 2409.470 with the same title, to more accurately correspond to the FAR and would be revised to correct the Code of Federal Regulations citation. Current subpart 2409.70 would be accordingly removed, as 2409.7001 was the only section in that subpart.

In part 2415, ''Contracting by Negotiation,'' subpart 2415.2, ''Solicitation and Receipt of Proposals and Quotations,'' the following changes would be made: new section 2415.203, ''Requests for proposals,'' would authorize contracting officers to limit the size of technical and management portions of offers submitted in response to requests for proposals; section 2415.204, ''Contract format,'' would be revised to delete the word ''cognizant,'' since HUD now has a single HCA; section 2415.209, ''Solicitation provisions and contract clauses,'' would be revised to prescribe the use of a new Alternate III to the solicitation provision at 2452.215–70, ''Proposal content,'' when the contracting officer determines that it is necessary to limit the size of the technical and management portion of offers submitted by offerors; and section 2415.209 would be revised to prescribe the use of a new provision at 2452.215–71, ''Relative Importance of Technical Evaluation Factors to Cost or Price,'' in solicitations using the tradeoff selection method. The provision notifies offerors of the relative weight of the technical evaluation factors to cost or price when evaluating offers for contract award. The contracting officer selects the relative weighting to be used.

In subpart 2415.3, ''Source selection,'' in 2415.303, ''Responsibilities,'' paragraph (a) would be revised to designate the SPE as the agency head for the purposes of designating source selection authorities other than the contracting officer as provided for at FAR 15.303(a). Paragraph (b) would be redesignated (b)(1) and revised to remove the specific number of participants to be used on a technical evaluation panel. The removal of a specific number of panelists would permit contracting officers and requiring activities to determine the appropriate number of evaluation panelists on a case-by-case basis.

Section 2415.304, ''Evaluation factors and significant subfactors,'' would be revised to remove paragraph (d)(2), which contains a requirement for numerical scoring of technical proposals when selecting awardees for negotiated contracts. HUD's policy is to not use numerical scoring. Therefore, this requirement is no longer applicable. A new paragraph (c)(3)(i) would be added to require the evaluation of small business participation in acquisitions using the tradeoff source selection process.

In 2415.305, ''Proposal evaluation,'' paragraph (a)(3) would be revised to change the reference from ''predetermined cut-off scores'' to ''predetermined threshold levels of technical acceptability,'' in accordance with the revision to section 2415.304.

A new 2415.370, ''Solicitation provision,'' would be added to prescribe the use of a new solicitation provision at 2452.215–72, ''Evaluation of Small Business Participation.'' This provision would be required for contracts that use the FAR clause at 52.219–9, ''Small Business Subcontracting Plan.''

In part 2416, ''Types of Contracts,'' a new subpart 2416.3, ''Cost-Reimbursement Contracts,'' would be added. Under this new subpart, section 2416.307, ''Contract clauses,'' would be added to prescribe the use of two new contract clauses: 2452.216–79, ''Estimated Cost (No Fee),'' to be included in all cost-reimbursement (no fee) type solicitations and contracts; and 2452.216–80, ''Estimated Cost and Fixed-Fee,'' to be included in all cost-plus-fixed fee type solicitations and contracts. The clauses provide standard contract language regarding total estimated cost, fee, and level of funding if the contract is funded incrementally.

In subpart 2416.5, ''Indefinite-delivery contracts,'' 2416.505, ''Ordering,'' would be revised to remove language redundant to FAR 16.505 and to reflect the change in OCPO organization under which there is now one contracting activity and therefore, one ombudsman. Paragraph (b)(5) would be redesignated as (b)(6) to correspond with that of FAR 16.505(b)(6).

In 2416.506–70, ''Solicitation provisions and contract clauses,'' paragraph (b) would be revised to remove the reference to definite-quantity contracts, to permit the tailoring of the clause as needed for specific contracts, and to remove the prescription for an alternate to the clause. In part 2417, ''Special Contracting Methods,'' under subpart 2417.2, ''Options,'' 2417.204(e), would be revised to: under the authority of FAR 17.204(e), establish the SPE as the approving official for contracts proposed to exceed 5 years; define the contract period of indefinite-delivery contracts as the ordering period for the purposes of requiring prior approval; prohibit the use of SPE approval retroactively to extend contract periods; and clarify that SPE approval is not required for options properly exercised pursuant to FAR clause 52.217–8, ''Option to Extend Services.''

In part 2419, ''Small Business Programs,'' under subpart 2419.2, ''Policies,'' 2419.201 would be revised to correct the designation of the paragraphs to match paragraph designations in the parallel section in FAR 19.201. The following additional substantive revisions are proposed: remove the reference to HUD Headquarters in paragraph (d); in the same paragraph, reference FAR 19.201(d); and clarify that the Director of the Office of Small and Disadvantaged Business Utilization appoints small business specialists. Previously, this section required the HCAs to appoint such specialists.

In subpart 2419.5, ''Set-Asides for Small Business,'' 2419.503, ''Setting aside a class of acquisitions,'' is proposed to be removed. This section requires that all contracts for construction services that support the Real Estate Owned program of the Federal Housing Administration (FHA) be set aside for small business. This requirement exceeds the FAR's requirements. Normal compliance with FAR part 19 should result in the maximum practicable use of small business set-asides.

In subpart 2419.7, ''The Small Business Subcontracting Program,'' in 2419.708, ''Solicitation Provisions and Contract Clauses,'' a new paragraph (b) would be added to prescribe the use of a new clause at 2452–219–73, ''Incorporation of Subcontracting Plan,'' in contracts when a subcontracting plan is required. Paragraph (b) would also prescribe the use of a new provision at 2452.219–74, ''Small Business Subcontracting Goals,'' for solicitations that are required to include the FAR clauses at 52.219–8, ''Utilization of Small Business Concerns'' and at 52.219–9, ''Small Business Subcontracting Plan.'' The provision provides offerors with HUD's small business subcontracting goals. Paragraph (d), currently the only paragraph in the section, would be revised to correct the applicable dollar threshold, by replacing the current dollar figure with a cross-reference, and to clarify that the provision is required when the use of the FAR clause at 52.219–9 is required.

Subpart 2419.8, ''Small Business Administration Section (8)(a) Program,'' would be revised to implement the terms of HUD's current partnership agreement with the SBA, under which the SBA has delegated to HUD's SPE its authority under section 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, as well as its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. The revised subpart 2419.8 implements the specific terms and guidance contained in the agreement. Note that SBA provided HUD with the specific verbiage for use in implementing the agreement in HUD's FAR supplement.

In subpart 2419.8, the following new sections would be added:

Section 2419.803, ''Selecting acquisitions for the 8(a) Program,'' would be added to include an new subsection 2419.803–70, which would provide direction on the use of simplified acquisitions (as defined at FAR 2.101) under the Partnership Agreement.

Section 2419.804 would be added to include three new subsections as follows:

Subsection 2419.804–2, ''Agency offering,'' would be added to require that for 8(a) contracts to be awarded under the Partnership Agreement, HUD's agency offering letters to the 8(a) firms identify that the offering is in accordance with the Partnership Agreement. Subsection 2419.804–3, ''SBA acceptance,'' would be added to include a new subsection 2419.804–370, ''SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold,'' to provide the procedures for SBA's acceptance of HUD offerings for 8(a) contracts that exceed the simplified acquisition threshold.

Section 2419.805, ''Competitive 8(a),'' would be added to include a new subsection 2419.805–2, ''Procedures,'' which would provide the procedures for notifying the SBA of selected offerors for award under competitive 8(a) contracts awarded under the Partnership Agreement and for the SBA's verification of the awardees' eligibility under the 8(a) Program.

Section 2419.806, ''Pricing the 8(a) contract,'' would be added to require HUD contracting officers to obtain certified cost or pricing data directly from the 8(a) contractor when required by FAR subpart 15.4 when awarding contracts under the Partnership Agreement.

Section 2419.808, ''Contract negotiation,'' would be added to provide a new subsection 2419.808–1, ''Sole source,'' which would make the 8(a) contractor responsible for negotiating a contract with HUD within the time frame established by the HUD contracting officer. Subsection 2419.808–1 would also permit HUD, after notification to and approval by the SBA, to proceed with the acquisition from other sources if an 8(a) contractor does not negotiate within the established time frame and if HUD cannot allow additional time. Furthermore, if the acquisition is conducted under the Partnership Agreement, HUD would be delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA might participate in such negotiations.

Section 2419.811, ''Preparing the contracts,'' would be added to include the following:

A new subsection 2419.811–1, ''Sole source,'' would be added to provide procedures for the preparation of sole source 8(a) contract awards made under the Partnership Agreement.

A new subsection 2419.811–2, ''Competitive,'' would be added to state that the contract preparation procedures for sole source 8(a) contracts shall be used for competitive 8(a) contracts awarded under the Partnership Agreement.

A new subsection 2419.811–3, ''Contract clauses,'' would be added to prescribe HUDAR clauses to be used in place of certain FAR clauses for 8(a) contracts awarded under the Partnership Agreement.

Section 2419.812, ''Contract administration,'' would be added to state that 8(a) contractors whose contracts are awarded under the Partnership Agreement are required to notify both the HUD contracting officer and the SBA whenever the ownership of the 8(a) firm is transferred.

In part 2426, ''Other Socioeconomic Programs,'' 2426.7001, ''Policy,'' and 7002, ''Responsibility,'' are proposed to be removed. The content of these sections is essentially redundant to FAR 19.201 and HUDAR 2419.201. Accordingly, subpart 2426 is removed and reserved.

In part 2427, ''Patents, Data, and Copyrights,'' the title of 2427.305–2 is proposed to be revised to ''Administration by the Government'' to correspond to the title of FAR 27.305–2.

A new 2427.470, ''Contract clause,'' is proposed to be added to prescribe the use of new clause 2452.227–70, ''Government Information,'' in solicitations and contracts when the Federal Government will provide information to the contractor or the contractor will obtain information on behalf of the Federal Government to perform work required under the contract. In order to accommodate this new section, subpart 2427.4 would be added, as authorized by FAR, and by 48 CFR subpart 27.4, ''Rights in Data and Copyrights.''

In part 2428, ''Bonds and Insurance,'' the title of 2428.106 is proposed to be revised to ''Administration,'' to correspond to the title of FAR 28.106.

In part 2432, ''Contract Financing,'' new 2432.006, ''Reduction or suspension of contract payments upon finding of fraud,'' 2432.006–1, ''General,'' and 2432.006–2, ''Definitions,'' are proposed to be added to delegate certain agency head authorities to the SPE with regard to reducing or suspending contract payments in cases of fraud. The SPE is designated as the ''remedy coordination official,'' and may delegate the responsibilities of the remedy

coordination official to appropriate personnel within the OCPO.

A new 2432.007 would be added to designate the SPE as the agency head for the purpose of establishing contract financing payment periods of shorter than 30 days.

A new subpart 2432.7, ''Contract Funding,'' is added to provide authority for, and limitations on the use of, incrementally funded fixed-price contracts. New 2432.702, ''Policy,'' 2432.703–1, ''General,'' 2432.704, ''Limitation of cost or funds,'' and 2432.705, ''Contract clauses,'' would be added to subpart 2432.7. The use of incrementally funded fixed-price contracts is necessitated by recurring budget and funding uncertainties. However, the new subpart will limit the use of this method of contract funding to contracts for severable services not exceeding one year in length that are incrementally funded, using funds available as of the date that the funds are obligated or that funds are available from multiple fiscal years and Congress has otherwise authorized incremental funding. Accordingly, a new clause at 2452.232–72, Limitation of Government's obligation,'' also would be added.

In subpart 2432.9, ''Prompt Payment,'' 2432.903, ''Policy,'' would be revised to correct the reference to FAR 32.903(a). Also, 2432.906 would be revised to specifically designate the head of the contracting activity as the agency head for the purposes of making the determination required by FAR 32.906 to make invoice payments earlier than 7 days prior to the due dates specified in the contract.

In section 2432.908, ''Contract clauses,'' a new paragraph (c) would be added, following FAR 32.908(c), to prescribe the use of a new clause in 2452.232–73, ''Constructive Acceptance Period,'' in solicitations and contracts when the contracting officer has determined that an acceptance period longer than the 7 days provided for in FAR 52.232–25, ''Prompt Payment,'' is needed.

In part 2437, ''Service Contracting,'' under subpart 2437.1, ''Service Contracts—General,'' in 2437.110, ''Solicitation provisions and contract clauses,'' paragraph (d) is removed from this section and redesignated as 2401.106–70, ''Contract clause.'' Paragraphs (a), (c), and (e) are redesignated (e)(1), (e)(2), and (e)(3), respectively, to better correspond to FAR 37.110(e). Redesignated paragraph (e)(3) would be revised to include the version of this paragraph that had been authorized via deviation and to clarify that the access requirements of 2452.237–75, ''Access to HUD facilities,'' apply to contractors who require regular access to HUD facilities versus infrequent visitors to HUD facilities.

In part 2439, ''Acquisition of Information Technology,'' 2439.107, ''Contract clauses,'' paragraph (a) is proposed to be revised to include the version of this paragraph that had been authorized via deviation. The deviation was issued to implement requirements of Homeland Security Presidential Directive (HSPD) 12 regarding personal identity verification and access to information systems.

The title of part 2442 is proposed to be revised to read, ''Contract Administration and Audit Services,'' to correspond to the title of part 42 of the FAR. In part 2442, a new subpart 2442.3, ''Contract Administration Office Functions,'' would be added following FAR subpart 42.3. A new 2442.302–70, ''Contract clause,'' would be added to this subpart to prescribe the use of a new standard clause at 2452.242–72, ''Post-award Orientation Conference,'' in solicitations and contracts when the contractor will be required to attend a post-award orientation conference.

In part 2452, ''Solicitation Provisions and Contract Clauses,'' under subpart 2452.2, ''Texts of Provisions and Clauses,'' 2452.204–70, ''Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats),'' would be added to provide a standard contract clause that requires contractors to preserve, and upon the request of the contracting officer, provide to HUD any information generated or maintained under the contract that is related to matters concerning actual or anticipated litigation to which HUD is a party in accordance with the amendments to the Federal Rules of Civil Procedure concerning the discovery of electronically stored information.

Section 2452.215–70, ''Proposal content,'' would be amended to add a new Alternate III when the contracting officer determines that it is necessary to limit the size of the technical and management portion of offers submitted under requests for proposals using the tradeoff source selection method. The contracting officer must insert the page limit in the provision's alternate.

A new solicitation provision, 2452.215–71, ''Relative Importance of Technical Evaluation Factors to Cost or Price,'' would be added to provide a standard provision for use in solicitations using the tradeoff source selection method. The provision notifies offerors of the relative weight of the technical evaluation factors to cost or price when evaluating offers for contract award. The contracting officer selects the relative weighting to be used.

A new solicitation provision in 2452.215–72, ''Evaluation of Small Business Participation,'' would be added to provide factors for use in evaluating proposed small business participation in offers for contracts requiring the use of FAR 52.219–9, Small Business Subcontracting Plan, to be awarded using the tradeoff source selection process.

Section 2452.216–76, ''Minimum and Maximum Quantities or Amounts for Order,'' would be revised to remove the reference to definite-quantity contracts, since the use of minimum and maximum quantities does not apply to those contracts and the tables, which had permitted inserting multiple minimums and maximums (e.g., for separate option periods), and remove the alternate. Instead, a single minimum and maximum would be inserted. In accordance with FAR 16.502, definite-quantity contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled by the Government at designated locations upon order. The Government orders the entire quantity established in the contract. Therefore, the use of minimum and maximum quantities is not applicable to definite-quantity contracts.

A new clause at 2452.216–79, ''Estimated Cost (No Fee),'' would be added to set forth the total estimated cost in cost-reimbursement type contracts that do not provide for any fee. The clause would also provide the level of funding if the contract is incrementally funded.

A new clause at 2452.216–80, ''Estimated Cost and Fixed-Fee,'' would be added to set forth the total estimated cost and fixed-fee in cost-plus-fixed fee type contracts. The clause would also provide the level of funding and the pro-rated amount of fixed-fee if the contract is incrementally funded.

New 2452.219–71, ''Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III to FAR 52.219–18,'' and 2452.219–72, ''Section 8(a) direct awards (deviation),'' would be added to include clauses to implement HUD's Partnership Agreement with the SBA under which the SBA delegated to HUD's SPE its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Section 8(a) of the Small

Business Act (15 U.S.C. 637(a)) established a program that authorizes the SBA to enter into all types of contracts with other federal agencies and let subcontracts for performing those contracts go to firms eligible for participation in the 8(a) Program. The SBA's subcontractors are referred to as ''8(a) contractors.''

A new 2452.219–73, ''Incorporation of Subcontracting Plan,'' would add a standard clause for use when incorporating an approved subcontracting plan into a contract by reference, to conform to HUD practice.

A new 2452.219–74, ''Small Business Subcontracting Goals,'' is proposed. This section would add a provision for use in solicitations for contracts that are required to include the FAR clauses at 52.219–8, ''Utilization of Small Business Concerns,'' and at 52.219–9, ''Small Business Subcontracting Plan.'' The provision provides offerors with the HUD's small business subcontracting goals.

A new 2452.227–70, ''Government Information,'' would add a clause to provide direction to contractors on the maintenance and protection of Federal Government information provided to, or obtained by, them for the purpose of performing the contract. Such direction is intended to ensure the protection and retrieval of Government information, when needed.

Sections 2452.232–70, ''Payment Schedule and Invoice Submission (Fixed-Price),'' and 2452.232–71, ''Voucher Submission (Cost-Reimbursement),'' are proposed to be revised to require contractors to submit copies of all invoices and vouchers to the contracting officer. As currently written, the two clauses provide contracting officers with the option of requiring contractors to provide them with copies of invoices and vouchers for payment. The revisions will better ensure that contracting offices and files contain a complete invoicing history. In addition, to better ensure that the contract closeout process is properly and promptly initiated, 2452.232–70 and 2452.232–71 are revised to require the contracting officer's certification of the final invoice or completion voucher before final payment may be made. Section 2452.232–71 would also be revised to require its use in time-and-materials and labor-hour contracts and to require contractors to aggregate vouchered costs under such contracts by individual tasks or jobs. A new 2452.232–72, ''Limitation of Federal Government's obligation,'' would add a clause to limit the Federal Government's obligation under incrementally funded fixed-price contracts (see new subpart 2432.7). In such cases, the clause: Sets forth the authority and obligations of the Government and contractor regarding work under the incrementally funded line items of the contract; requires the contractor to notify the Government, within a period specified by the contracting officer, when work under such line items has incurred 85 percent of the funds allotted to them; provides for termination of such line items if not fully funded; provides for an equitable adjustment in the contract price and/or performance schedule if the contractor incurs additional costs or is delayed in the performance of the work solely by reason of the failure of the Government to allot additional funds in amounts sufficient for timely performance of the incrementally funded line items; and permits the Government to allot additional funds for the performance of the incrementally funded line items at any time prior to termination.

A new 2452.232–73, ''Constructive acceptance period,'' would add a clause to provide for an acceptance period longer than the 7 days provided for in FAR 52.232–25, ''Prompt Payment,'' when the contracting officer determines that a longer period is necessary.

Section 2452.237–72, ''Coordination of data collection activities,'' would be redesignated as 2452.201–70. The clause and its prescription are more appropriately located in HUDAR subpart 2401.1.

In 2452.237–73, ''Conduct of work and technical guidance,'' the introductory sentence would be revised to correct the prescription citation and to remove the name of the Government Technical Representative (GTR) from the clause. The contracting officer will provide the name and contact information for the GTR to the contractor separately.

Section 2452.237–75, ''Clearance of contractor personnel,'' would be revised to formally incorporate the version of the clause entitled, ''Access to HUD Facilities,'' which had been authorized via deviation, into the HUDAR. The clause has been revised to implement the personal identity verification and other requirements of Homeland Security Presidential Directive (HSPD) 12, as described in the clause.

Section 2452.237–77, ''Observance of Legal Holidays and Administrative Leave,'' is revised to correct the prescription citation and revise the clause title to read, ''Temporary Closure of HUD Facilities,'' which more accurately reflects its contents and purpose; namely, providing direction to contractors regarding their access to HUD facilities during temporary closures of the facilities (e.g., for holidays).

Section 2452.239–70, ''Background investigations for sensitive automated systems/applications,'' would be revised to formally incorporate the version of the clause entitled ''Access to HUD Systems,'' which had been authorized via deviation, in the HUDAR. The clause implements the personal identity verification and other requirements of Homeland Security Presidential Directive (HSPD) 12, as described in the clause. Also, definitions are added in a new paragraph (a).

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0091. The information collection requirements for the HUDAR are currently approved by OMB under control number 2535–0091. In accordance with the Paperwork Reduction Act, an agency 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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. This proposed rule makes technical changes to existing contracting procedures and does not make any major changes that would significantly impact businesses. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed 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 proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

48 CFR Part 2401

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2402

Government procurement.

48 CFR Part 2403

Conflict of interests, Government procurement.

48 CFR Part 2404

Government procurement.

48 CFR Parts 2406–2409

Government procurement.

48 CFR Parts 2415–2417

Government procurement.

48 CFR Part 2419

Government procurement, Small business.

48 CFR Part 2426

Colleges and universities, Government procurement, Minority businesses.

48 CFR Part 2427

Government procurement, Inventions and patents.

48 CFR Part 2428

Government procurement, Surety bonds.

48 CFR Part 2432

Government procurement.

48 CFR Part 2437

Government procurement.

48 CFR Part 2439

Computer technology, Government procurement.

48 CFR Part 2442

Government procurement.

48 CFR Part 2452

Government procurement.

For the reasons discussed in the preamble, HUD proposes to amend 48 CFR chapter 24 as follows:

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2401.1—Purpose, Authority, Issuance

2. Add 2401.106–70 to read as follows:

2401.106–70 Contract clause.

The contracting officer shall insert the clause at 2452.201–70, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

Subpart 2401.4—Deviations From the FAR

3. Revise 2401.403 to read as follows:

2401.403 Individual deviations.

The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

4. Revise 2401.404 to read as follows:

2401.404 Class deviations.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

5. Add 2401.470 to read as follows:

2401.470 Deviations from the HUDAR.

The Senior Procurement Executive is authorized to approve deviations from the HUDAR.

6. Add 2401.471 to read as follows:

2401.471 Requests for deviations—FAR and HUDAR.

(a) Requests for deviations from the FAR or HUDAR shall be submitted in writing to the Chief Procurement Officer.

(b) Each request for authorization of a deviation from the FAR or HUDAR shall:

(1) Identify the deviation as individual or class;

(2) Identify the FAR or the HUDAR requirement from which a deviation is sought;

(3) Fully describe the deviation, its intended effect, and the circumstances in which it will be used;

(4) Explain why a deviation is required and include pertinent background and supporting information;

(5) State whether the deviation has been requested previously and if so, the circumstances and result of the previous request; and

(6) Identify the contractor(s) and the contract(s) (including dollar values) that would be affected.

(c) At his or her discretion, the Chief Procurement Officer will consider requests for deviations on an expedited basis and, in urgent situations, may authorize deviations via telephone or electronic mail. Such authorizations will be confirmed in writing.

(d) The contracting officer shall include a copy of each authorized deviation in the contract file(s) to which it pertains.

Subpart 2401.6—Career Development, Contracting Authority and Responsibilities

7. In 2401.602–3:

a. Revise paragraphs (b)(1) and (3); and

b. Remove paragraph (c)(7).

The revision reads as follows:

2401.602–3 Ratification of unauthorized commitments.

(b)(1) Requests for ratification of unauthorized commitments shall be submitted in writing through the contracting officer to the ratification approval officials identified in paragraph (b)(3) of this section. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign the request for ratification.

* * * * *

(3) In accordance with FAR 1.602–3(b)(3), the Senior Procurement

Executive may delegate the authority to approve ratifications of individual unauthorized commitments down to, but not below, the level of an Assistant Chief Procurement Officer.

* * * * *

PART 2402—DEFINITIONS OF WORDS AND TERMS

8. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2402.1—Definitions

9. In 2402.101, add in alphabetical order a definition of ''*Contracting Activity,*'' and revise the definitions of ''*Head of the Contracting Activity*'' and ''*Legal Counsel*'' to read as follows:

2402.101 Definitions.

* * * * *

Contracting activity means the Office of the Chief Procurement Officer.

* * * * *

Head of the contracting activity (HCA) means the Chief Procurement Officer. As permitted by the FAR and the HUD Acquisition Regulation, the Chief Procurement Officer, acting within his or her authority as the Senior Procurement Executive, may delegate HCA authority for specific actions or classes of actions down to, but not below, the level of the Assistant Chief Procurement Officers. Delegated HCA authority may not be further redelegated.

Legal counsel means HUD's Office of General Counsel and its field-based components.

* * * * *

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

10. The authority citation for part 2403 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart 2403.4—Contingent Fees

11. Revise 2403.405(b) to read as follows:

2403.405 Misrepresentations or violations of the covenant against contingent fees.

* * * * *

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the HCA shall review the facts and, if appropriate, take or direct one or more of the actions set forth at FAR 3.405(b). The HCA shall refer suspected fraudulent or criminal matters to HUD's Office of the Inspector General for possible referral to the Department of Justice.

PART 2404—ADMINISTRATIVE MATTERS

12. The authority citation for part 2404 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

13. Add subpart 2404.7 to read as follows:

Subpart 2404.7—Contractor Records Retention

Sec.
2404.7001 Contract clause

2404.7001 Contract clause.

The contracting officer shall insert the clause at 2452.204–72, Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats), in all solicitations and contracts exceeding the simplified acquisition threshold. The contracting officer shall use the basic clause with its Alternate I in cost-reimbursement type contracts. The contracting officer shall use the basic clause with its Alternate II in labor-hour and time-and-materials contracts.

PART 2406—COMPETITION REQUIREMENTS

14. The authority citation for part 2406 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

Subpart 2406.3—Other Than Full and Open Competition

15. Add 2406.302–2 to read as follows:

2406.302–2 Unusual and compelling urgency.

(d)(1)(ii) The HCA is the agency head's designee for the purposes of FAR 6.302–2(d)(1)(ii).

2406.304–70 [Removed]

16. Remove 2406.304–70.

Subpart 2406.5—Competition Advocates

17. Revise 2406.501 to read as follows:

2406.501 Requirement.

The Senior Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Departmental competition advocate.

PART 2407—ACQUISITION PLANNING

18. The authority citation for part 2404 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart 2407.1—Acquisition Plans

19. Revise 2407.102 to read as follows:

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures that meet the criteria contained in FAR subpart 7.1 for acquisition planning and acquisition plan content.

PART 2409—CONTRACTOR QUALIFICATIONS

20. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

21. Add subpart 2409.4 to read as follows:

Subpart 2409.4—Debarment, Suspension, and Ineligibility

Sec.
2409.405 Effect of listing.
2409.407–1 General.
2409.470 HUD regulations on debarment, suspension, and ineligibility.
2409.405 Effect of listing.

(3) The Senior Procurement Executive is the agency head's designee under FAR 9.405(d)(3).

2409.407–1 General.

(d) The Senior Procurement Executive is the agency head's designee under FAR 9.407–1(d).

2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424.

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

22. Add 2409.503 to read as follows:

2409.503 Waiver.

The Senior Procurement executive is the agency head's designee under FAR 9.503.

Subpart 2409.70—[Amended]

23. Remove subpart 2409.70.

PART 2415—CONTRACTING BY NEGOTIATION

24. The authority citation for part 2415 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

25. Revise the heading for subpart 2415.2 to read as set forth above.

26. Add 2415.203 to read as follows:

2415.203 Requests for proposals.

(a)(3) The contracting officer may limit the size of the technical and management portion of offers submitted in response to a request for proposals when the contracting officer determines that it is in the Government's best interest to do so.

27. Revise 2415.204 to read as follows:

2415.204 Contract format.

(e) The HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

28. Revise 2415.209 to read as follows:

2415.209 Solicitation provisions and contract clauses.

(a)(1) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the tradeoff selection process (see FAR 15.101–1) expected to exceed the simplified acquisition limit. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete, revise, or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provision may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest-priced technically acceptable source selection process, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, HUD systems or applications (see the clause at 2452.239–70), the provision shall be used with its Alternate II. When the contracting officer has determined that it is necessary to limit the size of the technical and management portion of offers submitted by offerors, the provision shall be used with its Alternate III. The contracting officer shall clearly identify in the provision any contents of the technical and management portion of offers that are excluded from the size limitation (e.g., proposed contractor staff resumes).

(2) The contracting officer shall insert the provision at 2452.215–71, Relative Importance of Technical Evaluation Factors to Cost or Price, in solicitations for contracts to be awarded using the tradeoff selection process (see FAR 15.101–1) expected to exceed the simplified acquisition limit.

Subpart 2415.3—Source Selection

29. Revise 2415.303 to read as follows:

2415.303 Responsibilities.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 15.303(a).

(b)(1) The technical evaluation requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). The TEP may consist of any number of members as appropriate to the acquisition, with one member serving as the chairperson. As needed, the TEP may include advisors and committees to focus on specific technical areas or concerns. The TEP is responsible for fully documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

30. Revise 2415.304 to read as follows:

2415.304 Evaluation factors and significant subfactors.

(c)(3)(i) The extent of participation of small businesses in performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor, shall be addressed in the source selection for contracts to be awarded using the tradeoff source selection process (see FAR 15.101–1) that require the use of the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(d) The solicitation shall state the basis for the source selection decision as either the ''lowest price technically acceptable'' (LPTA) process or the ''tradeoff'' process (as defined at FAR subpart 15.1).

31. Revise 2415.305(a)(3) to read as follows:

2415.305 Proposal evaluation.

(a) * * *

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the tradeoff process, predetermined threshold levels of technical acceptability for proposals shall not be employed. A technical evaluation report, which complies with FAR 15.305(a)(3), shall be prepared and signed by the technical evaluators, furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

32. Add 2415.370 to read as follows:

2415.370 Solicitation provision.

The contracting officer shall insert the provision at 2452.215–72, Evaluation of Small Business Participation, in solicitations for contracts that require the use of the FAR clause in 52.219–9, ''Small Business Subcontracting Plan,'' that will be awarded using the tradeoff source selection process (see FAR 15.101–1).

PART 2416—TYPES OF CONTRACTS

33. The authority citation for part 2416 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

34. Add subpart 2416.3 to read as follows:

Subpart 2416.3—Cost-Reimbursement Contracts

Sec.
2416.307 Contract clauses.

2416.307 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.216–79, Estimated Cost (No Fee), in all cost-reimbursement (no fee) type solicitations and contracts.

(b) The contracting officer shall insert the clause at 2452.216–80, Estimated Cost and Fixed-Fee, in all cost-plus-fixed fee type solicitations and contracts.

Subpart 2416.5—Indefinite-Delivery Contracts

35. Revise 2416.505 to read as follows:

2416.505 Ordering.

(a) The contracting officer shall be the ordering official for all task orders except as provided for herein. The contracting officer may designate an ordering official when orders are to be placed on a firm fixed-price basis, the prices of the specific services or supplies to be provided under the order are set forth in the contract, and there is no negotiation of order terms. The contracting officer shall not designate ordering officials:

(1) For contracts for services where prices are not tied to delivery of a completed service;

(2) For any contracts where discounts need to be negotiated; or

(3) In any other circumstances where adjustment of contract price or any other terms and conditions is necessary.

(b)(6) The Departmental competition advocate also serves as the Departmental task and delivery order ombudsman in accordance with FAR 16.505(b)(6). In addition to the duties set forth at FAR 16.505(b)(6), the ombudsman shall recommend any corrective action regarding affording fair opportunity to contractors to compete for orders to the responsible contracting officer.

36. In 2416.506–70, revise paragraph (b) to read as follows:

2416.506–70 Solicitation provisions and contract clauses.

* * * * *

(b) *Minimum and maximum quantities or amounts for order.* The contracting officer shall insert a clause substantially the same as 2452.216–76, Minimum and Maximum Quantities or Amounts for Order, in all indefinite-quantity and requirements solicitations and contracts. When the clause is used for requirements solicitations and contracts, the contracting officer may either delete paragraph (a) or insert ''none'' for the minimum quantity or amount.

* * * * *

PART 2417—SPECIAL CONTRACTING METHODS

37. The authority citation for part 2417 continues to read as follows:

Authority: 31 U.S.C. 1535; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2417.2—Options

38. Revise section 2417.204 to read as follows:

2417.204 Contracts.

(e)(1) The Senior Procurement Executive (SPE) is authorized to approve contract periods for other than information technology contracts that exceed the 5-year limit set forth at FAR 17.204(e) that are not otherwise limited by statute (e.g., the Service Contract Act). Except as provided for in paragraphs (e)(2) and (4) herein, the SPE shall approve any contract period that will exceed 5 years, including all option periods, prior to the award of the basic contract.

(2) With regard to HUD indefinite-delivery contracts, the ''contract period'' requiring the SPE's prior approval in paragraph (e)(1) shall mean the ordering period of a contract. Unless otherwise specified within the contract, the 5-year limit shall not apply to the period that any task or delivery order issued within the contract's ordering period extends beyond the final end date of the contract's ordering period, regardless of whether the performance period of the order causes the total period of the contract to exceed 5 years. The issuance of any such task or delivery order does not require the SPE's approval. Task or delivery orders with end dates extending beyond the ordering period of the contract may not exceed the final delivery date that the contracting officer has stated in the applicable indefinite-delivery FAR clause included in the contract (i.e., 52.216–20, ''Definite Quantity,'' paragraph (d); 52.216–21, ''Requirements,'' paragraph (f); or 52.216–22, ''Indefinite Quantity,'' paragraph (d)).

(3) The SPE's authority described in paragraphs (e)(1) and (2) shall not be used as the basis to retroactively increase or extend the period of any existing contract.

(4) The SPE is not required to approve any option properly exercised pursuant to the FAR clause at 52.217–8, ''Option to Extend Services,'' that extends the contract period beyond 5 years; provided that the total length of all options exercised pursuant to FAR clause 52.217–8 may not exceed 6 months; and provided that exercise of any such options shall be in accordance with FAR 37.111. Any proposed extension of a contract beyond the 6-month maximum permitted by FAR 52.217–8 shall be considered a new requirement and shall be subject to the competition requirements of FAR part 6.

PART 2419—SMALL BUSINESS PROGRAMS

39. The authority citation for part 2419 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2419.2—Policies

40. In 2419.201, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and revise newly designated paragraph (e)(1), to read as follows:

2419.201 General policy.

(d) The Director of HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the administration of the HUD small business program and for performing all functions and duties prescribed in FAR 19.201(d). This includes Department-wide responsibility for developing, implementing, executing, and managing these programs; providing advice on these programs; and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged, and women-owned small business; HUBZone small business; veteran-owned small business; and service-disabled veteran-owned small business concerns.

(e) The Director of OSDBU shall designate small business specialists who shall advise and assist HUD's contracting activity and small business concerns as described in paragraph (d) on all matters related to small business participation in HUD acquisitions. Small business specialists shall perform the following functions:

(1) Maintain a program designed to locate capable small-business sources as referenced in 2419.201(d) for current and future procurements;

* * * * *

Subpart 2419.5—Set-Asides for Small Business

2419.503 [Removed and Reserved]

41. Remove and reserve 2419.503.

Subpart 2419.7—The Small Business Subcontracting Program

42. Revise 2419.708 to read as follows:

2419.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall insert clause at 2452–219–73, Incorporation of Subcontracting Plan, in solicitations and contracts when a subcontracting plan is required. The contracting officer shall insert the provision at 2452.219–74, Small Business Subcontracting Goals, in solicitations for contracts that are required to include the FAR clauses at 52.219–8, ''Utilization of Small Business Concerns,'' and 52.219–9, ''Small Business Subcontracting Plan.''

(d) The contracting officer shall insert the provision at 2452.219–70, Small Business Subcontracting Plan Compliance, in solicitations for contracts that are expected to exceed the dollar thresholds set forth at FAR 19.702 and are required to include the clause at FAR 52.219–9, Small Business Subcontracting Plan.

Subpart 2419.8—Contracting With the Small Business Administration (the 8(a) Program)

43. Revise 2419.800 to read as follows:

2419.800 General.

(f) By Partnership Agreement between the SBA and HUD, the SBA delegated to HUD's Senior Procurement Executive its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to

eligible 8(a) Program participants. Under the Partnership Agreement, a contract may be awarded directly to an 8(a) firm on either a sole-source or competitive basis. The SBA reserves the right to withdraw the delegation issued as a result of the Partnership Agreement; however, any such withdrawal shall have no effect on contracts already awarded under the Partnership Agreement.

44. Add 2419.803 to read as follows:

2419.803 Selecting acquisitions for the 8(a) Program.

45. Add 2419.803–70 to read as follows:

2419.803–70 Procedures for simplified acquisitions under the partnership agreement.

(a) HUD contracting officers may use the procedures of FAR part 13 and HUDAR part 2413 to make purchases not exceeding the simplified acquisition threshold from 8(a) Participants. The following apply to such acquisitions:

(1) Neither offering letters to, nor acceptance letters from the SBA are required.

(2) The contracting officer will use the Central Contractor Registration (CCR) database on the Internet (*http://www.ccr.gov*) to establish that the selected 8(a) firm is a current program participant.

(b) Once an 8(a) contractor has been identified, the contracting officer will establish the price with the selected 8(a) contractor.

(c) For acquisitions requiring an award document (e.g., purchase order), the contracting officer will:

(1) Prepare and issue an award document in accordance with the applicable provisions of FAR part 13 and HUDAR part 2413. The applicable clauses prescribed in 2419.811–3 shall be included in the award document. The contracting officer will issue the award document directly to the 8(a) firm; and

(2) Forward to the SBA District Office serving the 8(a) firm a copy of the award document within 5 days after the award is issued.

46. Add 2419.804 to read as follows:

2419.804 Evaluation, offering, and acceptance.

47. Add 2419.804–2 to read as follows:

2419.804–2 Agency offering.

(d) When applicable, the notification must identify that the offering is in accordance with the Partnership Agreement identified in 2419.800.

48. Add 2419.804–3 to read as follows:

2419.804–3 SBA acceptance.

49. Add 2419.804–370 to read as follows:

2419.804–370 SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold.

(a) The following procedures apply to the acceptance of requirements covered by the Partnership Agreement for acquisitions that exceed the simplified acquisition threshold.

(1) The SBA's decision whether to accept the requirement will be transmitted to HUD in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and HUD may grant, an extension beyond the 5-day limit.

(3) SBA's acceptance letters should be faxed or emailed to HUD.

(4) If HUD has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the contracting officer may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of SBA's acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

50. Add 2419.805 to read as follows:

2419.805 Competitive 8(a).

51. Add 2419.805–2 to read as follows:

2419.805–2 Procedures.

(b)(3) For requirements exceeding the simplified acquisition threshold that are processed under the Partnership Agreement cited in 2419.800, the contracting officer shall submit the name, address, and telephone number of the low bidder (sealed bid requirements) or the apparent successful offeror (negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

52. Add 2419.806 to read as follows:

2419.806 Pricing the 8(a) contract.

(a) For contracts awarded under the Partnership Agreement cited in 2419.800, when required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor.

53. Add 2419.808 to read as follows:

2419.808 Contract negotiation.

54. Add 2419.808–1 to read as follows:

2419.808–1 Sole source.

(a) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the 8(a) contractor is responsible for negotiating with HUD within the time frame established by the contracting officer. If the 8(a) contractor does not negotiate within the established time frame, and HUD cannot allow additional time, HUD, after notification and approval by SBA, may proceed with the acquisition from other sources.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, HUD is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

55. Add 2419.811 to read as follows:

2419.811 Preparing the contracts.

56. Add 2419.811–1 to read as follows:

2419.811–1 Sole source.

(e) If the award is to be made under the Partnership Agreement cited in 2419.800, the contracting officer shall prepare the instrument to be awarded to the 8(a) firm in accordance with the normal HUD procedures for non-8(a) contracts, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall include appropriate contract clauses, as necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of the Partnership Agreement cited in 2419.800.

(3) The contracting officer shall include SBA's requirement number on the contract unless the acquisition does not exceed the simplified acquisition threshold.

(4) A single award document shall be used between HUD and the 8(a) contractor. As such, no signature on the part of the SBA is required; a single signature by the HUD contracting officer shall suffice. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the ''awarded to'' or ''contractor name'' block on the appropriate forms.

57. Add 2419.811–2 to read as follows:

2419.811–2 Competitive.

(a) If the award is to be made under the Partnership Agreement cited in 2419.800, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole-source contracts as set forth in 2419.811–1.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the process for obtaining signatures shall be as specified in 2419.811–1(e).

58. Add 2419.811–3 to read as follows:

2419.811–3 Contract clauses.

(d)(3) The contracting officer shall use the clause at FAR 52.219–18, ''Notification of Competition Limited to Eligible 8(a) Concerns,'' with the clause at 2452.219–71, ''Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III to FAR 52.219–18,'' for competitive 8(a) acquisitions processed under the Partnership Agreement cited in 2419.800.

(f) In contracts and purchase orders awarded under the Partnership Agreement cited at 2419.800, the contracting officer shall substitute the clause at 2452.219–72, Section 8(a) Direct Award, for the clauses at FAR 52.219–11, ''Special 8(a) Contract Conditions;'' FAR 52.219–12, ''Special 8(a) Subcontract Conditions;'' and FAR 52.219–17, ''Section 8(a) Award.''

59. Add 2419.812 to read as follows:

2419.812 Contract administration.

(e) Awards under the Partnership Agreement cited in 2419.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at 2452.219–71, Section 8(a) Direct Award (Deviation), which requires the 8(a) contractor to notify the SBA and the HUD contracting officer when ownership of the firm is being transferred.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

60. The authority citation for part 2426 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2426.70—Minority Business Enterprises

2426.7001 [Removed and Reserved]

61. Remove and reserve 2426.7001.

2426.7002 [Removed and Reserved]

62. Remove and reserve 2426.7002.

PART 2427—PATENTS, DATA, AND COPYRIGHTS

63. The authority citation for part 2427 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2427.3—Patent Rights Under Government Contracts

64. Revise the section heading of 2427.305–2 to read as follows:

2427.305–2 Administration by the Government.

* * * * *

65. Add subpart 2427.4 to read as follows:

Subpart 2427.4—Rights in Data and Copyrights

Sec.
2427.470 Contract clause.

2427.470 Contract clause.

The contracting officer shall insert the clause 2452.227–70, Government Information, in all solicitations and contracts when the Government will provide information to the contractor, and/or when the contractor will obtain information on the Government's behalf to perform work required under the contract. The contracting officer shall describe all information to be provided to the contractor in paragraph (d)(1) of the clause.

PART 2428—BONDS AND INSURANCE

66. The authority citation for part 2428 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2428.1—Bonds

67. Revise the section heading of section 2428.106 to read as follows:

2428.106 Administration.

* * * * *

PART 2432—CONTRACT FINANCING

68. The authority citation for part 2432 is revised to read as follows:

Authority: 31 U.S.C. 3901–3905; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

69. Add 2432.006 to read as follows:

2432.006 Reduction or suspension of contract payments upon finding of fraud.

70. Add 2432.006–1 to read as follows:

2432.006–1 General.

The Senior Procurement Executive is the agency head for the purposes of FAR 32.006–1. In accordance with FAR 32.006–1(c), the Senior Procurement Executive may delegate the remedy coordination official duties to personnel in the Office of the Chief Procurement Officer at or above the Level IV of the Executive Service.

71. Add 2432.006–2 to read as follows:

2432.006–2 Definitions.

''Remedy coordination official'' means the Senior Procurement Executive.

72. Add 2432.006–3 to read as follows:

2432.006–3 Responsibilities.

(b) HUD personnel shall report immediately in writing when a contractor's request for advance, partial, or progress payments is suspected to be fraudulent. The report shall be made to the contracting officer and the remedy coordination official. The report shall describe the events, acts, and conditions that indicate the apparent or suspected violation and include all pertinent documents. The remedy coordination official will consult with, and refer cases to, the Office of the Inspector General for investigation, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Senior Procurement Executive.

73. Add 2432.006–4 to read as follows:

2432.006–4 Procedures.

The Senior Procurement Executive is the agency head for the purposes of FAR 32.006–4.

74. Add 2432.007 to read as follows:

2432.007 Contract financing payments.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 32.007(a).

Subpart 2432.7—Contract Funding

75. Add 2432.703–1 to read as follows:

2432.703–1 General.

(b)(1) Except as described herein, a fixed-price contract may be funded incrementally only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract or option;

(ii) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(iii) The contract uses funds available from multiple (2 or more) fiscal years and Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

76. Add 2432.704 to read as follows:

2432.704 Limitation of cost or funds.

77. Add 2432.704–70 to read as follows:

2432.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 2452.232–72, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the affected contract line items (CLINs) or contract, as applicable; or

(3) Considering whether to allot additional funds; and

(i) The contractor is required by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate the affected CLINs or contract, as applicable, for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 2452.232–72, ''Limitation of Government's obligation,'' sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

78. Add 2432.705 to read as follows:

2432.705 Contract clauses.

79. Add 2432.705–70 to read as follows:

2432.705–70 Clause for limitation of Government's obligation.

The contracting officer shall insert the clause at 2452.232–72, ''Limitation of Government's Obligation,'' in solicitations and resultant incrementally funded fixed-price contracts as authorized by 2432.703–1. The contracting officer shall insert the information required in the table in paragraph (b) and the notification period in paragraph (c) of the clause.

Subpart 2432.9—Prompt Payment

80. Revise 2432.903 to read as follows:

2432.903 Policy.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.903(a).

81. Revise 2432.906 to read as follows:

2432.906 Making payments.

(a) *General.* The authority to make the determination prescribed in FAR 32.906(a) is delegated to the HCA. Before making this determination, the HCA shall consult with the appropriate payment office to ensure that procedures are in place to permit timely payment.

82. In 2432.908, revise paragraphs (c)(1) and (2) to read as follows:

2432.908 Contract clauses.

(c) * * *

(1) The contracting officer shall insert the clause at 2452.232–73, Constructive Acceptance Period, in solicitations and contracts when the contracting officer has determined that an acceptance period longer than the 7 days provided for in the FAR clause at 52.232–25, ''Prompt Payment,'' is needed.

(2) The contracting officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission, in all cost-reimbursement, time-and-materials, and labor-hour type solicitations and contracts. The contracting officer shall insert the billing frequency period agreed upon with the contractor (see also the FAR clause at 52.216–7, ''Allowable Cost and Payment'').

* * * * *

PART 2437—SERVICE CONTRACTING

83. The authority citation for part 2437 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2437.1—Service Contracts—General

84. Revise 2437.110 to read as follows:

2437.110 Solicitation provisions and contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.237–70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(2) The Contracting Officer shall insert the clause at 2452.237–73, Conduct of Work and Technical Guidance, in all solicitations contracts for services other than commercial services awarded pursuant to FAR part 12.

(3) The contracting officer shall insert the clause at 2452.237–75, Access to HUD Facilities, in all solicitations and contracts when contractor employees, including subcontractors and consultants, will be required to regularly work in or have access to any HUD facilities (as distinct from nongovernment employee visitors to government facilities).

(4) The Contracting Officer shall insert the clause at 2452.237–77, Temporary Closure of HUD Facilities, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

85. The authority citation for part 2439 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2439.1—General

86. Revise 2439.107(a) to read as follows:

2439.107 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.239–70, Access to HUD Systems, in solicitations and contracts when the contract will require contractor employees, including subcontractors and consultants, to have access to any HUD information system(s) as defined in the clause.

* * * * *

PART 2442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

87. The authority citation for part 2442 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 121(c); 42 U.S.C. 3535(d).

88. The heading for part 2442 is revised to read as set forth above.

89. Add subpart 2442.3 to read as follows:

Subpart 2442.3—Contract Administration Office Functions

Sec.

2442.302–70 Contract clause.

2442.302–70 Contract clause.

The contracting officer shall include clause 2452.242–72, Post-award Orientation Conference, in solicitations and contracts when the contractor will be required to attend a post-award orientation conference. The contracting officer shall indicate whether the contractor must attend the conference in person or via electronic communication.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

90. The authority citation for part 2452 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

91. Add 2452.204–70 to read as follows:

2452.204–70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).

As prescribed in 2404.7001, insert the following clause:

PRESERVATION OF, AND ACCESS TO, CONTRACT RECORDS (TANGIBLE AND ELECTRONICALLY STORED INFORMATION (ESI) FORMATS) (* * *)

(a) For the purposes of this clause—

''Contract records'' means information created or maintained by the contractor in the performance of the contract. Contract records include documents required to be retained in accordance with FAR 4.703 and other information generated or maintained by the contractor that is pertinent to the contract and its performance including, but not limited to: email and attachments, formal and informal correspondence, calendars, notes, reports, memoranda, spreadsheets, tables, telephone logs, forms, survey, books, papers, photographs, drawings, machine-readable materials, and data. Contract records may be maintained as electronically stored information or as tangible materials. Contract records may exist in either final or any interim version (*e.g.,* drafts that have been circulated for official purposes and contain unique information, such as notes, edits, comments, or highlighting). Contract records may be located or stored on the contractor's premises or at off-site locations.

''Electronically stored information (ESI)'' means any contract records that are stored on, or generated by, an electronic device, or contained in electronically accessible media, either owned by the contractor, subcontractor(s), or employees of the contractor or subcontractor(s) regardless of the physical location of the device or media (*e.g.,* offsite servers or data storage).

''ESI devices and media'' include, but are not be limited to:

(i) Computers (mainframe, desktop, and laptop);

(ii) Network servers, including shared and personal drives;

(iii) Individual email accounts of the contractor's principals, officers, and employees, including all folders contained in each email account such as ''inbox,'' ''outbox,'' ''drafts,'' ''sent,'' ''trash,'' ''archive,'' and any other folders;

(iv) Personal data assistants (PDAs);

(v) External data storage devices including portable devices (*e.g.,* flash drive); and

(vi) Data storage media (magnetic, *e.g.,* tape; optical, *e.g.,* compact disc, microfilm, etc.).

''Tangible materials'' means contract records that exist in a physical (*i.e.,* non-electronic) state.

(b) If during the period of performance of this contract, HUD becomes, or anticipates becoming, a party to any litigation concerning matters related to records maintained or generated by the Contractor in the performance of this contract, the Contracting Officer may provide the contractor with a written (either hardcopy or email) preservation hold notice and certification of compliance with the preservation hold notice. Upon receipt of the hold notice, the Contractor shall immediately take the following actions—

(1) Discontinue any alteration, overwriting, deletion, or destruction of all tangible materials and ESI.

(2) Preserve tangible materials and ESI. The contractor shall preserve ESI in its ''native'' form to preserve metadata (*i.e.,* creation and modification history of a document).

(3) Identify all individuals who possess or may possess tangible materials and ESI related to this matter, including contractor employees, subcontractors, and subcontractor employees. The contractor shall provide the names of all such individuals via email to the HUD official indicated in the notice.

(4) Document in writing the contractor's efforts to preserve tangible materials and ESI. It may be useful to maintain a log documenting preservation efforts.

(5) Complete the certification of compliance with the preservation hold notice upon receipt and return it to the identified contact person; and

(6) Upon the request of the Contracting Officer, provide the Contracting Officer or other HUD official designated by the Contracting Officer with any of the information described in this clause. The contractor shall immediately confirm receipt of such request. The contractor shall describe in detail any records that the contractor knows or believes to be unavailable and provide a detailed explanation of why they are unavailable, and if known, their location.

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(2) The Contractor must assert its right to an adjustment under this clause within ____[*Contracting Officer insert period; 30 days if no other period inserted*] from the date of receipt of the Contracting Officer's request made pursuant to paragraph (b)(6) of this clause. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a request submitted before final payment of the contract.

(3) Failure to agree to any adjustment shall be a dispute under the ''Disputes'' clause of this contract. However, nothing in this clause shall excuse the contractor from providing the records requested by the Contracting Officer.

(e) The Contractor shall include this clause in all subcontracts.

(End of clause)

Alternate I (* *).* For cost-reimbursement type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one of the following and modify the contract accordingly—

(i) Estimated cost;

(ii) Delivery or completion schedule, or both;

(ii) Amount of any fixed fee; or

(iii) Other affected terms.

Alternate II (* *).* For labor-hour or time-and-materials type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

(i) Ceiling price;

(ii) Hourly rates;

(iii) Delivery schedule; or

(iv) Other affected terms.

92. In 2452.215–70, add Alternate III immediately following Alternate II, to read as follows:

2452.215–70 Proposal content.

* * * * *

Alternate III (* * *). As prescribed in 2415.209(a), add the following paragraph (e) when the size of Part I, Technical and Management, offers will be limited:

(e) Size limit of Part I, Technical and Management.

(1) Offerors shall limit Part I, Technical and Management, of their initial offers to _____ [*Contracting Officer insert number*] pages, except for the information specifically exempted in paragraph (3). Offerors are cautioned that if Part I of their offers exceeds this limit, the Government will evaluate

only the information contained in the pages up through the permitted number. Pages beyond that limit will not be evaluated.

(2) A page shall consist of one side of a single sheet of 8½″ x 11″ paper, single spaced, using not smaller than 12 point type font, and having margins at the top, bottom, and sides of the page of no less than one inch in width.

(3) The following information is exempt from the limitation set forth in paragraph (1): [*Contracting Officer list exemptions or enter ''None''*].

(4) Offerors are encouraged to use recycled paper and to use both sides of the paper (see the FAR clause at 52.204–4).

93. Add 2452.215–71 to read as follows:

2452.215–71 Relative importance of technical evaluation factors to cost or price.

As prescribed in 2415.209(a)(2), insert the following provision:

RELATIVE IMPORTANCE OF TECHNICAL EVALUATION FACTORS TO COST OR PRICE (* * *)

For the purposes of evaluating offers and the selection of the contractor or contractors under this solicitation, the relative merit of the offeror's technical proposal as evaluated in accordance with the technical evaluation factors listed herein shall be considered [*Contracting Officer insert one of the following:* ''significantly more important than,'' ''approximately equal to,'' or ''significantly less important than''] cost or price. While the proposed cost or price will not be assigned a specific weight, it shall be considered a significant criterion in the overall evaluation of proposals.

94. Add 2452.215–72 to read as follows:

2452.215–72 Evaluation of small business participation.

As prescribed in 2415.370, insert the following provision:

EVALUATION OF SMALL BUSINESS PARTICIPATION (* * *)

(a) In addition to the technical and management evaluation factors set forth in this solicitation, the Government will evaluate the extent to which all offerors identify and commit to using small businesses in the performance of the contract, whether through joint ventures or teaming arrangements, or as subcontractors. The evaluation shall consider the following:

(1) The extent to which small businesses are specifically identified in proposals;

(2) The extent of commitment to use small businesses (for example, enforceable commitments will be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small businesses are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors (other than small businesses) in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small Business Concerns, and 52.219–9, Small Business Subcontracting Plan; and

(6) The extent of participation of small businesses in terms of the total value of the contract.

(b) Offerors that are required to submit a subcontracting plan pursuant to the clause at FAR 52.219–9 shall include the small businesses proposed as subcontractors for evaluation under this provision in their subcontracting plan.

(End of Provision)

95. Revise 2452.216–76 to read as follows:

2452.216–76 Minimum and maximum quantities or amounts for order.

As prescribed in 2416.506–70(b), insert the following clause:

MINIMUM AND MAXIMUM QUANTITIES OR AMOUNTS FOR ORDER (* * *)

(a) The minimum quantity or amount to be ordered under this contract shall not be less than [*contracting officer insert quantity or amount*].

(b) The maximum quantity or amount to be ordered under this contract shall not exceed [*contracting officer insert quantity or amount*].

(End of clause)

96. Add 2452.216–79 to read as follows:

2452.216–79 Estimated cost (no fee).

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST (NO FEE) (* * *)

(a) It is estimated that the total reimbursable cost to the Government for full performance of this contract will be $_____ [*Contracting Officer insert amount*].

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are $_____ [*Contracting Officer insert amount*] (see also the clause at FAR 52.232–22, ''Limitation of Funds'' herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232–20, Limitation of Cost, herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

(End of clause)

97. Add 2452.216–80 to read as follows:

2452.216–80 Estimated cost and fixed-fee.

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST AND FIXED–FEE (* * *)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $_____ [*Contracting Officer insert amount*], of which $_____ [*Contracting Officer insert amount*] represents the estimated reimbursable costs, and $_____ [*Contracting Officer insert amount*] represents the fixed fee.

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are $_____ [*Contracting Officer insert amount*], of which _____ [*Contracting Officer insert amount*] represents the limitation for reimbursable costs and $_____ [*Contracting Officer insert amount*] represents the prorated amount of the fixed fee (see also the clause at FAR 52.232–22, ''Limitation of Funds'' herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232–20, ''Limitation of Cost,'' herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

(End of clause)

98. Add 2452.219–71 to read as follows:

2452.219–71 Notification of competition limited to eligible 8(a) concerns—Alternate III to FAR 52.219–18.

As prescribed in 2419.811–3(d)(3), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS—ALTERNATE III TO FAR 5219–18 (* * *)

The following paragraph (c) replaces paragraph (c) of the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns:

(c) Any award resulting from this solicitation will be made directly by the HUD Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

99. Add 2452.219–72 to read as follows:

2452.219–72 Section 8(a) direct awards (Deviation).

As prescribed in 2419.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARD (* * *)

(a) This contract is issued as a direct award between the Department of Housing and Urban Development (HUD) and the 8(a) Contractor pursuant to a Partnership Agreement (Agreement) between the Small Business Administration (SBA) and HUD. The SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[*To be completed by Contracting Officer at time of award*].

(b) SBA is the prime contractor and _____ [*insert name of 8(a) contactor*] is the subcontractor under this contract.

Under the terms of the Agreement, HUD is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the HUD Contracting Officer shall give advance notice to the SBA before issuing a final notice terminating performance, either in whole or in part, under the contract. The HUD Contracting Officer shall also coordinate with SBA prior to processing any novation agreement. HUD may assign contract administration functions to a contract administration office.

(c) _____ [*insert name of 8(a) contractor*] agrees:

(1) To notify the HUD Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.

(2) To adhere to the requirements of FAR 52.219–14, ''Limitations on Subcontracting.''

(End of Clause)

100. Add 2452.219–73 to read as follows:

2452.219–73 Incorporation of subcontracting plan.

As prescribed in 2419.708(b), insert the following clause:

INCOPORATION OF SUBCONTRACTING PLAN (* * *)

The Contractor's approved subcontracting plan, dated _____ [*Contracting Officer insert date*] is hereby incorporated by reference and made a part of this contract.

(End of clause)

101. Add 2452.219–74 to read as follows:

2452.219–74 Small business subcontracting goals.

As prescribed in 2419.708(b), insert the following provision:

SMALL BUSINESS SUBCONTRACTING GOALS (* * *)

(a) This provision does not apply to offerors that are small businesses.

(b) The offeror's attention is directed to the FAR clause at 52.219–9, ''Small Business Subcontracting Plan,'' herein. HUD will evaluate proposed subcontracting plans using the Departmental small business subcontracting goals set forth in paragraph (c). Offerors that are unable to propose subcontracting that meets HUD's established goals must provide the rationale for their proposed level of subcontracting.

(c) HUD's subcontracting goals are as follows:

(i) Small Business —____% [*Contracting Officer insert HUD small business subcontracting goal percentage*]

(ii) The total Small Business goal shown in paragraph (i) contains the following subordinate goals [*Contracting Officer insert percentages*]:

(A) Small Disadvantaged Business—____%

(B) Women-Owned Small Business—____%

(C) Service-Disabled Veteran-Owned Small Business—____%

(D) HUBZone Small Business—____%

(End of Provision)

102. Add 2452.227–70 to read as follows:

2452.227–70 Government information.

As prescribed in 2427.470, use the following clause:

GOVERNMENT INFORMATION (* * *)

(a) *Definitions.* As used in this clause, ''Government information'' includes—

''Contractor-acquired information,'' which means information acquired or otherwise collected by the Contractor on behalf of the Government in the context of the Contractor's duties under the contract.

''Government-furnished information (GFI),'' which means information in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. GFI also includes contractor-acquired information if the contractor-acquired information is a deliverable under the contract and is for continued use under the contract. Otherwise, GFI does not include information that is created by the Contractor and delivered to the Government in accordance with the requirements of the work statement or specifications of the contract. The type, quantity, quality, and delivery requirements of such deliverable information are set forth elsewhere in the contract schedule.

(b) *Information Management and Information Security.*

(1) The Contractor shall manage, account for, and secure all Government information provided or acquired by the contractor. The Contractor shall be responsible for all Government information provided to its subcontractors. The Contractor agrees to include a requirement in each subcontract under this contract that flows down the protection from disclosure requirements.

(2) The Contractor's responsibility for Government information extends from the initial provision or acquisition and receipt of information, through stewardship, custody, and use until returned to, or otherwise disposed of, as directed by the Contracting Officer. This requirement applies to all Government information under the Contractor's accountability, stewardship, possession or control, including its subcontractors.

(c) *Use of Government information.* (1) The Contractor shall not use any information provided or acquired under this contract for any purpose other than in the performance of this contract.

(2) The Contractor shall not modify or alter the Government information, unless authorized in writing, in advance, by the Contracting Officer.

(d) *Government-furnished information.* (1) The Government shall deliver to the Contractor the information described below—

Description

Date to be Provided

[Contracting Officer insert]

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished information will be suitable for contract performance and will be delivered to the Contractor by the dates stated in paragraph (d)(1) of this clause.

(i) The Government does not warrant the validity or accuracy of the Government-furnished information unless otherwise noted.

(ii) In the event that information received by the Contractor is not in a condition suitable for its intended use, the Contractor shall immediately notify the Contracting Officer in writing. Upon receipt of the Contractor's notification, the Contracting Officer shall advise the Contractor on a course of action to remedy the problem.

(iii) If either the failure of the Government to provide information to the Contractor by the dates shown in this clause or the remedial action taken under this clause to correct defective information causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, the Contracting Officer shall consider an equitable adjustment to the contract. The Contractor shall provide to the Contracting Officer its written statement describing the general nature and amount of the equitable adjustment proposal within 30 days after the remedial action described in paragraph (ii) herein is completed, or within 30 days after the date upon which the Government failed to provide information, unless the Contracting Officer extends this period.

(3)(i) The Contracting Officer may, by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished information under this contract;

(B) Substitute other Government-furnished information for the information previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use the information.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Rights in information.* Government information is the property of the U.S. Government unless otherwise specifically identified. The specific rights in any other information acquired or created by the Contractor under this contract shall be as expressed in the ''*Rights in Data*'' clause contained in this contract.

(f) *Government access to information.* The Government shall have the right to access any Government information maintained by the contractor and any subcontractors. The Contractor shall provide the Contracting Officer, and other duly authorized

Government representatives, with access to all Government information, including access to the Contractor's facilities, as necessary, promptly upon written notification by the Contracting Officer. Such notification may be by electronic mail.

(g) *Contractor liability for Government information.* (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage, or destruction to the Government information furnished or acquired under this contract, except when the loss, theft, damage, or destruction is the result of the Contractor's failure to properly manage, account for, and safeguard the information in accordance with this clause.

(2) In the event of any loss, theft, damage, or destruction of Government information, the Contractor shall immediately take all reasonable actions necessary to protect the Government information from further loss, theft, damage, or destruction.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction of Government information.

(h) *Information alteration and disposal.* Except as otherwise provided for in this contract, the Contractor shall not alter, destroy, or otherwise dispose of any Government information unless expressly directed by the Contracting Officer to do so.

(i) *Return of Government information to the Government.* (1) The Government may require the Contractor to return Government Information to the Government at any time. Upon demand by the Contracting Officer or his/her representative, the Contractor shall return all Government information to the Government as directed by the Contracting Officer or other individual designated by the Contracting Officer.

(2) The Contractor's failure to return all information as directed, including directions regarding the time frames for delivery back to the Government and directions prescribing the form in which the data must be returned, shall be considered a breach of contract, and the Government shall have the right to physically remove the Government information from the Contractor, including removal of such information from the Contractor's physical premises and from any electronic media (e.g., Contractor's computer systems).

(3) When required to return Government information to the Government, the Contractor shall do so at no cost to the Government. The Government shall not be responsible for the cost of data format conversion and the cost of delivery, if any.

(4) The Contractor shall ensure that all Government information provided to subcontractors is returned to the Government.

(j) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished information.

(2) Delivery of Government-furnished information in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished information.

(4) Failure to correct or replace Government information for which the Government is responsible.

Alternate I. When the contracting officer determines that the failure to return Government information as provided for in paragraph (i) shall result in a monetary damage to the Government, the contracting officer shall include the following subparagraph (i)(5). The contracting officer shall consult the requiring activity to determine an amount or percentage that accurately reflects the damages to the Government.

(5) In the event of Contractor delay in returning the Government Information to the Government, for each calendar day late, the Contracting Officer has the discretion to deduct ____[*Contracting Officer insert dollar amount or percentage*] from the total value of the contract, and/or withhold payment from the Contractor

(k) *Subcontracts.* The Contractor shall ensure that all subcontracts under which Government information is provided to a subcontractor include the basic terms and conditions set forth in paragraphs (a), (b), (c), (f), and (h) of this clause in each subcontract. Subcontracts shall clearly describe the Government information provided to the subcontractor. The Contractor shall be responsible for all Government information provided to subcontractors.

(End of clause)

103. Revise 2452.232 to read as follows:

2452.232–70 Payment schedule and invoice submission (Fixed-price).

As prescribed in 2432.908(c)(1), insert the following clause in all fixed-price solicitations and contracts:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (* * *)

(a) *Payment Schedule.* Payment of the contract price (see Section B of the contract) will be made upon completion and acceptance of all work unless a partial payment schedule is included below [*Contracting Officer insert schedule information*]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1. 2. 3.			

[*Continue as necessary*]

(b) *Submission of Invoices.* (1) The Contractor shall submit invoices as follows: original to the payment office and one copy each to the Contracting Officer and a copy to the Government Technical Representative (GTR) identified in the contract. To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232–25, ''Prompt Payment.''

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (*e.g.,* block 14 of the Standard Form (SF) 26, block 21 of the SF–33, or block 25 of the SF–1449). The contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(c) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by other payment clauses or other supplemental information (e.g., contracts for commercial services) contained in this contract.

(d) *Final Invoice Payment.* The final invoice shall not be paid prior to certification by the Contracting Officer that all work has been completed and accepted.

(End of clause)

104. Revise 2452.232–71 to read as follows:

2452.232–71 Voucher submission.

As prescribed in 2432.908(c)(2), insert the following clause in all cost-reimbursement, time-and-materials, and labor-hour solicitations and contracts:

VOUCHER SUBMISSION (* * *)

(a) *Voucher Submission.* (1) The contractor shall submit, _____ [*Contracting Officer insert billing period, e.g., monthly*], an original and two copies of each voucher. In addition to the items required by the clause at FAR 52.232–25, *Prompt Payment,* the voucher shall show the elements of cost for the billing period and the cumulative costs to date. The Contractor shall submit all vouchers, except for the final voucher, as follows: original to the payment office and one copy each to the Contracting Officer and the Government Technical Representative (GTR) identified in the contract. The contractor shall submit all copies of the final voucher to the Contracting Officer.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or subsequent modification document (e.g., block 14 of the Standard Form (SF) 26, or block 21 of the SF–33). The contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information.* (1) The Contractor shall provide the payment office with all information required by other payment clauses contained in this contract.

(2) For time-and-materials and labor-hour contracts, the Contractor shall aggregate vouchered costs by the individual task for which the costs were incurred and clearly identify the task or job.

(c) *Final Payment.* The final payment shall not be made until the Contracting Officer has certified that the contractor has complied with all terms of the contract.

(End of clause)

105. Add section 2452.232–72 to read as follows:

2452.232–72 Limitation of Government's obligation.

As prescribed in 2432.705–70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (* * *)

(a) Funds are not available for full funding of all contract line items under this contract. The incrementally funded line items and their anticipated funding schedule are as follows:

Contract line item number	Total price	Amount of current funding	Anticipated date(s) of future funding

The contracting officer will revise this table as funds are allotted to the contract.

(b) For the incrementally funded line item(s) in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract for these contract line items. The Contractor is not authorized to continue work on the incrementally funded line item(s) beyond that point. The Government will in no event be obligated to reimburse the Contractor in excess of the amount allotted to the contract for the incrementally funded line item(s) regardless of anything to the contrary in the clause entitled ''*Termination for Convenience of the Government.*'' As used in this clause, the total amount payable by the Government in the event of termination for convenience of applicable line item(s) includes costs, profit, and estimated termination settlement costs for those line item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (a) of this clause, the Contractor will notify the Contracting Officer in writing at least __ [*90 days unless the Contracting Officer inserts a different number*] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable line item(s). This notification will state: The estimated date when that point will be reached; and an estimate of the amount of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for allotment of funds identified in paragraph (a) of this clause (or to another mutually agreed-upon date). The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the line item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (a) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed-upon date, the Contracting Officer will terminate any line item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''*Termination for Convenience of the Government.*''

(d) When additional funds are allotted for continued performance of the incrementally funded line item(s), the parties will agree to the period of contract performance covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed-upon date(s), and the contract will be modified accordingly.

(e) If the Contractor incurs additional costs or is delayed in the performance of the work under this contract solely by reason of the failure of the Government to allot additional funds in amounts sufficient for timely performance of the incrementally funded line item(s), and then additional funds are allotted, an equitable adjustment will be made in the line item price(s) or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder shall be considered a dispute subject to the ''*Disputes*'' clause in this contract.

(f) The Government may allot additional funds for the performance of the incrementally-funded line item(s) at any time prior to termination.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''*Default.*'' The provisions of this clause are limited to the work and allotment of funds for the incrementally funded line item(s) and will no longer apply once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''*Termination for Convenience of the Government.*''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(End of clause)

106. Add 2452.232–73 to read as follows:

2452.232–73 Constructive acceptance period.

As prescribed in 2432.908, insert the following clause:

CONSTRUCTIVE ACCEPTANCE PERIOD (* * *)

As authorized by FAR 32.908(c)(1), the constructive acceptance period in paragraph (a)(5)(i) of the clause at FAR 52.232–25, ''Prompt Payment,'' under this contract is ____ [*Contracting Officer insert number*] calendar days.

(End of clause)

107. In 2452.237–70, revise the introductory text to read as follows:

2452.237–70 Key personnel.

As prescribed in 2437.110(e)(1), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the contractor's key personnel:

* * * * *

2452.237–72 [redesignated]

108. Redesignate 2452.237–72 as 2452.201–70, and revise the introductory text to read as follows:

2452.201–70 Coordination of Data Collection Activities.

As prescribed in 2401.106–70, insert the following clause in solicitations and contracts where the contractor is required to collect identical information from ten or more public respondents:

* * * * *

109. In 2452.237–73, revise the introductory text and paragraph (a) to read as follows:

2452.237–73 Conduct of work and technical guidance.

As prescribed in 2437.110(e)(2), insert the following clause in all contracts for services:

CONDUCT OF WORK AND TECHNICAL GUIDANCE (* * *)

(a) The Contracting Officer will provide the contractor with the name and contact information of the Government Technical Representative (GTR) assigned to this contract. The GTR will serve as the contractor's liaison with the Contracting Officer with regard to the conduct of work. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

* * * * *

110. Revise 2452.237–75 to read as follows:

2452.237–75 Access to HUD facilities.

As prescribed in 2437.110(e)(3), insert the following clause in solicitations and contracts:

ACCESS TO HUD FACILITIES (* * *)

(a) *Definitions.* As used in this clause—

''Access'' means physical entry into and, to the extent authorized, mobility within a Government facility.

''Contractor employee'' means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

''Facility'' and ''Government facility'' mean buildings, including areas within buildings that are owned, leased, shared, occupied, or otherwise controlled by the Federal Government.

''NACI'' means National Agency Check with Inquiries, the minimum background investigation prescribed by the U.S. Office of Personnel Management.

''PIV Card'' means the Personal Identity Verification (PIV) Card, the Federal Government-issued identification credential (identification badge).

(b) *General.* The performance of this contract requires contractor employees to have access to HUD facilities. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such facility in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to a HUD facility without a proper PIV Card.

(c) *Background information.* (1) For each contractor employee subject to the requirements of this clause and not in possession of a current PIV Card acceptable to HUD, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, ''Questionnaire for Non-sensitive Positions,'' FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17). The SF–85 and OF–306 are available from the OPM Web site, *http://www.opm.gov.* The GTR will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver the forms and information required in subparagraph (c)(1) to the GTR.

(3) The information provided in accordance with paragraph (c)(1) will be used to perform a background investigation to determine the suitability of the contractor employees to have access to Government facilities. After completion of the investigation, the GTR will notify the contractor in writing when any contractor employee is determined to be unsuitable for access to a Government facility. The contractor shall immediately remove such employee(s) from work on this contract that requires physical presence in a Government facility.

(4) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in subparagraph (c)(1): employee's full name, Social Security Number, and place and date of birth.

(d) *PIV Cards.* (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD facilities and who does not already possess a PIV Card acceptable to HUD (see paragraph (b)). HUD will not issue the PIV Card until the contractor employee has successfully cleared the FBI National Criminal History Fingerprint Check and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (c)(1) has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility, and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall promptly return PIV Cards to HUD as required by the FAR clause at 2.204–9. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (e.g., employee terminates employment with the contractor, employee's duties no longer require access to HUD facilities). The GTR will instruct the contractor as to how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor as to how to return all HUD-issued PIV Cards not previously returned. Unless otherwise directed by the Contracting Officer, the contractor shall not return PIV Cards to any person other than the GTR.

(e) *Control of access.* HUD shall have, and exercise, complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD facility. The contractor shall immediately notify such employee that he/she no longer has access to any HUD facility, remove the employee from any such facility that he/she may be in, and provide a suitable replacement in accordance with the requirements of this clause.

(f) *Access to HUD information systems.* If this contract requires contractor employees to have access to HUD information system(s), application(s), or information contained in such systems, the contractor shall comply with all requirements of HUDAR clause 2452.239–70, *Access to HUD Systems,* including providing for each affected employee any additional background investigation forms prescribed in that clause.

(g) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

111. In 2452.237–77, revise the section heading and introductory text to read as follows:

2452.237–77 Temporary closure of HUD facilities.

As prescribed in 2437.110(e)(4), insert the following clause:

TEMPORARY CLOSURE OF HUD FACILITIES (* * *)

* * * * *

112. Revise 2452.239–70 to read as follows:

2452.239–70 Access to HUD systems.

As prescribed in 2439.107(a), insert the following clause:

ACCESS TO HUD SYSTEMS (* * *)

(a) *Definitions:* As used in this clause—

''Access'' means the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

''Application'' means the use of information resources (information and information technology) to satisfy a specific set of user requirements (see OMB Circular A–130).

''Contractor employee'' means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

''Mission-critical system'' means an information technology or

telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

''NACI'' means a National Agency Check with Inquiries, the minimum background investigation prescribed by OPM.

''PIV Card'' means the Personal Identity Verification (PIV) Card, the Federal Government-issued identification credential (i.e., identification badge).

''Sensitive information'' means any information of which the loss, misuse, or unauthorized access to, or modification of, could adversely affect the national interest, the conduct of federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

''System'' means an interconnected set of information resources under the same direct management control, which shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people (see OMB Circular A–130). System includes any system owned by HUD or owned and operated on HUD's behalf by another party.

(b) *General.* (1) The performance of this contract requires contractor employees to have access to a HUD system or systems. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such system in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to any HUD system without a PIV Card.

(2) All contractor employees who require access to mission-critical systems or sensitive information contained within a HUD system or application(s) are required to have a more extensive background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using, or operating the system or applications(s).

(c) *Citizenship-related requirements.* Each affected contractor employee as described in paragraph (b) shall be:

(1) A United States (U.S.) citizen; or,

(2) A national of the United States (see 8 U.S.C. 1408); or,

(3) An alien lawfully admitted into, and lawfully permitted to be employed in the United States, provided that for any such individual, the Government is able to obtain sufficient background information to complete the investigation as required by this clause. Failure on the part of the contractor to provide sufficient information to perform a required investigation or the inability of the Government to verify information provided for affected contractor employees will result in denial of their access.

(d) *Background investigation process:* (1) The Government Technical Representative (GTR) shall notify the contractor of those contractor employee positions requiring background investigations.

(i) For each contractor employee requiring access to HUD information systems, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, ''Questionnaire for Non-Sensitive Positions,'' FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17).

(ii) For each contractor employee requiring access to mission-critical systems and/or sensitive information contained within a HUD system and/or application(s), the contractor shall submit the following properly completed forms: SF–85P, ''Questionnaire for Public Trust Positions;'' FD 258; and a Fair Credit Reporting Act form (authorization for the credit-check portion of the investigation). Contractor employees shall not complete the Medical Release behind the SF–85P.

(iii) The SF–85, 85P, and OF–306 are available from OPM's Web site, *http://www.opm.gov.* The GTR will provide all other forms that are not obtainable via the Internet.

(2) The contractor shall deliver the forms and information required in subparagraph (d)(1) to the GTR.

(3) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in subparagraph (d)(1): employee's full name, Social Security number, and place and date of birth.

(4) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the investigative forms described in paragraph (d)(1).

(5) Upon completion of the investigation process, the GTR will notify the contractor if any contractor employee is determined to be unsuitable to have access to the system(s), application(s), or information. Such an employee may not be given access to those resources. If any such employee has already been given access pending the results of the background investigation, the contractor shall ensure that the employee's access is revoked immediately upon receipt of the GTR's notification.

(6) Failure of the GTR to notify the contractor (see paragraph (d)(1)) of any employee who should be subject to the requirements of this clause and is known, or should reasonably be known, by the contractor to be subject to the requirements of this clause, shall not excuse the contractor from making such employee(s) known to the GTR. Any such employee who is identified and is working under the contract, without having had the appropriate background investigation or furnished the required forms for the investigation, shall cease to perform such work immediately and shall not be given access to the system(s)/application(s) described in paragraph (b) until the contractor has provided the investigative forms required in paragraph (d)(1) for the employee to the GTR.

(7) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD, or for whom a background investigation was completed, terminates employment with the contractor or otherwise is no longer performing work under this contract that requires access to the system(s), application(s), or information. The contractor shall provide a copy of the written notice to the Contracting Officer.

(e) *PIV Cards.* (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD systems and does not already possess a PIV Card acceptable to HUD (see paragraph (b)). HUD will not issue the PIV Card until the contractor employee has successfully cleared an FBI National Criminal History Fingerprint Check, and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (d)(1) has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee's access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility, and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor's employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall promptly return PIV Cards to HUD as required by the FAR clause at 52.204–9. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (e.g., the employee terminates employment with the contractor, the employee's duties no longer require access to HUD systems). The GTR will instruct the contractor as to how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor as to how to return all HUD-issued PIV Cards not previously returned. Unless otherwise directed by the Contracting Officer, the contractor shall not return PIV Cards to any person other than the GTR.

(f) *Control of access.* HUD shall have and exercise full and complete control over

granting, denying, withholding, and terminating access of contractor employees to HUD systems. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD system. The contractor shall immediately notify such employee that he/she no longer has access to any HUD system, physically retrieve the employee's PIV Card from the employee, and provide a suitable replacement employee in accordance with the requirements of this clause.

(g) *Incident response notification.* An incident is defined as an event, either accidental or deliberate, that results in unauthorized access, loss, disclosure, modification, or destruction of information technology systems, applications, or data. The contractor shall immediately notify the GTR and the Contracting Officer of any known or suspected incident, or any unauthorized disclosure of the information contained in the system(s) to which the contractor has access.

(h) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized government personnel with an established need to know, or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD is the sole property of HUD.

(2) The contractor shall require that all employees who may have access to the system(s)/applications(s) identified in paragraph (b) sign a pledge of nondisclosure of information. The employees shall sign these pledges before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of 3 years after final payment under this contract. The contractor shall provide a copy of these pledges to the GTR.

(i) *Security procedures.* (1) The Contractor shall comply with applicable federal and HUD statutes, regulations, policies, and procedures governing the security of the system(s) to which the contractor's employees have access including, but not limited to:

(i) The Federal Information Security Management Act (FISMA) of 2002;

(ii) OMB Circular A–130, *Management of Federal Information Resources,* Appendix III, Security of Federal Automated Information Resources;

(iii) HUD Handbook 2400.25, *Information Technology Security Policy;*

(iv) HUD Handbook 732.3, *Personnel Security/Suitability;*

(v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;

(vi) Homeland Security Presidential Directive 12 (HSPD–12); and

(vii) OMB Memorandum M–05–24, *Implementing Guidance for HSPD–12.*

The HUD Handbooks are available online at: *http://www.hud.gov/offices/adm/hudclips/* or from the GTR.

(2) The contractor shall develop and maintain a compliance matrix that lists each requirement set forth in paragraphs, (b), (c), (d), (e), (f), (g), (h), (i)(1), and (m) of this clause with specific actions taken, and/or procedures implemented, to satisfy each requirement. The contractor shall identify an accountable person for each requirement, the date upon which actions/procedures were initiated/completed, and certify that information contained in this compliance matrix is correct. The contractor shall ensure that information in this compliance matrix is complete, accurate, and up-to-date at all times for the duration of this contract. Upon request, the contractor shall provide copies of the current matrix to HUD.

(3) The Contractor shall ensure that its employees, in performance of the contract, receive annual training (or once if the contract is for less than one year) in HUD information technology security policies, procedures, computer ethics, and best practices in accordance with HUD Handbook 2400.25.

(j) *Access to contractor's systems.* The Contractor shall afford HUD, including the Office of Inspector General, access to the Contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2)), databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out, but not limited to, any information security program activities, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

(k) *Contractor compliance with this clause.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(l) *Physical access to Federal Government facilities.* The contractor and any subcontractor(s) shall also comply with the requirements of HUDAR clause 2452.237 75 when the contractor's or subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(m) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

Dated: February 10, 2012.

Jemine A. Bryon,

Chief Procurement Officer.

[FR Doc. 2012–6165 Filed 3–15–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 080603729–8750–01]

RIN 0648–AW83

Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 4

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

ACTION: Proposed rule; request for comments.

SUMMARY: This fishery management plan (FMP) amendment addresses Atlantic highly migratory species (HMS) fishery management measures in the U.S. Caribbean Region. There are substantial differences between some segments of the HMS fisheries in the Caribbean Region and the HMS fisheries that occur off the mainland of the United States, including: Limited fishing permit and dealer permit possession; smaller vessels; limited availability of processing and cold storage facilities; shorter trips; limited profit margins; and high local consumption of catches. These differences can sometimes create an awkward fit between current Federal HMS fishery regulations applicable to the whole Atlantic HMS fishery and the traditional operation of Caribbean fisheries, which has led to fewer Caribbean Region fishermen and vessels obtaining required permits and reporting data needed for effective fisheries management. NMFS is proposing management measures that would amend the HMS fishery management regulations for the U.S. Caribbean Region to better correspond with the traditional operation of the fishing fleet in the region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries. With this amendment, NMFS proposes to create an HMS Caribbean Small Boat Commercial Permit (CSBP) allowing fishing for and sales of bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, Atlantic swordfish, and Atlantic sharks within local Caribbean markets. The proposed CSBP management measures include specific authorized species and retention limits, modification of reporting requirements, authorization of specific gears, vessel size restrictions, and consideration of mandatory workshop training.

Additionally, NMFS proposes to stipulate that the CSBP could not be held in combination with any other HMS permit.

This proposed rule modifies regulatory text that is also proposed to be amended by the HMS Electronic Dealer Reporting System (E-dealer) rulemaking (RIN 0648–BA75). The proposed language included in the HMS E-dealer rulemaking is being utilized in the proposed rule for this action.

DATES: Written comments will be accepted until June 14, 2012. NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

ADDRESSES: NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

You may submit comments on this document, identified by NOAA–NMFS–2012–0053, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0053 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Margo Schulze-Haugen, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–1917; *Attn:* Margo Schulze-Haugen.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough or Randy Blankinship at 727–824–5399.

SUPPLEMENTARY INFORMATION: Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of ICCAT. Federal Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the HMS handgear fishery.

Background

A brief summary of the background of this proposed action is provided below. A more complete summary of Atlantic HMS management can be found in the 2006 Consolidated HMS FMP, in the annual HMS SAFE Reports, and online at *http://www.nmfs.noaa.gov/sfa/hms/.*

In 2007, NMFS initiated a potential amendment to the 2006 Consolidated HMS FMP (Amendment 4) to develop and implement management measures for HMS in the Caribbean Region. Pre-scoping for the amendment commenced in the winter of 2007/2008. National Environmental Policy Act (NEPA) scoping was initiated by publishing a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on May 27, 2008 (73 FR 30381). The NOI indicated that the EIS would address issues regarding authorized fishing gear and fishing vessel and dealer permitting in the Caribbean Region, as well as examine management alternatives to improve vessel and dealer reporting, data collection, and Agency outreach. On July 14, 2008, NMFS announced the availability in the **Federal Register** (73 FR 40301) of an ''issues and options'' paper describing measures that could be included in a potential amendment. In the same announcement, NMFS provided details for scoping meetings and requested comments on the issues and options document. The comment period was open until October 31, 2008. NMFS presented the issues and options paper to the Caribbean, Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England Fishery Management Councils. Additionally, NMFS presented the issues and options presentation and a summary of the comments received during scoping to the HMS Advisory Panel (AP) at its September 2008 meeting. A summary of the scoping comments was released on January 15, 2009. A predraft of the proposed amendment, including specific management alternatives, was made available to the public on August 21, 2009. On July 13, 2011 (76 FR 41216), NMFS published a NOI to prepare an Environmental Assessment (EA) for Amendment 4. After considering potential environmental effects of the measure and substantive comments received through formal scoping and other means, NMFS preliminarily determined that an EA would provide an appropriate level of NEPA review for Amendment 4 and that preparing an EIS is not necessary. NMFS anticipates that this proposed action will have a low level of potential adverse environmental impacts due to the limited geographic area of the small-scale Caribbean HMS fishery, small size of the vessels involved, the relatively low number of known participants, and the use of traditional handgears. Additionally, any potential impacts to protected species are expected to be minimal.

Currently, no HMS limited access fishing permits (LAPs) and only a small number of HMS open access fishing permits and dealer permits are held in the U.S. Caribbean Region. This is likely due to numerous factors, including the high costs typically associated with obtaining HMS LAPs and owning/operating a commercial vessel, relatively low catch volume and revenue, the low number of HMS LAPs that were initially issued to residents of the U.S. Caribbean, language barriers, and a general lack of awareness of HMS fishing regulations, among other factors. The low number of LAPs initially issued to fishermen in the U.S. Caribbean Region may have also been due to local fishermen not meeting previous qualification requirements or because they failed to apply for LAPs during the issuance process. The small number of HMS dealer permits in the region may be a result of limited processing and cold storage facilities, and the

customary sales and distribution system for seafood in the U.S. Caribbean Region, among other reasons. The low number of HMS fishing and dealer permits has resulted in limited catch and landings data from the U.S. HMS fisheries in the U.S. Caribbean Region, even though there are small-scale commercial fishermen targeting HMS, particularly yellowfin tuna. The lack of catch and landings data complicates fishery management efforts in the region. In some cases, traditionally utilized fishing gears and economically necessary practices, such as targeting both pelagic and reef fish species with multiple gear types during a single trip, may diverge from existing regulations and fishing norms in U.S. mainland fisheries.

NMFS has benefited from receiving various recommendations to improve management of the HMS permitting program and HMS fisheries in the U.S. Caribbean Region from the HMS AP, Caribbean Fishery Management Council (CFMC), territorial governments, local fishermen, and Non-Governmental Organizations (NGOs). Some suggested improvements to management of HMS fisheries in the U.S Caribbean Region received to date include: creating a new commercial Caribbean HMS permit; combining Caribbean vessel and dealer permits (thereby allowing small-scale vessels to retail/wholesale catch); authorizing specific gears; limiting small-scale vessel size; and providing additional training and outreach for compliance with regulations, species identification, and proper reporting.

Based on discussions with the HMS AP, CFMC, and the territorial governments, NMFS believes that the depletion of continental shelf fishery resources may be increasing local interest in exploiting HMS resources in some areas. As local fishermen become more dependent on offshore fishery resources and increase fishing effort on HMS, there is an increased need for NMFS to consider ways of including small-scale Caribbean fishing vessels into the HMS permitting and reporting regime in order to collect better catch and effort data and provide for sustainably managed fisheries.

This amendment is needed to implement management measures specific to the unique characteristics of the U.S. Caribbean Region. The purpose of this amendment is to enact HMS management measures that better correspond with the traditional operation of the fishing fleet in the U.S. Caribbean Region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries.

The specific objectives for this action are to:

- Increase participation in the HMS Federal fishery management program in the U.S. Caribbean Region;
- Expand regional HMS permit availability and increase permitting program awareness, participation, and compliance in the U.S. Caribbean region;
- Improve regional HMS catch and fishing effort data;
- Examine and implement regionally tailored HMS management strategies, as appropriate;
- Provide targeted training and outreach to HMS fishery participants; and
- Improve NMFS' capability to monitor and sustainably manage U.S. Caribbean HMS fisheries.

With this amendment, NMFS proposes to create a U.S. Caribbean-Region-specific permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks in that region; collect HMS landings data through NMFS' cooperation with existing territorial government programs; authorize the use of rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear; restrict the size of vessels eligible to be issued a CSBP to those 45 feet or less in length overall (LOA); limit the Caribbean permit to be valid only for fishing and sales in the U.S. Caribbean Region; and stipulate that the Caribbean permit may not be held in combination with any other HMS vessel permit.

NMFS considered four alternatives ranging from maintaining the status quo to creating a new permit valid only in the Caribbean Region (as defined at 50 CFR 622.2), which could allow fishing for and sales of BAYS tunas, swordfish, and sharks (excluding sandbar) under specific limitations. NMFS assessed the impacts of the alternatives, which are composed of seven key topics: permitting/workshop certification; authorized species; retention limit ranges; reporting; authorized gears; vessel size restrictions; and regions. Instead of analyzing a range of alternatives under each individual topic, NMFS analyzed four alternatives that are composed of various suites of measures under the seven key topics.

Alternative 1 would, among other things, maintain the current Atlantic HMS vessel and dealer permits structure, current upgrading restrictions, current authorized species and gear structure, current retention limits, and current observer and reporting requirements. Alternative 2 would create a new permit allowing fishing for and sales of BAYS tunas and swordfish under specific limitations. Alternative 3 would create a new permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks, under specific limitations. Alternative 3 differs from Alternative 2 in that it could also allow for the retention of sharks. Alternative 4 would create a new permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks, under specific limitations. Alternative 4 differs from Alternative 3 in that it could allow for higher retention limits of BAYS tunas, SWO, and Atlantic sharks, and would not limit vessel size.

The preferred alternative (Alternative 3) would create an open access commercial vessel permit, the Caribbean Small Boat Commercial Permit (CSBP), which would authorize fishing for and sales of BAYS tunas, swordfish, and sharks in the U.S. Caribbean Region. CSBP holders would not be required to sell catches only to HMS permitted dealers and could retail their HMS catch, provided that specified reporting requirements are met. CSBP holders would be required to physically posses their permit, or a copy of their permit, at any point of HMS sale. The CSBP would not be valid for fishing for or sales of HMS outside of the U.S. Caribbean Region; nor could it be held on a vessel in combination with any other HMS vessel permit. The CSBP would be a commercial-only permit and, as such, would not allow the retention of billfish. Vessels issued a CSBP would be authorized to possess rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear. Under this alternative, rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear would be authorized for the harvest of BAYS tunas. Rod and reel, handline, harpoon, bandit gear, and buoy gear would be authorized for the harvest of SWO, and rod and reel, handline, and bandit gear would be authorized for the harvest of Atlantic sharks.

Under the preferred alternative, retention limits could be set between 0 and 24 BAYS per vessel per trip, 0 to 6 swordfish per vessel per trip, and 0 to 3 non-sandbar LCS per vessel per trip, and 0 to 16 SCS and pelagic sharks (combined) per vessel per trip. For both BAYS and swordfish, the current size limits and landing restrictions at §§ 635.20 and 635.30 would apply. For sharks, there would be no size limits, as there is no current Federal commercial shark size limit; however, current landing restrictions at § 635.30, such as ''fins attached'' requirements, would apply.

Although under the preferred alternative, NMFS intends to set the shark trip limits at 0, NMFS proposes to

require applicants for a CSBP to complete a NMFS Atlantic Shark Identification Workshop and submit a copy of a valid workshop certificate with their permit application package if shark trip limits are set above 0 in future rulemaking. Additionally, NMFS is considering requiring CSBP holders to possess a valid NMFS Atlantic Shark Identification Workshop certificate (or a copy) at any point of shark sale. NMFS would conduct rulemaking to implement these requirements through the framework procedures at § 635.34(b) at the time that the shark trip limits are adjusted.

Landings data for vessels issued CSBPs would be collected through cooperation between NMFS and territorial government fisheries data collection programs, as specified by those programs. The individual territorial governments would be responsible for supplying these data to the NMFS Southeast Fisheries Science Center (SEFSC) and meeting requirements determined to be appropriate by NMFS.

Under the preferred alternative, NMFS requests specific comment on an initial retention limit of 10 BAYS tunas, 2 swordfish, and 0 sharks per vessel per trip. These limits were identified due to comments received during NEPA scoping and public comment on the Amendment 4 Pre-Draft. The trip limits fall within the ranges discussed above, and could be adjusted in the future through the framework procedures codified at § 635.34(b).

NMFS is proposing Alternative 3 because it accomplishes the objectives and best addresses public input. Additionally, this alternative provides an increased capability for fisheries data collection and flexibility to modify trip limits for BAYS, swordfish, and sharks as appropriate and necessary.

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by June 14, 2012 (see **DATES** and **ADDRESSES**).

NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment (EA) for this rule that discusses the impact on the environment that would result from this rule. In this proposed action, NMFS is considering options to increase the participation of small-scale Caribbean fishing vessels within the HMS permitting and reporting regime in order to better collect catch and effort data and provide for sustainably managed fisheries. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Purpose and Objectives of the Action

NMFS proposes this rule consistent with the requirements of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to enact HMS management measures that better correspond with the traditional operation of the fishing fleet in the U.S. Caribbean Region and to provide NMFS with improved capability to monitor and sustainably manage those fisheries.

Consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, and other relevant federal laws, this rule is intended to increase participation in the HMS Federal fishery management program in the U.S. Caribbean Region; expand regional HMS permit availability and increase permitting program awareness, participation, and compliance in the U.S. Caribbean Region; improve regional HMS catch and fishing effort data; examine and implement regionally tailored HMS management strategies, as appropriate; provide targeted training and outreach to HMS fishery participants; and improve NMFS' capability to monitor and sustainably manage U.S. Caribbean HMS fisheries.

Number of Small Entities Affected

If implemented, this rule would affect owners of vessels fishing for and selling HMS in the U.S. Caribbean Region. Under the Regulatory Flexibility Act, 5 U.S.C. 603(b)(3), NMFS must estimate the number of small entities to which the rule would apply. The Small Business Administration, which implements the RFA, defines a small fishing entity as one that has average annual receipts less than $4.0 million; charter/headboats are small entities if they have average annual receipts of less than $6.5 million. Additionally, wholesale fish dealers with 100 or fewer employees are considered small entities, as are seafood processors with 500 or fewer employees.

This proposed rule would apply to small-scale HMS handgear vessels that fish in the Caribbean Region. The current Caribbean HMS handgear fishery is comprised of fishermen who are currently required to hold an Atlantic General category or a HMS Charter/Headboat category permit and the related industries including processors, bait houses, and equipment suppliers. There may also be a few unknown entrants to the Caribbean small-scale HMS fishery; however, this number is expected to be low due to the isolated area, small vessels in the region, limited fishing area, and limited profit margins. In 2010, there were 92 vessels permitted in the Atlantic tunas General category in Puerto Rico and 10 in the USVI; also, there were 23 vessels permitted in the Charter/Headboat category in Puerto Rico and 21 in the USVI. NMFS anticipates that the universe of fishermen who might purchase and fish under a CSBP would likely be approximately 100 individuals in the U.S. Caribbean Region, with some potential shift of fishermen currently permitted in the HMS Angling and Charter/Headboat categories. All of these vessels are considered ''small entities'' under the RFA for the purposes of this analysis.

This proposed rule does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way NMFS currently requires permit holders to apply for open access HMS permits. Fishermen, dealers, and managers in these fisheries must comply with a number laws, including, but not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the

Coastal Zone Management Act. However, NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, federal or otherwise.

Alternatives

NMFS considered three alternatives to this proposed rule. All of the entities affected by this rule are small entities, so the rule would not impose disparate impacts on small and large entities. Therefore, the analysis of alternatives to reduce the impact on small entities under section 603(c) of the RFA are inapplicable. This proposed action would modify existing requirements that may affect small entities and would simplify reporting requirements and better account for the business practices of Caribbean fishermen. Specifically, this rule would allow Caribbean small-scale fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the NMFS SEFSC. Small entities may not be exempted from the proposed reporting requirements if the objectives of this proposed rule are to be met, consistent with legal obligations.

NMFS considered and analyzed three alternatives to the preferred alternative (this proposed rule). These alternatives ranged from the no-action alternative, or maintaining the status quo, to creating a CSBP permit valid only in the Caribbean Region which could allow fishing for and sales of BAYS tunas, swordfish, and Atlantic sharks (excluding sandbar) under specific limitations. NMFS assessed the impacts of the alternatives, which are composed of seven key topics: permitting/workshop certification; authorized species; retention limit ranges; reporting; authorized gears; vessel size restrictions; and, regions. Instead of analyzing a range of alternatives under individual topics, the IRFA analyzes four alternatives that are composed of various suites of measures under the seven key topics.

Alternative 1 would, among other things, maintain current Atlantic HMS vessel and dealer permits structure, current upgrading restrictions, current authorized species and gear structure, current retention limits, and, current observer and reporting requirements. Alternative 2 would create a CSBP allowing fishing for and sales of BAYS tunas and Atlantic swordfish under specific limitations. Alternative 3 would create a CSBP allowing fishing for and sales of BAYS tunas, Atlantic swordfish, and Atlantic sharks, under specific limitations. Alternative 3 differs from Alternative 2 in that it could also allow for the retention of Atlantic sharks. Alternative 4 would create a CSBP allowing fishing for and sales of BAYS tunas, Atlantic swordfish, and Atlantic sharks, under specific limitations. Alternative 4 differs from Alternative 3 in that it could allow for higher retention limits of BAYS tunas, Atlantic swordfish, Atlantic sharks, and would not limit vessel size. Under alternatives 2–4, modifications to the initial proposed retention limits could be made using the adjustment procedures codified at § 635.34(b).

Under Alternative 1, NMFS does not anticipate any substantive change in economic impacts as the small-scale fishermen in the Caribbean Region are already operating under the current regulations. However, this alternative may be contributing to a loss of potential income by small-scale fishermen in the Caribbean Region, because these fishermen are limited in their ability to gain access to commercial limited access swordfish and shark fisheries due to the relatively high costs of obtaining permits considering the low volume of their catch and resulting profit. Additionally, the relative absence of a dealer structure in the U.S. Caribbean Region effectively restricts where fishermen may legally sell their catches, so they often sell to non-dealers or become individual dealers themselves.

Alternative 2 would allow small-scale fishermen in the Caribbean Region to fish for, retain, and sell BAYS tunas and swordfish. Retention limits for BAYS tunas could be set between 0 and 24 fish per trip. The upper end of this range is equal to the current maximum recreational retention limit of yellowfin tuna (YFT) for an HMS charter vessel with 6 paying passengers and 2 crew members onboard. NMFS considered setting the initial limit at 10 BAYS tunas per trip. The Caribbean small-scale commercial tunas fishery is small, the vessels are limited in range and hold capacity, and are currently allowed to harvest unlimited numbers of BAYS tunas if they possess an Atlantic tunas General category permit. Alternative 2 would also allow permit holders to retain and sell 0 to 6 swordfish per vessel per trip. This upper limit is equal to the current maximum swordfish retention limit for the open access HMS Charter/Headboat permit with 6 paying passengers onboard. NMFS considered setting the initial retention limit at 2 swordfish per trip. In summary, NMFS would have framework adjustment authority under § 635.34(b) to modify BAYS tunas and swordfish limits in the future within the ranges identified above. Under Alternative 2, NMFS considered establishing an initial proposed limit of 10 BAYS tunas per trip, and an initial proposed retention limit of 2 swordfish per trip. Alternative 2 would limit the length of vessels eligible for the CSBP to 45 feet or less.

NMFS anticipates Alternative 2 would result in positive economic impacts for affected fishermen. Alternative 2 would allow small-scale Caribbean fishermen (vessels limited to 45 feet LOA or less) to use specific handgear (including buoy gear) and greenstick gear to fish for and retain BAYS tunas, and specific handgear to fish for and retain swordfish. Allowing small-scale fishermen in the U.S. Caribbean Region to use their traditional free-floating ''yo-yo'' handlines (buoy gear) to target BAYS tunas has been requested for many years. Establishing a trip limit range of 0 to 24 BAYS tunas with an initial proposed limit of 10 BAYS tunas per trip is expected to produce positive economic impacts because 10 BAYS is reported to be a very successful trip for the small-scale fishermen (Lynn Rios, pers. comm.). According to NMFS' ''Fisheries of the United States, 2010,'' YFT sells for approximately $1.75 per pound in Puerto Rico (this price likely includes lesser quality longline landings); however, according to information provided by the USVI DPNR, YFT and ''tunas'' harvested in the handline fishery may sell for up to $7.00 per pound depending on quality and local demand (NMFS, 2011c).

Using ICCAT conversions for YFT, a fish meeting the current U.S. minimum size (27 inches Curved Fork Length (CFL)) weighs approximately 14 lb. Therefore, if each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 10 YFT on each trip (240 YFT/yr.), then the annual revenue per vessel associated with this activity would range from $5,880.00 (240 YFT × 14 lb × $1.75/lb) − $23,520.00 (240 YFT × 14 lb × $7.00/lb). These estimates are based upon the initial retention limit of 10 BAYS tunas that NMFS considered under Alternative 2. Because NMFS would have authority to adjust the BAYS tunas retention limits from 0 to 24 fish under Alternative 2, the annual ex-vessel revenue estimates could vary from $0.00 (under a 0 fish limit) to as much as $14,112 (576 YFT × 14 lb × $1.75/lb) − $56,448 (576 YFT × 14 lb × $7.00/lb) under a 24 fish retention limit if the BAYS retention limit were to change. Also, it is important to reemphasize that

a 10-fish trip is considered very successful and the likelihood that it would occur on multiple trips over an entire year is unknown. The small-scale commercial HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The ability to legally land and sell swordfish from federal waters under Alternative 2 could increase the profitability of the local handgear fishery. Swordfish is currently selling for approximately $4.00 to $6.00 per pound in the Caribbean Region (Lynn Rios, pers. comm.). Analyzing a trip limit range of 0 to 6 for swordfish per trip, and setting an initial proposed retention limit of 2 swordfish per trip would likely result in positive economic impacts for those fishermen able to target and store 1 or 2 swordfish on their vessels.

Using ICCAT conversions for swordfish, a fish meeting the current U.S. minimum size (47 inches Lower Jaw Fork Length (LJFJ)) weighs approximately 44 lb. Therefore, if each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 2 swordfish on each trip (24 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from $4224.00 (24 swordfish × 44 lb × $4.00/lb) − $6,336.00 (24 swordfish × 44 lb × $6.00/lb). These estimates are based upon the initial proposed retention limit of 2 swordfish that NMFS considered under Alternative 2. Because NMFS would have authority to adjust the swordfish retention limit under this alternative from 0 to 6 fish using the framework procedures codified at 50 CFR 635.34(b), the annual ex-vessel revenue estimates could vary from $0.00 (under a 0 fish limit) to as much as $25,344 (144 swordfish × 44 lb × $4.00/lb) − $38,016 (144 swordfish × 44 lb × $6.00/lb) under a 6-fish limit if the swordfish limit were to change. Also, a 2-fish trip is considered very successful and the likelihood that it would occur on multiple trips over an entire year is unknown. The small-scale commercial HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 2 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way HMS permit holders apply for their current HMS permits, if they currently hold one. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, so they often sell catches to non-dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of small-scale Caribbean fishermen by allowing Caribbean fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the NMFS Southeast Fisheries Science Center (SEFSC).

Alternative 3, the preferred alternative proposed here, would allow Caribbean small-scale fishermen to retain and sell from 0 and 24 BAYS tunas and from 0–6 swordfish, which are the same ranges as discussed in Alternative 2. These retention limits could be adjusted using the framework procedures at § 635.34(b). Under Alternative 3, NMFS considered establishing an initial proposed limit of 10 BAYS tunas per trip, and an initial proposed retention limit of 2 swordfish per trip which are the same as Alternative 2. This suite could also allow for Caribbean small-scale fishermen to affordably participate in the commercial fishery for sharks. Under this alternative, shark retention limits could be set between 0 to 3 non-sandbar LCS and 0 to 16 SCS and pelagic sharks combined using the framework adjustment procedures at § 635.34(b). To be conservative, NMFS considered setting the initial shark trip limit at 0, with the ability to modify the limits using the framework adjustment procedures at § 635.34(b). Alternative 3 would limit the length of vessels eligible for the CSBP to 45 feet LOA or less.

With regard to BAYS tunas and swordfish, the initial proposed retention limits in Alternative 3 (10 BAYS & 2 swordfish) would have the same positive economic impacts as Alternative 2 discussed above (BAYS: $5,880.00–$23,520.00; swordfish: $4224.00–$6,336.00). Similarly, because NMFS would have authority to adjust the BAYS tunas retention limits from 0 to 24 fish under Alternative 3, the annual ex-vessel revenue estimates could vary from $0.00 (under a 0 fish limit) to as much as $14,112 (576 YFT × 14 lb × $1.75/lb) − $56,448 (576 YFT × 14 lb × $7.00/lb) under a 24 fish retention limit if the BAYS limit were to change. Also, because NMFS would have authority to adjust the swordfish retention limit under this alternative from 0 to 6 fish using the framework procedures codified at § 635.34(b), the annual ex-vessel revenue estimates could vary from $0.00 (under a 0 fish limit) to as much as $25,344 (144 swordfish × 44 lb × $4.00/lb) − $38,016 (144 swordfish × 44 lb × $6.00/lb) under a 6-fish limit if the swordfish limit were to change.

The potential ability for small-scale Caribbean fishermen to participate in the federal commercial shark fishery under this alternative by analyzing a retention limit range of 0 to 3 non-sandbar LCS and 0 to 16 SCS and pelagic sharks combined would produce larger potential positive economic impacts than Alternatives 1 and 2. According to NMFS' ''Fisheries of the United States, 2010,'' ''shark'' sells for approximately $1.57 per pound in Puerto Rico (this price likely includes lesser quality longline landings); however according to information provided by the USVI Department of Planning and Natural Resources (DPNR), ''shark'' harvested in the handline fishery may sell for up to $4.00 per pound depending on quality and demand (NMFS, 2011c).

NMFS considered setting the initial proposed shark retention limit at 0 under Alternative 3; this would produce $0.00 in ex-vessel revenues. There is a potential for future revenue increases under this alternative because NMFS would have the ability to modify the limits once the shark complexes have recovered and the Agency has more data on regional participants, catches, and discards in the CSBP fishery. The range of shark limits in Alternative 3 have the potential to provide increased revenues for fishermen who catch sharks and who have or can create a market for them in the U.S. Caribbean Region.

Using information from the Northeast Fisheries Science Center (Kohler *et al.,* 1996), the average weight of a Caribbean non-sandbar LCS (i.e., tiger, blacktip, lemon, nurse, great hammerhead) fish is approximately 95 lb (ww), and the average weight of a Caribbean pelagic shark (*i.e.,* common thresher, oceanic whitetip, blue) is approximately 150 lb (whole weight (ww)). For Caribbean SCS, a weight of 10 lb (ww) is assumed. Therefore, if each fisherman conducted two shark trips per month (24 trips/yr.), and landed 3 non-sandbar LCS and 16 SCS on each trip (72 LCS/yr. & 384 SCS), then the annual revenue per vessel associated with this activity would range from $16,768.00 (72 LCS ×

95 lb × $1.57/lb + 384 SCS × 10 lb × $1.57/lb) − $42,720.00 (72 LCS × 95 lb × $4.00/lb + 384 SCS × 10 lb × $4.00/lb). These estimates are based upon the upper catch limit of 3 non-sandbar LCS and 16 SCS or pelagic sharks (combined) that NMFS could consider under Alternative 3. These estimates of annual revenues would be higher if more pelagic sharks were landed, due to their larger average size. The likelihood that the limits would be reached on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 3 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way NMFS currently requires permit holders to apply for open access HMS permits. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, and thus they sell them to non-permitted dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of Caribbean fishermen by allowing small-scale fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the SEFSC.

Alternative 4 would establish a range that could allow Caribbean small-scale fishermen to retain and sell from between 0 to an unlimited number of BAYS tunas, with an initial proposed retention limit of 24 BAYS tunas per trip. This could potentially increase the number of BAYS tunas harvested in the region. Alternative 4 would also establish a range that could allow permit holders to retain and sell from 0 to an unlimited number of swordfish per vessel per trip, with an initial proposed retention limit of 6 swordfish per trip. This alternative could potentially increase the number of swordfish harvested in the region. With regard to sharks, Alternative 4 could allow Caribbean small-scale fishermen to participate in the federal commercial fishery for sharks. Shark retention limits could be set between 0 to 33 non-sandbar LCS, and from 0 to no limit for SCS and pelagic sharks combined. In summary, NMFS would have the ability to modify BAYS tunas, swordfish, and shark trip limits within the identified ranges using the framework adjustment procedures at § 635.34(b).

Under Alternative 4, NMFS considered setting an initial proposed limit of 24 BAYS tunas per trip; an initial proposed retention limit of 6 swordfish per trip; and initial retention limits of 1 non-sandbar LCS and 2 SCS or pelagic sharks combined, with the ability to modify these retention limits using the framework adjustment procedures codified at § 635.34(b). Alternative 4 would not limit the size of vessel allowed to be issued a CSBP. During NEPA scoping and through public comment on the Predraft, NMFS received comment from fishermen concerned about over capitalization leading to depressed market prices. Alternatives 2 and 3 would limit vessel size to 45 feet LOA or less.

Alternative 4 could potentially have the largest positive economic impacts when compared with Alternatives 1, 2, and 3 discussed above; however, it could also result in local overcapitalization in the fishery, lead to depressed market prices, and other potential adverse economic impacts. It could increase the number of BAYS tunas harvested in the region, and the range would mirror the trip limits currently authorized for the open access Atlantic tunas General category permit. As discussed under Alternative 2, a trip where 10 BAYS tunas are harvested in the Caribbean small-scale HMS fishery is considered a very successful day, this alternative could increase the number of BAYS allowed to be harvested to an unlimited amount. This increased retention limit may result in additional positive economic impacts; however, it is not known if the Caribbean small-scale commercial fleet has the ability to hold and market this amount of tunas.

Using ICCAT conversions for YFT, a fish meeting the current U.S. minimum size (27 inches CFL) weighs approximately 14 lb. Therefore, if each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 24 YFT on each trip (576 YFT/yr.), then the annual revenue per vessel associated with this activity would range from $14,112.00 (576 YFT × 14 lb × $1.75/lb) − $56,448.00 (576 YFT × 14 lb × $7.00/lb). These estimates are based upon the initial proposed retention limit of 24 BAYS tunas that NMFS considered under Alternative 4. Because NMFS would have the ability to adjust the BAYS tunas retention limit from 0 to an unlimited amount under Alternative 4, the annual ex-vessel revenue estimates would vary from either $0.00 to an unlimited amount if the BAYS retention limit were to change from the initial proposed limit of 24 BAYS/trip. Also, it is important to reemphasize that a 10-fish trip is considered very successful, and the likelihood that a 24 fish trip would occur on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The unlimited upper end of the range being considered for swordfish in Alternative 4 would be equal to the current limited access swordfish directed permit retention limit. NMFS has received anecdotal information that swordfish are being harvested by handgear fishermen in the Caribbean Region. Alternative 4 would provide small-scale fishermen in the Caribbean Region with access to the federal commercial swordfish fishery and the ability to legally market their catches. Currently, entrance to the federal limited access commercial swordfish fishery has been difficult for small-scale fishermen as permits are cost prohibitive. However, as stated above, the vessels participating in the Caribbean small-scale commercial fishery are small, limited in range, and limited in hold capacity. It is not known if these small vessels can hold and safely transport an unlimited amount of swordfish to port.

Using ICCAT conversions for swordfish, a fish meeting the current U.S. minimum size (47 inches LJFL) weighs approximately 44 lb. Therefore, if each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 6 swordfish on each trip (144 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from $25,344.00 (144 swordfish × 44 lb × $4.00/lb) − $38,016.00 (144 swordfish × 44 lb × $6.00/lb). These estimates are based upon the initial retention limit of 6 swordfish that NMFS considered under Alternative 4. Because NMFS would have framework authority to adjust the swordfish retention limit from 0 to an unlimited amount under Alternative 4, the annual ex-vessel revenue estimates would vary from $0.00 to an unlimited amount if the swordfish limit were to change from 6 per trip. Also, a 2-fish trip is considered very successful within the region and the likelihood that a 6-

fish trip would occur on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The shark retention limits in the range for Alternative 4 have the potential to provide increased revenues for fishermen who catch sharks and who have or can create a market for them in the U.S. Caribbean Region.

Using information from the Northeast Fisheries Science Center (Kohler et al., 1996), the average weight of a Caribbean non-sandbar LCS (i.e., tiger, blacktip, lemon, nurse, great hammerhead) fish is approximately 95 lb (whole weight (ww)), and the average weight of a Caribbean pelagic shark (i.e., common thresher, oceanic whitetip, blue) is approximately 150 lb (ww). For Caribbean SCS, a weight of 10 lb (ww) is assumed. Therefore, if each fisherman conducted two shark trips per month (24 trips/yr.), and landed 1 non-sandbar LCS and 2 SCS on each trip (24 LCS/yr. & 48 SCS), then the annual revenue per vessel associated with this activity would range from $4,296.00 (24 LCS × 95 lb × $1.57/lb + 48 SCS × 10 lb × $1.57/lb) − $11,040.00 (24 LCS × 95 lb × $4.00/lb + 48 SCS × 10 lb × $4.00/lb). These estimates are based upon the initial retention limit of 1 non-sandbar LCS and 2 SCS or pelagic sharks (combined) that NMFS considered in Alternative 4. These estimates of annual revenues would be higher if more pelagic sharks were landed due to their larger average size. Because NMFS would have framework authority to adjust the retention limits from 0 to 33 non-sandbar LCS and from 0 to an unlimited amount of SCS or pelagic sharks (combined) under Alternative 4, the annual ex-vessel revenue estimates would vary from $0.00 to an unlimited amount if the retention limits were to change. The likelihood that the retention limits would be reached on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 4 would not limit the size of vessel allowed to be issued a CSBP. During NEPA scoping and through public comment on the Predraft, the Agency received comments from fishermen concerned about over capitalization leading to depressed market prices. Alternatives 2 and 3 limit vessel size to 45 feet or less. Alternative 4 does not identify a vessel size limit and could result in local overcapitalization in the fishery, lead to depressed market prices, and other potential adverse economic impacts.

Alternative 4 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way HMS permit holders apply for their current HMS permits, if they currently hold one. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, so they often sell to non-dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of Caribbean fishermen by allowing small-scale fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the SEFSC.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 13, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR parts 600 and 635 as amended at 76 FR 37750, June 28, 2011, are proposed to be amended as follows:

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, paragraph (v), under the heading ''IX. Secretary of Commerce,'' entry 1, add N to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):.	
* * * * * * *	
N. Caribbean Small Boat Commercial Fishery	N. Rod and reel, handline, harpoon, bandit gear, green-stick gear, buoy gear.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

4. In § 635.4,

a. Revise paragraphs (a)(5), (a)(10), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (f)(1),

(f)(2), (g)(1)(ii), (g)(2), (g)(3), (h)(1) introductory text, (m)(1), and (m)(2); and

b. Add paragraph (o) to read as follows:

§ 635.4 Permits and fees.

(a) * * *

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Caribbean Small Boat Commercial permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Caribbean Small Boat Commercial permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Caribbean Small Boat Commercial permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Caribbean Small Boat Commercial permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat or an HMS Caribbean Small Boat Commercial permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership. The owner of a vessel applying for an HMS Caribbean Small Boat Commercial permit as issued pursuant to paragraph (o) of this section is exempt from the requirements of this paragraph but is subject to restrictions set forth at § 635.4 (o)(3) and may not hold any other HMS fishing permit simultaneously.

* * * * *

(e) * * * (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of the Federal Atlantic commercial shark permits described below or an HMS Caribbean Small Boat Commercial permit as issued pursuant to paragraph (o) of this section. A Federal Atlantic commercial shark permit or HMS Caribbean Small Boat Commercial permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental limited access permit or an HMS Caribbean Small Boat Commercial permit issued pursuant to paragraph (o) of this section. The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

* * * * *

(f) * * * (1) Except as specified in paragraphs (n) and (o) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraphs (n) and (o) of this section.

* * * * *

(g) * * *

(1) * * *

(ii) A first receiver, as defined in § 635.2, of Atlantic bigeye, albacore, yellowfin, or skipjack tunas must possess a valid Federal Atlantic tunas dealer permit except as noted under paragraph (o) of this section.

(2) *Shark.* A first receiver, as defined in § 635.2, of any Atlantic shark listed in Table 1 of Appendix A of this part must possess a valid dealer permit except as noted under paragraph (o) of this section.

(3) *Swordfish.* A first receiver, as defined in § 635.2, of Atlantic swordfish must possess a valid Federal Atlantic swordfish dealer permit except as noted under paragraph (o) of this section.

* * * * *

(h) * * *

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, and HMS Caribbean Small Boat Commercial vessel permits.*

* * * * *

(m) * * * (1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Caribbean Small Boat Commercial vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by

NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, except as specified in paragraphs (n) and (o) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

(o) *HMS Caribbean Small Boat Commercial permits.* (1) The owner of a vessel who fishes in the U.S. Caribbean, as defined at § 622.2 of this chapter, possesses handgear or green-stick gear and retains, with the intention to sell, any BAYS tunas, Atlantic swordfish, or Atlantic sharks may obtain an HMS Caribbean Small Boat Commercial permit. An HMS Caribbean Small Boat Commercial permit is valid only within the U.S. Caribbean, as defined at § 622.2 of this chapter.

(2) To be eligible for an HMS Caribbean Small Boat Commercial permit, vessel owners must provide documentation that the vessels is less than or equal to 13.7 m (45 ft) in length overall (LOA).

(3) A vessel issued an HMS Caribbean Small Boat Commercial permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as a valid HMS Caribbean Small Boat Commercial permit is issued to that vessel.

(4) The owner of a vessel issued an HMS Caribbean Small Boat Commercial permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24 and may possess unauthorized gears onboard as stated at § 635.21(b).

(5) HMS landed under an HMS Caribbean Small Boat Commercial permit may be sold by the owner or operator to individuals who do not possess the HMS dealer permits required under § 635.4(g). HMS Caribbean Small Boat Commercial permit holders are not considered to be dealers as defined at § 600.10 of this chapter because HMS Caribbean Small Boat Commercial permit holders may not purchase, barter, or trade for HMS harvested by other vessels with the intent to sell such landings.

5. In § 635.21, revise paragraphs (b), (e)(1) introductory text, (e)(3)(i), (e)(4)(iii), and (e)(4)(iv) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

* * * * *

(e) * * * (1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an HMS Caribbean Small Boat Commercial permit who fishes for, retains, or possesses BAYS tunas in the U.S. Caribbean, as defined at § 622.2, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

* * * * *

(3) * * * (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet; except that individuals issued an HMS Caribbean Small Boat Commercial permit may only harvest sharks with rod and reel, handline, and bandit gear in the U.S. Caribbean, as defined at § 622.2. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

* * * * *

(4) * * *

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Caribbean Small Boat Commercial permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP or an HMS Caribbean Small Boat Commercial permit under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy

gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit, Incidental HMS squid trawl permit, or an HMS Caribbean Small Boat Commercial permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

6. In § 635.24, revise the section heading and add paragraphs (a)(4)(iv), (b)(3), and (c) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish and BAYS tunas.

(a) * * *

(4) * * *

(iv) A person who owns or operates a vessel that has been issued an HMS Caribbean Small Boat Commercial permit may retain, possess, or land any LCS, SCS or pelagic sharks only when the trip limit is set above zero. The current shark trip limit for HMS Caribbean Small Boat Commercial permit holders is set at zero.

* * * * *

(b) * * *

(3) Persons aboard a vessel that has been issued an HMS Caribbean Small Boat Commercial vessel permit may retain, possess, land, or sell no more than 2 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(c) *BAYS tunas.* Persons aboard a vessel that has been issued an HMS Caribbean Small Boat Commercial permit under § 635.4 may retain, possess, land, or sell no more than 10 BAYS tunas per trip.

7. In § 635.27, revise paragraph (c)(1)(i)(A) to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, a handgear permit for swordfish, or an HMS Caribbean Small Boat Commercial permit has been issued or is required to be issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

8. In § 635.31, revise paragraphs (a)(1)(i), (a)(2)(ii), and (d)(1) to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) * * *

(i) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Caribbean Small Boat Commercial permit issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

(2) * * *

(ii) Dealers may first receive Atlantic bigeye, albacore, yellowfin and skipjack tunas only if they have submitted reports to NMFS according to reporting requirements of paragraphs § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Individuals issued a valid HMS Caribbean Small Boat Commercial permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers.

* * * * *

(d) * * * (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Caribbean Small Boat Commercial permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell swordfish trip limits, codified at § 635.24(b)(3), to non-dealers.

* * * * *

9. In § 635.71, revise paragraphs (a)(3)(iii), (a)(4)(ii), (a)(53), (a)(55), (e)(1), (e)(10), (e)(11), (e)(16) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(3) * * *

(iii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, or sharks without the appropriate valid Federal Atlantic HMS dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements of §§ 635.5(b)(1)(ii) and 635.5(b)(1)(iii). This prohibition does not apply to HMS harvested by HMS Caribbean Small Boat Commercial vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) * * *

(ii) Offload an Atlantic bigeye, albacore, yellowfin, or skipjack tuna, swordfish, or shark other than to a dealer that has a valid Federal Atlantic HMS dealer permit issued under § 635.4, except that this does not apply to HMS Caribbean Small Boat Commercial vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'', as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or an HMS Caribbean Small Boat Commercial permit in accordance with § 635.4(o).

* * * * *

(55) For an individual issued an HMS Caribbean Small Boat Commercial permit to purchase, barter for, or trade for HMS harvested by other vessels with the intent to sell such landings.

* * * * *

(e) * * *

(1) First receive or attempt to first receive Atlantic swordfish from the north or south Atlantic swordfish stock without a Federal Atlantic swordfish dealer permit as specified in § 635.4(g) unless the harvesting vessel possesses a valid HMS Caribbean Small Boat Commercial permit issued under § 635.4 of this part and harvested the swordfish in the U.S. Caribbean as defined at § 622.2.

* * * * *

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or a valid HMS Caribbean Small Boat Commercial permit in accordance with § 635.4(o).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit category, or issued a valid HMS Caribbean Small Boat Commercial permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

* * * * *

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at § 635.21(e) unless issued a HMS Caribbean Small Boat Commercial permit and operating within the U.S. Caribbean as defined at § 622.2.

* * * * *

[FR Doc. 2012–6455 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154–2152–01]

RIN 0648–XA920

Atlantic Highly Migratory Species; 2012 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2012 quota specifications for the Atlantic bluefin tuna (BFT) fishery. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before April 16, 2012. Dates and locations for public hearings on this proposed action will be specified in a separate document in the **Federal Register** to be published at a later date.

ADDRESSES: You may submit comments, identified by ''NOAA–NMFS–2012–0048'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2012–0048'' in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* 978–281–9340, Attn: Sarah McLaughlin
- *Mail:* Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Supporting documents, including the 2011 Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, as well as others, such as the Fishery Management Plans described below may be downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/.* These documents also are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as ''Atlantic tunas'') are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations to comply with this international treaty. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included a framework process to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has

recommended a Total Allowable Catch (TAC) of BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other Contracting Parties with BFT fisheries.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) a final rule, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635. Among other things, the Consolidated HMS FMP maintained an allocation scheme, established in the 1999 FMP, for dividing the baseline annual U.S. BFT quota among several domestic quota categories based on gear type (i.e., Harpoon, Purse Seine, Angling, General, Longline, and Trap categories).

The 2012 BFT quota specifications are necessary to adjust the annual U.S. baseline BFT quota, recommended for 2011 and for 2012 by ICCAT, to account for any underharvest or overharvest of the adjusted 2011 U.S. BFT quota. Preliminary information indicates an underharvest of the 2011 adjusted BFT quota. Final 2011 landings and dead discard information will be available in May 2012.

2010 ICCAT Recommendation and 2011 Implementing Rule

At its 2010 annual meeting, ICCAT recommended a TAC of 1,750 mt annually for 2011 and for 2012, inclusive of dead discards (ICCAT Recommendation 10–03—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program). This amount is expected to allow for continued stock growth under the both the low and high stock recruitment scenarios developed by ICCAT's scientific body at the last BFT stock assessment. The U.S. share of the TAC, adjusted for two specific bycatch allocations, is 54.02 percent, resulting in a baseline quota of 923.7 mt. The annual total U.S. quota, including 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), is 948.7 mt. Currently, ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. This limits the amount of 2011 U.S. underharvest that may be carried forward to 94.9 mt (10 percent of the 948.7-mt total U.S. quota).

Through a final rule implementing the BFT quotas and Atlantic tuna fisheries management measures (76 FR 39019, July 5, 2011), NMFS modified the baseline quota to 948.7 mt to implement ICCAT Recommendation 10–03 and set the domestic BFT fishing category subquotas per the allocation scheme established in the Consolidated HMS FMP and as permitted in implementing regulations (71 FR 58058, October 2, 2006). The baseline quota and category subquotas are codified and will be effective until changed; for instance, as a result of any new ICCAT BFT TAC recommendation. However, consistent with the Consolidated HMS FMP, NMFS will make underharvest and overharvest adjustments as necessary for the 2012 fishing year. Until the final specifications are effective, the existing BFT base quotas continue to apply as codified. See Table 1, second column.

Accounting for Dead Discards

The United States must report BFT landings data and BFT dead discard estimates to ICCAT annually. Currently, the best available annual estimate of dead discards for 2011 and that can be expected for 2012 is the 2010 estimate of 122.3 mt. Only pelagic longline dead discard estimates are available at this time. Estimates from other BFT gear types and fishing sectors that are not observed at sufficient levels for estimation and that do not report via a logbook are not included in this calculation. However, bycatch and bycatch mortality of BFT by vessels using handgear and purse seine gear is considered to be relatively low. Using the 2010 estimate as a proxy for estimated 2012 dead discards for the proposed action is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards and is the established protocol in the regulations. When the 2011 BFT dead discard estimate becomes available (late spring 2012), it will be used to prepare the final specifications and will be reported to ICCAT along with total 2011 BFT landings.

2012 Quota Specifications

The 2012 BFT quota specifications are necessary to adjust the annual U.S. baseline BFT quota, which was recommended by ICCAT for 2011 and for 2012, to account for underharvest or overharvest of the adjusted 2011 U.S. BFT quota. Based on preliminary data available as of January 18, 2012, landings for 2011 totaled 746.3 mt. Adding the 122.3-mt estimate of dead discards results in a preliminary 2011 total catch of 868.6 mt, which is 175 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 10–03 (948.7 mt plus 94.9 mt of 2010 underharvest carried forward to 2011, totaling 1,043.6 mt). However, the current ICCAT recommendation limits the amount of underharvest the United States may carry forward to 2012 to 94.9 mt, 10 percent of the total U.S. quota.

NMFS proposes to account up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2012, using the best available estimate of dead discards, and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the final 2011 BFT quota specifications. Accounting for dead discards in the Longline category in this way may provide further incentive for pelagic longline fishermen to reduce those interactions that may result in dead discards. NMFS would apply half of the amount of underharvest that is allowed to be carried forward to 2012 to the Longline category and maintain the other half in the Reserve category. Maintaining this portion of the underharvest in the Reserve category until later in the fishing year would provide maximum flexibility in accounting for 2012 landings and dead discards. Consistent with determination criteria at § 635.27(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any other quota category.

Specifically, NMFS would deduct half of the dead discard estimate of 122.3 mt (i.e., 61.2 mt) from the 2012 baseline Longline category subquota of 74.8 mt and apply half of the 94.9 mt allowed to be carried forward to 2012 to the Longline category, i.e., 74.8 − 61.2 + 47.5 = 61.1 mt adjusted Longline subquota (not including the 25-mt allocation set aside by ICCAT for the NED). NMFS would add the remainder of the 2011 underharvest that can be carried forward to 2012 (47.4 mt) to the Reserve category's baseline allocation of 23.1 mt, for an adjusted Reserve category quota of 70.5 mt.

For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories) as well as the Trap category, NMFS is not proposing adjustments to the baseline BFT subquotas (i.e., the allocations that result from applying the scheme established in the Consolidated HMS FMP to the baseline U.S. BFT quota).

Thus, in accordance with the ICCAT Recommendation 10–03, the Consolidated HMS FMP allocation scheme for the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes quota specifications for the

2012 fishing year as follows and as shown in Table 1: General category—435.1 mt; Harpoon category—36 mt; Purse Seine category—171.8 mt; Angling category—182 mt; Longline category—61.1 mt; and Trap category—0.9 mt. The amount allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers would be 70.3 mt.

NMFS will make any necessary adjustments to the 2012 specifications in the final rule after considering updated 2011 landings information and the final dead discard estimate for 2011. It is important to note that NMFS and ICCAT have separate schedules and approaches for accounting for U.S. landings and dead discards. Through the specifications process used in 2011 (and proposed here), NMFS accounted proactively for half of the best estimate of dead discards at the beginning of the fishing year, and indicated that total 2011 U.S. BFT landings and dead discards would be accounted for and reported to ICCAT, and NMFS would make any ICCAT-required adjustments to future U.S. BFT quotas, if necessary. In contrast, ICCAT assesses quota compliance at its annual meeting in November by comparing the prior year's landings and reported dead discards against the adjusted U.S. quota. At the 2012 ICCAT annual meeting, ICCAT will compare actual 2011 landings and dead discards against the 948.7-mt base quota for 2011, plus the 94.9 mt allowed to be carried forward from 2010 to 2011 (for a total 2011 adjusted U.S. quota of 1,043.6 mt), to determine the United States' compliance with ICCAT.

If the final 2011 landings and dead discards information results in a total of greater than 948.7 mt (e.g., if the final dead discards estimate increases by more than 80.1 mt) but less than 1,043.6 mt, then the amount of 2011 underharvest that the United States may carry forward to 2012 would need to be reduced from 94.9 mt accordingly. In such an event, NMFS could decide to provide half of the available amount carried forward to the Longline category and the other half to the Reserve category (e.g., if the 2011 landings and the final dead discard estimate total 963.6 mt, 80 mt would be available to carry forward and NMFS could provide 40 mt to the Longline category and 40 mt to the Reserve category). NMFS could also decide to provide the entire amount to the Longline or Reserve category, particularly if the amount is small, such as 20 mt, or could allocate the amount carried forward in another manner after considering domestic management needs for 2012. In these examples, the baseline subquotas for the directed fishing categories and Trap category would be maintained (i.e., not changed). NMFS invites public comment on the range of possible allocations of the amount carried forward should that amount be greater than 0 mt and less than 94.9 mt.

Conversely, if the complete 2011 landings information and the final dead discard estimate for 2011 total more than the adjusted 2011 U.S. BFT quota of 1,043.6 mt, NMFS may need to take further action, consistent with the BFT quota adjustment regulations and with ICCAT Recommendation 10–03. Also, the United States may be subject to adjustment of the U.S. BFT quota, consistent with ICCAT recommendations. Given the amount of dead discards the United States has reported to ICCAT in the last few years (ranging from 122 to 204 mt), NMFS considers this potential situation to be unlikely, as the dead discard estimate would need to be approximately 300 mt. However, NMFS requests public comment on the potential adjustment of the final 2012 quota and subquotas to account for potential overharvest of the 2011 adjusted U.S. quota. For example, NMFS may determine that reducing either the Longline and/or the Reserve category quotas is necessary, or that the overall 2012 BFT quota must be reduced, which would affect all category subquotas.

The adjusted Longline category subquota for 2012 would be further subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude) in the Consolidated HMS FMP. Thus, the proposed Longline category subquota of 61.1 mt would be subdivided as follows: 24.4 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 36.7 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS would account for landings under the 25-mt NED allocation separately from other Longline category landings.

NMFS considers this a transitional approach from the method used for 2007 through 2010. From 2007 through 2010, there were substantial underharvests of some of the commercial BFT subquotas. Consistent with the Consolidated HMS FMP and its implementing regulations, NMFS provided the Longline category a substantial portion of prior year U.S. underharvest that was allowed to be carried forward (limited to 50 percent of the total U.S. quota at that time) during the annual specification process at the beginning of the fishing year. This provided quota sufficient for the pelagic longline fleet to operate for the entire fishing year while also accounting for dead discards ''up front'' using the best available estimate of anticipated dead discards. NMFS was also able to increase the directed categories' quotas and the Reserve category quota using available underharvest.

This new method is appropriate again for 2012 as NMFS plans to begin an HMS FMP amendment process to determine whether existing management measures need to be adjusted more broadly to meet the multiple goals for the BFT fishery in the future. In the meantime, management of the BFT fishery continues under the current Consolidated HMS FMP, implementing regulations, and ICCAT Recommendations. Through the FMP amendment process, NMFS may begin to expand BFT data collection programs, including collection of dead discard information, for all categories and may revise measures to account for and control dead discards. In contemplating how to account for dead discards within the U.S. BFT quota, NMFS believes that the operational issues facing the pelagic longline fishery and implications regarding BFT dead discards that may occur while the fleet continues directed fishing operations for swordfish and other tunas should be considered. NMFS anticipates that dead discards in the pelagic longline fishery may be reduced due to continued implementation of the weak hook requirement in the Gulf of Mexico in 2011 (76 FR 18653, April 5, 2011).

TABLE 1—PROPOSED 2012 ATLANTIC BLUEFIN TUNA QUOTAS AND QUOTA SPECIFICATIONS

[in metric tons]

		2011 Quota specifications		
Category (% share of baseline quota)	Baseline allocation for 2011 and 2012 (per 2010 ICCAT recommendation and consolidated HMS FMP allocations)	Dead discard deduction (1/2 of 2011 proxy of 122.3 mt)	2011 Underharvest to carry forward to 2012 (94.9 mt total)	Adjusted 2012 fishing year quota
Total (100)	923.7*			957.4
Angling (19.7)	182.0			182.0
	SUBQUOTAS:			*SUBQUOTAS:*
	School 94.9			School 94.9
	Reserve 17.6			Reserve 17.6
	North 36.5			North 36.5
	South 40.8			South 40.8
	LS/SM 82.9			LS/SM 82.9
	North 39.1			North 39.1
	South 43.8			South 43.8
	Trophy 4.2			Trophy 4.2
	North 1.4			North 1.4
	South 2.8			South 2.8
General (47.1)	435.1			435.1
	SUBQUOTAS:			*SUBQUOTAS:*
	Jan 23.1			Jan 23.1
	Jun–Aug 217.6			Jun–Aug 217.6
	Sept 115.3			Sept 115.3
	Oct–Nov 56.6			Oct–Nov 56.6
	Dec 22.6			Dec 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8			171.8
Longline (8.1)	74.8	−61.2	+47.5	61.1
	SUBQUOTAS:			*SUBQUOTAS:*
	North (-NED) 29.9			North (-NED) 24.4
	NED 25.0*			NED 25.0*
	South 44.9			South 36.7
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1		+47.4	70.5

*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Request for Comments

NMFS solicits comments on this proposed rule through April 16, 2012. See instructions in **ADDRESSES** section above.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasoning for this certification is as follows:

These annual quota Atlantic bluefin tuna (BFT) specifications (effective January 1 through December 31, 2012) are necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the United States must promulgate regulations as necessary and appropriate to implement binding recommendations of ICCAT.

The proposed rule would adjust the annual U.S. baseline BFT quota, which was recommended for 2011 and for 2012 by ICCAT, to account for any underharvest or overharvest of the adjusted 2011 U.S. BFT quota. Preliminary information indicates an underharvest of the 2011 adjusted BFT quota. This proposed action was developed in accordance with the framework process set forth in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), and is supported by the Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the Consolidated HMS FMP and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FRFA) prepared for the 2011 final rule implementing BFT quotas and Atlantic tuna fisheries management measures (see **ADDRESSES**).

On July 5, 2011, the National Marine Fisheries Service (NMFS) published a final rule (76 FR 39019) that modified the baseline quota to 948.7 mt to implement ICCAT Recommendation 10–03 (Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program) and set the category subquotas per the allocations established in the Consolidated HMS FMP (71 FR 58058, October 2, 2006). The FRFA prepared for the 2011 BFT quota specifications indicated that there were 8,311 commercial Atlantic tunas or Atlantic HMS permit holders (3,849 in the Atlantic Tunas General category; 29 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine

category; 248 in the Atlantic Tunas Longline category; 6 in the Atlantic Tunas Trap category; and 4,174 in the HMS Charter/Headboat category). This constitutes the best available information regarding the universe of permit holders recently analyzed.

Under the SBA's regulations implementing the RFA, a small fishing entity is one that has less than $4 million in annual revenue ($6.5 million for charter/party boats). This action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities.

The most recent ex-vessel average price per pound information for each commercial quota is used to estimate potential ex-vessel gross revenues under the 2012 baseline subquotas and the 2012 proposed adjusted subquotas, *which would reduce the Longline category subquota in the same manner as implemented for 2011* (i.e., 2011 prices for the General, Harpoon, and Longline/Trap categories, and 2009 for the Purse Seine category, when Purse Seine category landing were last recorded). The 2012 baseline quotas could result in estimated gross revenues for each category, if fully utilized, as follows: General category: $8.5 million (435.1 mt * $8.90/lb); Harpoon category: $565,000 (36 mt * $7.12/lb); Longline category: $1 million (74.8 mt * $6.10/lb); Purse Seine category: $2.3 million (171.8 mt * $5.96/lb); and Trap category: $12,000 (0.9 mt * $6.10/lb). Under the adjusted quota for the Longline category, gross revenues could be $822,000 (61.1 mt * $6.10/lb). Estimated potential 2012 revenues on a per vessel basis, considering the number of permit holders listed above, could be $2,200 for the General category; $19,500 for the Harpoon category; $3,300 for the Longline category under the proposed adjusted subquota (reduced from $4,100 under the baseline subquota); $451,000 for the Purse Seine category; and $2,000 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

However, this proposed rule would not change the BFT baseline quota and category subquotas, or implement any new management measures not previously considered. ICCAT Recommendation 10–03 is in effect until changed, for instance, as a result of a new ICCAT BFT quota recommendation. The domestic BFT baseline quotas and subquotas are codified in the regulations. Thus, the affected entities will not experience any negative price impacts as a result of this rule.

Carryover of underharvest: ICCAT Recommendation 10–03 limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. This limits the amount of 2011 U.S. underharvest that may be carried forward to 94.9 mt (10 percent of the 948.7-mt total U.S. quota). NMFS proposes to carry 94.9 mt forward to 2012 and distribute that amount in the same manner as specified for 2011. The adjusted BFT quota and subquotas for the 2012 fishing year would be the same as for the 2011 fishing year based on the best available data regarding 2011 landings and the best available estimate of dead discards, which must be accounted for and reported to ICCAT. The annual specification process that this proposed rule follows, including application of underharvests and overharvests, is described in detail in Chapters 2 and 4 of the Consolidated HMS FMP. Because the economic impacts of the carryover of underharvest, to the extent that there are any, are expected to be generally positive, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Because this rule does not change the catch limits significantly, and will not have an economic impact (except a positive one) on the affected entities, it does not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis is required, and none has been prepared.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 13, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–6453 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 52
Friday, March 16, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights

Date And Time: Monday, April 2, 2012, 2 p.m. [MDT].

Place: Via Teleconference. Public Dial-in 1–800–516–9896. Conference ID: 8334.

TDD: Dial 711 for relay services and enter 1–800–516–9896, followed by Conference ID #:8334.

Notice is hereby given that a planning meeting of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights will convene via teleconference. The purpose of the meeting is for the Advisory Committee to select a project topic to study.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by May 2, 2012. Comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999–18th Street, Suite 1380 South, Denver, CO 80202, faxed to (303) 866–1050, or emailed to *ebohor@usccr.gov.* In addition, persons who desire additional information may contact Malee Craft, Regional Director, Rocky Mountain Regional Office, by phone at (303) 866–1040.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Rocky Mountain Regional Office at the above email, address, or telephone number.

To ensure that the Commission secures an appropriate number of telephone lines for the public, persons are asked to contact the Rocky Mountain Regional Office 10 days before the meeting date either by email at *ebohor@usccr.gov* or by phone.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 12, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–6353 Filed 3–15–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Nevada Advisory Committee (Committee) to the Commission will convene on Friday, March 30, 2012, at 1 p.m. and adjourn at approximately 3:30 p.m. at the Department of Employment, Training and Rehabilitation, 2800 East St. Louis Ave., Las Vegas, Nevada 89104. The purpose of the meeting is for the Committee to receive an orientation and plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office by April 30, 2012. The mailing address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90032. Persons wishing to email their comments may do so to *atrevino@usccr.gov.* Persons that desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 12, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–6360 Filed 3–15–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that an orientation and planning meeting of the District of Columbia Advisory Committee will convene at 12 p.m. on Tuesday, April 10, 2012, at the U.S. Commission on Civil Rights, 624 Ninth Street NW., Conference Room 540, Washington, DC 20425. The purpose of the orientation meeting is to review the rules of operation for the Advisory Committee. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Thursday, May 10, 2012. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street NW., Suite 740, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may also contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site,

www.usccr.gov, or to contact the Eastern Regional Office at the above email or street address or phone number.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 12, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–6376 Filed 3–15–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Requests for Appointment of Technical Advisory Committee.

OMB Control Number: 0694–0100.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 5.

Number of Respondents: 1.

Average Hours Per Response: 5.

Needs and Uses: This collection of information is required by the Export Administration Regulations and the Federal Advisory Committee Act. The Technical Advisory Committees (TACs) were established to advise and assist the U.S. Government on export control matters. Under this collection, interested parties may submit a request to BIS to establish a new TAC. BIS provides administrative support for these TACs.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5167 or Jasmeet_K._Seehra@omb.eop.gov.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6416 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–852, A–523–801, A–520–805, A–552–811]

Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation of the antidumping duty investigations of circular welded carbon-quality steel pipe and tube from India, the Sultanate of Oman (Oman), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (Vietnam). *See Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 76 FR 72164 (November 22, 2011). The current deadline for the preliminary determinations of these investigations is April 3, 2012.

Periods of Investigations

The period of investigation for the India, Oman, and UAE investigations is October 1, 2010, through September 30, 2011. The period of investigation for the Vietnam investigation is April 1, 2011, through September 30, 2011.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination no later than 140 days after the initiation of the investigation.

On February 29, 2012, petitioners JMC Steel Group and Allied Tube and Conduit, made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determinations to provide the Department with additional time to collect and analyze information required for those determinations. No interested party commented on this request for postponement.

For the reason stated above and because there are no compelling reasons to deny the request, the Department is postponing by 50 days to May 23, 2012, the deadline for its preliminary determinations of these investigations pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) and (f). In accordance with section 735(a)(1) of the Act, the deadline for the final determination of these antidumping duty investigations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 12, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–6462 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1293 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2011, the U.S. Department of Commerce (Department) published a notice of initiation of administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2010, through December 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). The preliminary results of this administrative review are currently due no later than April 1, 2012.[1]

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of a countervailing duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively. *See also* 19 CFR 351.213(h).

Extension of Time Limit for Preliminary Results

Because the Department will require additional time to review and analyze submitted information from the Government of Italy and the respondent company, Molino e Pastifico Tomasello, S.p.A., and to issue supplemental questionnaires, it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days. The preliminary results will now be due no later than July 30, 2012.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 9, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–6463 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] Because April 1, 2012 is a Sunday, the preliminary results of this review would be due no later than the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Workshop to Seek Comment on Federal Conformity Assessment Guidance

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of Public Workshop.

SUMMARY: The U.S. Department of Commerce's (DOC) National Institute of Standards and Technology (NIST) will hold a free public workshop titled ''Conformity Assessment—Approaches and Best Practices'' on Wednesday, April 11, 2012 at 9 a.m. Eastern Time (ET) at NIST in Gaithersburg, Maryland. The purpose of the NIST public workshop is (1) to examine current approaches to conformity assessment among Federal agencies and the private sector and (2) to provide a forum for discussion with NIST on conformity assessment practices, challenges and the means by which these challenges are being addressed.

ADDRESSES: NIST, Building 101, Green Auditorium, 100 Bureau Drive in Gaithersburg, MD 20899.

DATES: Wednesday, April 11, 2012; 9 a.m. to 4 p.m. ET. Please see registration information and deadlines in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Gordon Gillerman, NIST Standards Coordination Office (SCO), Standards Services Division (SSD), 100 Bureau Drive, Gaithersburg, MD; Email: *Federal_CA@nist.gov*.

SUPPLEMENTARY INFORMATION: Section 12(b) of the National Technology Transfer and Advancement Act (NTTAA—Pub. L. 104–113) requires NIST to coordinate Federal, State, and local standards activities and conformity assessment activities with the private sector, with the goal of eliminating unnecessary duplication and complexity. OMB A119, which provides additional policy guidance on implementation of the NTTAA, directed the Secretary of Commerce to issue guidance to Federal agencies on conformity assessment related issues. In response, NIST published regulations entitled ''Guidance on Federal Conformity Assessment Activities'' in August 2000 (15 CFR part 287). The regulations outline Federal agencies' responsibility for evaluating the efficiency and effectiveness of their conformity assessment activities and are intended to help Federal agencies improve the management and coordination of their own conformity assessment activities in support of their regulatory, procurement and other mission objectives.

Discussions at the workshop will inform NIST conformity assessment guidance to Federal agencies. The conference will include presentations from key government officials, regulators, and industry and conformity assessment experts. Time will be allotted for participant input and discussions.

Registration Information: U.S. Citizens and Permanent Residents wishing to attend the meeting must register by 5 p.m. ET April 3, 2012. Non-U.S. Citizens that do not hold a green card must register by 5 p.m. ET March 27, 2012. There will be no onsite registration. To register, please go to the NIST Conference Services registration link: *https://www-s.nist.gov/CRS/conf_disclosure.cfm?&conf_id=5282*.

There is no registration fee.

Dated: March 8, 2012.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2012–6373 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB080

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of issuance of permits.

SUMMARY: NMFS has issued permit 15542 to Normandeau Associates, Incorporated [Responsible Party: Tim Salamunovich], 890 L Street, Arcata, CA 95521; permit 16608 to the U.S. Bureau of Reclamation (USBR) [Responsible Party: Michelle Banonis], 2800 Cottage Way, Room W–1727 Sacramento, CA 95825; and permit 16531 to FISHBIO Environmental, LLC [Responsible Party: Andrea Fuller], 599 Hi-Tech Pkwy, Oakdale, CA 95361; for purposes of scientific research.

ADDRESSES: Permits and related documents are available for review, upon written request or appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13705, Silver Spring, MD 20910–3226; Phone (301) 713–2289; Fax (301) 427–2521; and Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814; Phone (916) 930–3600; Fax (916) 930–3629.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number (916) 930–3606, or email: *shirley.witalis@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to Federally-listed threatened California Central Valley (CCV) steelhead (*Oncorhynchus mykiss*). Permits 15542, 16608 and 16531 have been issued under the authority of 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).

Permits

Permit 15542 was issued to Normandeau Associates, Incorporated (NAI) on October 24, 2011, authorizing the take of ESA-listed juvenile and adult CCV steelhead during fish monitoring surveys in lower Putah Creek, a tributary to the Sacramento River, Central Valley, California. The surveys are conducted under the auspices of the Lower Putah Creek Coordinating Committee (LPCCC) to evaluate LPCCC flow management actions on the abundance, distribution, condition, and health of fishes in lower Putah Creek. Sample fish will be captured by boat and raft-mounted electrofisher, anesthetized, identified to species, examined for marks and tags, measured and weighed, and released back into lower Putah Creek. Permit 15542 will expire on November 1, 2016.

Permit 16608 was issued to the U.S. Bureau of Reclamation (USBR) on January 26, 2012, authorizing the take of ESA-listed juvenile and adult CCV steelhead during implementation of the San Joaquin River Restoration Program Steelhead Monitoring Plan (SJRRP SMP). USBR, in affiliation with the SJRRP, will monitor for the presence of steelhead within the SJRRP action area, defined as the mainstem San Joaquin River, from Friant Dam to the confluence of the Merced River, in Central Valley, California. CCV steelhead will be captured prior to entering non-restored habitat, by raft-mounted electrofisher, fyke nets and trammel nets; identified to gender; sampled for tissues and scales; assessed for condition and the presence of marks and tags; and receive a coded floy tag. Captured CCV steelhead will then be transported by truck and released into suitable habitat in the San Joaquin River downstream of the confluence of the Merced River. Permit 16608 will expire on March 31, 2014.

Permit 16531 was issued to FISHBIO Environmental, LLC (FISHBIO) on February 24, 2012, authorizing the take of ESA-listed CCV steelhead in scientific research studies linking salmonid habitat and spatial variability in the Merced River, a tributary to the San Joaquin River, in the Central Valley, California. Research investigations will evaluate: (1) The effects of attraction flow augmentation on adult salmonid migration timing and on salmonid spawning and rearing habitats; and (2) the effects of current flow management on salmonid fry and juvenile abundance, outmigration, and survival in the lower Merced River. Authorized activities include: (1) Passive monitoring (observations and enumeration at a fish counting weir; snorkel surveys; and underwater DIDSON sonar camera monitoring), and (2) active monitoring (capture of CCV steelhead by rotary screw trap, the application of anesthesia, species identification, the taking of length measurements and weights, and release of sampled juvenile and adult steelhead back into the Merced River). Permit 16531 will expire on December 31, 2016.

Dated: March 13, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–6451 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB092

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee and Advisory Panel in April, 2012 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, April 3, 2012 at 10 a.m.

ADDRESSES: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee and Advisory Panel are meeting jointly to address the recent listing of Atlantic sturgeon under the Endangered Species Act. NMFS Protected Resources Division staff will brief the meeting participants on several aspects of this listing, including who is most affected and what it means to them. They are also seeking input on what strategies and measures should be considered to reduce the interaction of the monkfish fishery with sturgeon. The Mid-Atlantic Council representative will provide a brief on the results of the meeting of the Council's ad hoc Sturgeon Committee. The Committee will also consider developing recommendations to the Councils on a course of action to address the Biological Opinion, which is scheduled to be released on or shortly after April 6, when the listing becomes effective. Time permitting, the Council staff will update the Committee on the PDTs progress in developing Amendment 6 alternatives, and present results of any analyses that have been completed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 13, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6398 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN0648–XB090

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, April 4, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; telephone: (401) 861–8000; fax: (401) 454–4306.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisors will begin developing specific measures for Framework 24. This action is primarily setting specifications for fishing years 2013 and 2014. At this meeting, the Advisors will primarily work on other measures that will be considered in this action in addition to specifications. Specifically, (1) possible modification of Georges Bank access area opening dates; (2) consider measures to address sub-ACL of yellowtail flounder for the LAGC trawl fishery; (3) consider modifying the effective date of YT sub-ACL AMs from Year 2 to Year 3; (4) leasing LAGC IFQ mid-year; and (5) expanding the observer set-aside program to include LAGC open area trips. The Advisors will make recommendations to the Scallop Committee for research priorities for the 2013 and 2014 Research Set-Aside program. If time permits, the Advisors may review and provide input on a draft outline for a Performance Evaluation of the LAGC IFQ program to date. The Advisors may discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 13, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6404 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB067

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to review and discuss the following items: Fishery Management Plan (FMP) amendments under development; current landings and Acceptable Biological Catch (ABC) values for managed stocks including the effect of revised recreational catch estimates; ABC control rule approaches; research priorities; peer review procedures; and planning for update assessments of vermilion snapper and red porgy. The meeting will be held in Savannah, GA. See **SUPPLEMENTARY INFORMATION.**

DATES: The meetings will be held April 3–5, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton DeSoto Savannah, 15 East Liberty Street, Savannah, GA 31401; telephone: (912) 232–9000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; Email: *Kim.Iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss FMP amendments under development, current landings and ABC values for managed stocks including the effect of revised recreational catch estimates, ABC control rule approaches, research priorities, peer review procedures, and planning for update assessments of vermilion snapper and red porgy.

SSC Meeting Schedule:

April 3, 2012, 1 p.m.–6 p.m.

April 4, 2012, 8 a.m.–6 p.m.

April 5, 2012, 8 a.m.–3 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: March 13, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6448 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB082

Southern California Hook and Line Survey; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The National Marine Fisheries Service, Northwest Fisheries Science Center (NWFSC) will hold a peer review meeting to evaluate the Southern California Shelf Rockfish Hook and Line Survey which was designed to collect fishery-independent data for use in the stock assessments of groundfish associated with rocky habitats.

DATES: The Southern California Hook and Line Survey review meeting will be held beginning at 8 a.m., Wednesday, April 4, 2012 and end at 5:30 p.m. or as necessary to complete business for the day. The review meeting will reconvene on Thursday, April 5, 2012 at 8 a.m. and will adjourn by 5 p.m.

ADDRESSES: The Southern California Hook and Line Survey review meeting will be held at the Northwest Fisheries Science Center, 2725 Montlake Blvd. E., Seattle, WA 98112–2097; telephone: (206) 860–3200.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (541) 961–8475; or Mr. John Harms, Northwest Fisheries Science Center (NWFSC); telephone: (206)–860–3414.

SUPPLEMENTARY INFORMATION: The peer review meeting will be held to: (1) Evaluate the Southern California Hook and Line survey design and protocols; (2) examine the analytical methods used to generate rockfish abundance indices; and, (3) provide suggestions regarding potential expansion of the survey's geographical range and species for which abundance indices are generated—particularly for data-poor and data-limited species.

Although non-emergency issues not contained in the meeting agenda may come before the review meeting participants for discussion, those issues may not be the subject of formal review action during this meeting. Actions of the review participants will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Stacey Miller at (541) 961–8475 at least 5 days prior to the meeting date.

Dated: March 13, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6403 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB093

North Pacific Fishery Management Council; Public Notice

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council's) Groundfish Plan Teams and Crab Plan Team will hold a workshop on Assessment/Management Issues Related to Recruitment, April 4–5, 2012 at the Alaska Fishery Science Center.

DATES: The meetings will be held April 4–5, 2012. The meetings will begin at 9 a.m., April 4 and continue through Thursday April 5. Webex participation is available; please check the Council Web site for participation information.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Traynor Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Teams will develop guidelines on how to address environmental changes in the Stock-Recruitment relationship into biological reference points and how to model environmental forcing into stock projection models.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 13, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6399 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB050

Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Sonoma County Water Agency (SCWA) for an Incidental Harassment Authorization (IHA) to take marine mammals incidental to Russian River estuary management activities. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to SCWA to take, by Level B Harassment only, several species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than April 16, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Laws@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Supplemental documents provided by SCWA may be found at the same web address, as can NMFS' Environmental Assessment (2010) and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act. Documents cited in this notice may also be viewed, by appointment only, at the aforementioned physical address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, an IHA may be effective for a maximum of one year from date of issuance.

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 January 27, 2012 from SCWA requesting issuance of an IHA for the taking, by Level B harassment only, of marine mammals incidental to activities conducted in management of the Russian River estuary in Sonoma County, California. SCWA was first issued an IHA, valid for a period of one year, on April 1, 2010 (75 FR 17382) and was subsequently issued a second IHA for incidental take associated with the same activities on April 21, 2011 (76 FR 23306). The proposed activities include management of a naturally-formed barrier beach at the mouth of the river in order to minimize potential for flooding adjacent to the Russian River estuary and enhance habitat for juvenile salmonids, and biological and physical monitoring of the estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and considered in this document, include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

Breaching of naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (e.g., bulldozer, excavator) and increased human presence. As a result, pinnipeds hauled out on the beach may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of harbor seals, the species most commonly encountered at the haul-out, have been recorded extensively since 1972 at the haul-out near the mouth of the Russian River (the Jenner haul-out). Based on these monitoring data and SCWA's estimated number of management events, SCWA is requesting authorization to incidentally harass up to 2,956 harbor seals, 39 California sea lions, and 20 northern elephant seals during the 1-year time span of the proposed IHA, from April 21, 2012 to April 20, 2013.

Description of the Specified Activity

The estuary is located about 97 km (60 mi) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel, 1994). The proposed action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high

tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of barrier beach may be conducted for the sole purpose of reducing flood risk. SCWA's proposed activity was described in detail in NMFS' notice of proposed authorization prior to the current IHA (76 FR 14924; March 18, 2011); please see that document for a detailed description of SCWA's estuary management activities.

Within the Russian River watershed, the U.S. Army Corps of Engineers (Corps), SCWA and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) operate and maintain federal facilities and conduct activities in addition to the estuary management, including flood control, water diversion and storage, instream flow releases, hydroelectric power generation, channel maintenance, and fish hatchery production. The Corps, SCWA, and the District conducted these activities for many years before salmonid species in the Russian River were protected under the ESA. Upon determination that these actions were likely to affect ESA-listed salmonids, as well as designated critical habitat for these species, formal consultation under section 7 of the ESA was initiated. In 2008, NMFS issued a Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the Corps, SCWA, and the District in the Russian River watershed (NMFS, 2008). This BiOp found that the activities—including SCWA's estuary management activities—authorized by the Corps and undertaken by SCWA and the District, if continued in a manner similar to recent historic practices, were likely to jeopardize the continued existence of ESA-listed salmonids and were likely to adversely modify critical habitat.

If a project is found to jeopardize a species or adversely modify its critical habitat, NMFS must develop a Reasonable and Prudent Alternative (RPA) to the proposed project, in coordination with the federal action agency and any applicant. A component of the RPA described in the 2008 BiOp requires SCWA to collaborate with NMFS and modify their estuary water level management in order to reduce marine influence (i.e., high salinity and tidal inflow) and promote a higher water surface elevation in the estuary in order to enhance the quality of rearing habitat for juvenile salmonids. A program of potential incremental steps prescribed to reach that goal includes adaptive management of the outlet channel. SCWA is also required to monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system.

The analysis contained in the BiOp found that maintenance of lagoon conditions was necessary only for the lagoon management period. See NMFS' BiOp (2008) for details of that analysis. As a result of that determination, there are three components to SCWA's estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole goal of flood risk abatement; and (3) physical and biological monitoring. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for detailed discussion of these activities.

Jetty Study

In addition to the previously described activities, SCWA proposes to conduct new monitoring work at the mouth of the Russian River during the period of this proposed IHA. This additional activity comprises a plan to study the effects of a historical, dilapidated jetty on the formation and maintenance of the Russian River estuary, as required under RPA 2 of the 2008 BiOp. Through several phases from 1929–1948, the jetty and associated seawall, roadway, and railroad were constructed, reinforced and then abandoned by various entities. The plan for study of the jetty is described in greater detail in SCWA's ''Feasibility of Alternatives to the Goat Rock State Beach Jetty for Managing Lagoon Water Surface Elevations—A Study Plan'' (ESA PWA, 2011a), available online (see **ADDRESSES**).

NMFS' BiOp determined that salmonid estuarine habitat may be improved by managing the Russian River estuary as a perched, freshwater lagoon and, therefore, stipulates as a RPA to existing conditions that the estuary be managed to achieve such conditions between May 15th and October 15th. In recognition of the complexity and uncertainty inherent in attempting to manage conditions in a dynamic beach environment, the BiOp stipulates that the estuarine water surface elevation RPA be managed adaptively, meaning that it should be planned, implemented, and then iteratively refined based on experience gained from implementation. The first phase of adaptive management, which has been implemented since 2010, is limited to outlet channel management (ESA PWA, 2011b). The second phase requires study of and consideration of alternatives to the jetty (e.g., complete removal, partial removal).

The jetty, which is embedded in the barrier beach, may significantly affect some of the physical processes which determine lagoon water surface elevations. The proposed study would analyze the effects of the jetty on beach permeability and sand storage and transport. These physical processes are affected by the jetty, and, in turn, may affect seasonal water surface elevations and flood risk. Evaluating and quantifying these linkages will inform the development and evaluation of management alternatives for the jetty.

The goal of the proposed study is to evaluate the feasibility of modifying or removing the jetty to improve the likelihood of achieving the target lagoon water surface elevations. To accomplish this goal, the study objectives include: (1) Describe the extent and composition of the jetty; (2) understand the jetty's effects on the physical processes which partially determine lagoon water surface elevations, including beach permeability, sand storage, and sand transport; (3) evaluate the jetty's role in flood risk to property adjacent to the estuary; and (4) Recommend an approach for developing and analyzing jetty alternatives, such as jetty removal, partial removal, jetty notching and other uses of the jetty which may help achieve target lagoon water surface elevations.

The study would involve delineation of two study transects perpendicular to the beach barrier (see Figure 5 of SCWA's application). To study water seepage rates, six monitoring wells would be constructed on the barrier beach of the estuary (three per transect); these would be installed using a hollow stem auger drill rig and two inch diameter casings. Wells would be capped and buried below the sand surface to prevent vandalism and tourist interaction. The well locations were chosen to minimize potential for disturbance of pinnipeds using the Jenner haul-out (i.e., greater than 200 ft south of the actual haul-out location and on the opposite side of the jetty). No personnel or heavy equipment would need to approach or transit the haul-out, as is required for other estuary management activities. The noise generated from the drill is estimated to be 85–90 db re: 20 μPa at a distance of 20 ft. Given a maximum estimated source level of 90 dB (at 20 ft) and the distance between planned location of the wells and the haul-out, received sound levels at the haul-out would be below the level at which NMFS

considers harassment from airborne sound to be a possibility for harbor seals (90 dB re: 20 μPa). It is unlikely that harassment of pinnipeds would result from this activity; however, SCWA would implement standard mitigation measures as for other planned activities.

In order to better understand the characteristics of the barrier beach substrate and the location and composition of buried portions of the jetty and associated structures, geophysical surveys would be conducted along the barrier beach. Seismic refraction and electrical resistivity profiling would be conducted simultaneously. Seismic refraction involves pounding an impact hammer on the surface of the beach, creating a sound wave that resonates through the sand bar. It is not believed that this activity would generate sound at levels sufficient to be detected by seals hauled out along the beach; in fact, it is likely that sound waves generated by ocean waves crashing on the beach will be a source of interference when trying to detect the sound waves generated by the impact hammer (i.e., hauled-out seals would not be able to distinguish between sound pressure waves felt as a result of surf as opposed to seismic refraction). Electric resistivity profiling involves placing probes down into the substrate and would not produce any physical or auditory disturbance to the pinnipeds on the beach. This profile would be completed by a staff of up to three personnel for a period of 2 consecutive days. Ground-penetrating radar (GPR) profiles would also be completed near the jetty in perpendicular transects 30 to 40 feet long. The profiles would be collected by two personnel travelling on foot and should only take 1 day to complete.

Once the initial geophysical surveys have been completed, additional surface electromagnetic profiles will be collected along the barrier beach in order to explore how the jetty impacts beach seepage relative to the natural beach berm. Collecting these electromagnetic profiles will involve 2–3 personnel walking along the barrier beach using either a hand-held conductivity meter or a pull-along capacitively coupled Ohm-Mapper system cable with sensors. Neither of these instruments generates sound that could disturb pinnipeds on the beach.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out). California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 4 of SCWA's application). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary.

Harbor Seals

Harbor seals in the eastern Pacific inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. In California, approximately 400–600 harbor seal haul-outs are widely distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996).

The harbor seal population in California is estimated at approximately 34,233 (Carretta *et al.,* 2007). Counts of harbor seals in California showed a rapid increase from approximately 1972 to 1990, though net production rates appeared to decline from 1982 to 1994. The decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may be an indication that the population is reaching its environmental carrying capacity.

In general, harbor seals do not undertake long migrations, but do travel 300–500 km on occasion to find food or suitable breeding areas (Herder, 1986). Harbor seals are rarely found in pelagic waters and typically stay within the tidal and intertidal zones. On land, harbor seals haul out on rocky outcrops, mudflats, sandbars and sandy beaches with unrestricted access to water and with minimal human presence. Haul-out sites are important as resting sites for harbor seals, who feed opportunistically in shallow waters on fish, crustaceans, and cephalopods. Harbor seals are typically solitary while foraging, although small groups have been observed. They normally choose isolated sites for pupping, which normally occurs at the Russian River from March until late June, and sometimes into early July. The Jenner haul-out is the largest in Sonoma County.

A substantial amount of monitoring effort has been conducted at the Jenner haul-out and surrounding areas. Concerned local residents formed the Stewards' Seal Watch Public Education Program in 1985 to educate beach visitors and monitor seal populations. State Parks Volunteer Docents continue this effort towards safeguarding local harbor seal habitat. On weekends during the pupping and molting season (approximately March–August), volunteers conduct public outreach and record the numbers of visitors and seals on the beach, other marine mammals observed, and the number of boats and kayaks present.

Ongoing monthly seal counts at the Jenner haul-out were begun by J. Mortenson in January 1987, with additional nearby haul-outs added to the counts thereafter. In addition, local resident E. Twohy began daily observations of seals and people at the Jenner haul-out in November 1989. These datasets note whether the mouth at the Jenner haul-out was opened or closed at each observation, as well as various other daily and annual patterns of haul-out usage (Mortenson and Twohy, 1994). Recently, SCWA began regular baseline monitoring of the haul-out as a component of its estuary management activity. Table 1 shows average daily numbers of seals observed at the mouth of the Russian River from 1993–2005 (Mortenson and Twohy) and from 2009–11 (SCWA).

TABLE 1—AVERAGE DAILY NUMBER OF SEALS OBSERVED AT RUSSIAN RIVER MOUTH FOR EACH MONTH, 1993–2005; 2009–11

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1993	140	219	269	210	203	238	197	34	8	38	78	163
1994	138	221	243	213	208	212	246	98	26	31	101	162
1995	133	270	254	261	222	182	216	74	37	24	38	148
1996	144	175	261	247	157	104	142	65	17	29	76	139
1997	154	177	209	188	154	119	186	58	20	29	30	112
1998	119	151	192	93	170	213	232	53	33	21	93	147
1999	161	170	215	210	202	128	216	98	57	20	74	123
2000	151	185	240	180	158	245	256	63	46	50	86	127

TABLE 1—AVERAGE DAILY NUMBER OF SEALS OBSERVED AT RUSSIAN RIVER MOUTH FOR EACH MONTH, 1993–2005; 2009–11—Continued

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001	155	189	161	168	135	212	275	75	64	20	127	185
2002	117	12	20	154	134	213	215	89	43	26	73	126
2003	—	1	26	161	164	222	282	100	43	51	109	116
2004	2	5	39	180	202	318	307	35	40	47	68	61
2005	0	7	42	222	220	233	320	145	—	—	—	—
Mean, 1993–2005	118	137	167	191	179	203	238	76	36	32	79	134
2009–11	96	89	146	131	119	134	237	108	36	36	90	45

Data from 1993–2005 adapted from Mortenson and Twohy, 1994 and E. Twohy unpublished data. Data from 2009–11 collected by SCWA. Months represented by dash indicate periods where data were missing or incomplete.

The number of seals present at the Jenner haul-out generally declines during bar-closed conditions (Mortenson, 1996). SCWA's pinniped monitoring efforts from 1996 to 2000 focused on artificial breaching activities and their effects on the Jenner haul-out. Seal counts and disturbances were recorded from one to two days prior to breaching, the day of breaching, and the day after breaching (Merritt Smith Consulting, 1997, 1998, 1999, 2000; SCWA and Merritt Smith Consulting, 2001). In each year, the trend observed was that harbor seal numbers generally declined during a beach closure and increased the day following an artificial breaching event. Heckel (1994) speculated that the loss of easy access to the haul-out and ready escape to the sea during bar-closed conditions may account for the lower numbers. Table 2 shows average daily seal counts recorded during SCWA monitoring of breaching events from 1996–2000 and 2009–10, representing bar-closed conditions, when seal numbers decline.

TABLE 2—AVERAGE NUMBER OF HARBOR SEALS OBSERVED AT THE MOUTH OF THE RUSSIAN RIVER DURING BREACHING EVENTS (I.E., BAR-CLOSED CONDITIONS) BY MONTH.

Year	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
1996–2000	173	103	100	75	17	5	22	11
2009	—	—	91	—	—	13	22	—
2010	—	—	—	105	—	19	13	—

Dashes represent months when no estuary management events occurred.

Mortenson (1996) observed that pups were first seen at the Jenner haul-out in late March, with maximum counts in May. In this study, pups were not counted separately from other age classes at the haul-out after August due to the difficulty in discriminating pups from small yearlings. From 1989 to 1991, Hanson (1993) observed that pupping began at the Jenner haul-out in mid-April, with a maximum number of pups observed during the first two weeks of May. This corresponds with the peaks observed at Point Reyes, where the first viable pups are born in March and the peak is the last week of April to early May (SCWA, 2011). Based on this information, pupping season at the Jenner haul-out is conservatively defined here as March 15 to June 30.

California Sea Lions

California sea lions range from southern Mexico to British Columbia, Canada. The entire U.S. population has been estimated at 238,000, and grew at a rate of approximately 6 percent annually between 1975 and 2005 (Carretta *et al.,* 2007). Sea lions can be found at sea from the surf zone out to nearshore and pelagic waters. On land, sea lions are found resting and breeding in groups of various sizes, and haul out on rocky surfaces and outcroppings and beaches, as well as on manmade structures such as jetties. Sea lions prefer haul-out sites and rookeries near abundant food supplies, with easy access to water, although they may occasionally travel up rivers and bays in search of food.

California sea lions exhibit seasonal migration patterns organized around their breeding activity. Sea lions breed at large rookeries in the Channel Islands in southern California, and on both sides of the Baja California peninsula, typically from May to August. Females tend to remain close to the rookeries throughout the year, while males migrate north after the breeding season in the late summer before migrating back south to the breeding grounds in the spring (CDFG, 1990). No established rookeries are known north of Point Reyes, California, but large numbers of subadult and non-breeding or post-breeding male California sea lions are found throughout the Pacific Northwest. There is a mean seasonal pattern of peak numbers occurring in the northwest during fall, but local areas show high annual and seasonal variability. Sea lions feed on fish and cephalopods. Although solitary feeders, sea lions often hunt in groups, which can vary in size according to the abundance of prey (CDFG, 1990).

Solitary California sea lions have occasionally been observed at or in the vicinity of the haul-out (Merritt Smith Consulting, 1999, 2000). Individual sea lions were observed near the mouth of the Russian River in November and December of 2009; a single individual was observed hauled-out on one occasion in November 2009. Juvenile sea lions were observed during the summer of 2009 at the Patty's Rock haul-out, and some sea lions were observed during monitoring of peripheral haul-outs in October 2009. The occurrence of individual California sea lions in the action area may generally occur from September through April, but is infrequent and sporadic.

Northern Elephant Seals

Populations of northern elephant seals in the U.S. and Mexico are derived from a few tens or hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the recent derivation of most rookeries, no genetic differentiation would be expected.

Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population and is considered to be a separate stock. Based on the estimated 35,549 pups born in California in 2005, the California stock was estimated at approximately 124,000 (Carretta *et al.* 2009). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005 (Carretta *et al.,* 2009).

Northern elephant seals breed and give birth in California and Baja California, Mexico, primarily on offshore islands from December to March (Stewart *et al.,* 1994; Stewart and Huber, 1993). Gestation lasts around 11 months, and pups are born in early winter from December to January. Northern elephant seals are polygamous; males establish dominance over large groups of females during the breeding season. Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Censuses of pinnipeds at the mouth of the Russian River have been taken at least semi-monthly since 1987. Elephant seals were noted from 1987–95, with one or two elephant seals typically counted during May censuses, and occasional records during the fall and winter (Mortenson and Follis, 1997). A single, tagged northern elephant seal sub-adult was present at the Jenner haul-out from 2002–07. This individual seal, which was observed harassing harbor seals also present at the haul-out, was generally present during molt and again from late December through March. A single juvenile elephant seal was observed at the Jenner haul-out in June 2009. The occurrence of individual northern elephant seals in the action area has generally been infrequent and sporadic from December through March in the past 10 years.

Potential Effects of the Specified Activity on Marine Mammals

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. In addition, pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to harass pinnipeds present on the beach. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus. In addition, eight other haul-outs exist nearby that may accommodate flushed seals. In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups.

However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2011). In the unlikely event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, pups have been observed during the pupping season; therefore, NMFS has evaluated the potential for injury, serious injury, or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during monitoring in 2010–11, but were inferred based on signs indicating pupping (e.g., blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species. Pups less than 1 week old are characterized by being up to 15 kg, thin for their body length, or having an umbilicus or natal pelage.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding.

Based on extensive monitoring data, NMFS has preliminarily determined that impacts to hauled-out pinnipeds

during estuary management activities would be behavioral harassment of limited duration (i.e., less than one day) and limited intensity (i.e., temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Mitigation'' for more details). Further, the continued, and increasingly heavy, use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Habitat

The purposes of the estuary management activities are to improve summer rearing habitat for juvenile salmonids in the Russian River estuary and/or to minimize potential flood risk to properties adjacent to the estuary. These activities would result in temporary physical alteration of the Jenner haul-out, but are essential to conserving and recovering endangered salmonid species, as prescribed by the BiOp. These salmonids are themselves prey for pinnipeds. In addition, with barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, would likely increase suitability and availability of habitat for pinnipeds. Biological and water quality monitoring would not physically alter pinniped habitat. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for a more detailed discussion of anticipated effects on habitat.

During SCWA's pinniped monitoring associated with artificial breaching activities from 1996 to 2000, the number of harbor seals hauled out declined when the barrier beach closed and then increased the day following an artificial breaching event (Merritt Smith Consulting, 1997, 1998, 1999, and 2000; SCWA and Merritt Smith Consulting, 2001). This response to barrier beach closure followed by artificial breaching is anticipated to continue. However, it is possible that the number of pinnipeds using the haul-out could decline during the extended lagoon management period, when SCWA would seek to maintain a shallow outlet channel rather than the deeper channel associated with artificial breaching. Collection of baseline information during the lagoon management period is included in the monitoring requirements described later in this document. SCWA's previous monitoring, as well as Twohy's daily counts of seals at the sandbar (Table 1) indicate that the number of seals at the haul-out declines from August to October, so management of the lagoon outlet channel (and managing the sandbar as a summer lagoon) would have little effect on haul-out use during the latter portion of the lagoon management period. The early portion of the lagoon management period coincides with the pupping season. Past monitoring during this period, which represents some of the longest beach closures in the late spring and early summer months, shows that the number of pinnipeds at the haul-out tends to fluctuate, rather than showing the more straightforward declines and increases associated with closures and openings seen at other times of year (Merritt Smith Consulting, 1998). This may indicate that seal haul-out usage during the pupping season is less dependent on bar status. As such, the number of seals hauled out from May through July would be expected to fluctuate, but is unlikely to respond dramatically to the absence of artificial breaching events. Regardless, any impacts to habitat resulting from SCWA's management of the estuary during the lagoon management period are not in relation to natural conditions, but rather in relation to conditions resulting from SCWA's discontinued approach of artificial breaching during this period.

In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmonid abundance, ultimately providing more food for seals present within the action area.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under the previous authorization. In accordance with the 2011 IHA, SCWA submitted a Report of Activities and Monitoring Results, covering the period of January 1 through December 31, 2011, as well as providing additional analysis of monitoring results from 2009–10. During the dates covered by the 2011 monitoring report, SCWA did not conduct any outlet channel implementation events or artificial breaching events, but did conduct associated biological and physical monitoring. During the course of these activities, SCWA did not exceed the take levels authorized under the 2011 IHA.

Baseline Monitoring—Baseline monitoring was performed to gather additional information regarding a possible relationship between tides, time of day, and the highest pinniped counts at the Jenner haul-out and to gain a better understanding about which specific conditions harbor seals may prefer for hauling out. Baseline monitoring of the peripheral haul-outs was conducted concurrently with monitoring at the mouth of the Russian River, and was scheduled for 2 days out of each month with the intention of capturing a low and high tide each in the morning and afternoon. No species of pinnipeds other than harbor seals were observed at the Jenner haul-out during the baseline monitoring; California sea lions were observed on two occasions in 2011 at one of the peripheral haul-outs located in the estuary. Figures 3–4 of SCWA's report show the mean number of harbor seal adults and pups (identified only during the pupping season) during twice-monthly baseline monitoring events. With some exceptions, the highest means were observed from the end of the pupping season into molt in 2011. Comparison of count data between the Jenner and peripheral haul-outs did not show any obvious correlations (e.g., the number of seals occupying peripheral haul-outs compared to the Jenner haul-out did not necessarily increase or decrease as a result of disturbance caused by beach visitors). Please review SCWA's report for a more detailed discussion.

Estuary Management Activity Monitoring

No injuries or mortalities were observed during 2011, and harbor seal reactions ranged from merely alerting to crew presence to flushing from the beach. No estuary management events occurred during 2011; incidental take resulted only from physical and biological monitoring activities. Total observed take of marine mammals resulting from SCWA's estuary management activity during 2011 is shown in Table 3. Total observed take, by harassment only, from biological and physical monitoring prescribed by the BiOp, was 42 harbor seals. SCWA was authorized to take, by harassment only, 2,735 harbor seals, nineteen California sea lions, and fifteen northern elephant seals. While the observed take was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of

species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, was justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for the proposed IHA (see ''Estimated Take by Incidental Harassment'') for the same activities in 2012.

TABLE 3—OBSERVED INCIDENTAL HARASSMENT (LEVEL B HARASSMENT ONLY) OF HARBOR SEALS DURING RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES, 2011

Date	Event type	Observed take	
		Age class [a]	Number
Jan 12	Beach topographic survey	Adult	4
Mar 9	Beach topographic survey	Adult	12
Apr 27	Beach topographic survey	Adult	1
May 18	Biological and physical monitoring in the estuary	Adult	4
Jul 18	Beach topographic survey	Adult	3
Sep 19	Beach topographic survey	Adult	6
Nov 16	Beach topographic survey	Adult	6
Dec 14	Beach topographic survey	Adult	6
Total			42

[a] Pups are counted separately through June, after which all seals are counted as adults as it becomes more difficult to accurately age individuals.

Conclusions

The primary purpose of SCWA's Pinniped Monitoring Plan is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. However, the following questions are also of specific interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?
2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?
3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer lagoon in the Russian River estuary?
4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

The limited data available thus far—only three management events took place in 2010–11 and the duration of lagoon closure has not been dissimilar from the duration of closures that have been previously observed at the estuary—precludes drawing conclusions regarding the key questions in SCWA's Monitoring Plan. However, baseline data collected from 2009–11 indicates that the highest numbers of pinnipeds are observed at the Jenner haul-out in July, during the molting season (see Table 3 of SCWA's Monitoring Report). The baseline monitoring effort is focused on understanding whether time of year, tides, and time of day affect the timing of use of the Jenner haul-out by harbor seals, which are found there throughout the year. Seasonal variation in the abundance of harbor seals at their haul-out locations is commonly observed throughout the range (Allen *et al.,* 1989, Stewart and Yochem, 1994, Gemmer, 2002), and can typically be explained by changes in biological and physiological requirements throughout the year. Peak seal abundance occurring during molting season is likely a result of seals needing to spend more time on land in order to help facilitate the molting process. This annual peak is then followed by a decline in seal abundance, which is likely a result of individual seals decreasing the amount of time on the haul-out post-molt to spend more time foraging, and also coincides with the time that young of the year pups may disperse from their natal haul-out.

Overall, seals appear to utilize the Jenner haul-out throughout the tidal cycle. Seal abundance is significantly lower during the highest of tides when the haul-out is subject to an increase in wave overwash. Time of day had some affect on seal abundance at the Jenner haul-out, as abundance was greater in the afternoon hours compared to the morning hours. More analysis exploring the relationship of ambient temperature, incidence of disturbance, and season on time of day effects would help to explain why these variations in seal abundance occur. It is likely that a combination of multiple factors (e.g., season, tides, wave heights, level of beach disturbance) influence when the haul-out is most utilized.

SCWA has, thus far, implemented the lagoon outlet channel only one time (July 8, 2010). The response of harbor seals at the Jenner haul-out to the outlet channel implementation activities (Question 2 above) was similar to the responses observed during artificial breaching events in 2010 and in previous years of monitoring the Jenner haul-out during breaching events (Merritt Smith Consulting, 1997, 1998, 1999, 2000; Sonoma County Water Agency and Merritt Smith Consulting, 2001). The harbor seals alerted to the sound of equipment on the beach and left the haul-out as the crew and equipment approached. Harbor seals hauled out on the beach while equipment was operating, left the beach when equipment and staff were leaving the beach, and began to return to the haul-out within 30 minutes to 3 hours of the work ending. Because the barrier beach reformed soon after outlet channel implementation and subsequently breached on its own, maintenance of the outlet channel was not necessary and monitoring of the continued response of pinnipeds at the Jenner haul-out to maintenance of the outlet channel and management of the lagoon for the duration of the lagoon management period has not yet been possible.

There is little information available to draw conclusions regarding Questions 3–4, as the duration of closure associated with the lagoon outlet channel implementation was not dissimilar from the duration of closures that have been previously observed at the estuary. Similarly, the lack of extended lagoon conditions precludes any conclusions regarding Question 4. Initial comparisons of peripheral (river and coastal) haul-out count data to the Jenner haul-out counts suggest that further information from subsequent estuary management activities are

needed. For example, during the single lagoon outlet implementation in 2010, low seal abundance was recorded at Jenner and high seal abundance was recorded at Odin Cove. On the day after the lagoon outlet implementation seal abundance rose at Jenner and decreased at Odin Cove. This pattern is consistent with the idea that seals disturbed from the Jenner haul-out would temporarily relocate to a nearby haul-out. However, these results are inconclusive, as SCWA is not able to track the movements of individual seals.

Proposed 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.

SCWA has proposed to continue the following mitigation measures, as implemented during the previous IHA, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- During breaching events, all monitoring would be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.
- A water level management event may not occur for more than 2 consecutive days unless flooding threats cannot be controlled.

In addition, SCWA has proposed mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous IHA:

- SCWA will maintain a 1 week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- If a pup less than 1 week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS and CDFG to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than 1 week old are on the beach prior to a breaching event.
- Physical and biological monitoring will not be conducted if a pup less than 1 week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there would be two or more additional people on the beach (SCWA staff or regulatory agency staff) to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to preliminarily 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.

Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, NMFS and SCWA have developed the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past 15 years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration. Based upon the SCWA's record of management at the mouth of the Russian River, as well as information from monitoring SCWA's implementation of the improved mitigation measures as prescribed under the previous IHA, NMFS has preliminarily 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.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216 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 applicant has developed a Pinniped Monitoring Plan which

describes the proposed monitoring efforts. This Monitoring Plan can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the IHA, and to address the following questions of interest (as described previously):

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?
2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?
3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?
4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

In summary, past monitoring includes the following, which is proposed to continue should an IHA be issued:

Baseline Monitoring

Seals at the Jenner haul-out are counted twice monthly for the term of the IHA. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. This census begins at local dawn and continues for 8 hours. All seals hauled out on the beach are counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (e.g., heavy fog in the afternoon). Counts are scheduled for 2 days out of each month, with the intention of capturing a low and high tide each in the morning and afternoon. Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each 30-minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances would be recorded on a three-point scale that represents an increasing seal response to the disturbance (Table 4). The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson's Levels 2 and 3 will be considered as harassment under the MMPA, under the terms of this proposed IHA.

TABLE 4—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert ...	Seal head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.
2	Movement.	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight ..	All retreats (flushes) to the water, another group of seals, or over the beach.

Weather conditions are recorded at the beginning of each census. These include temperature, percent cloud cover, and wind speed (Beaufort scale). Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well (see Figure 4 of SCWA's application). The peripheral haul-outs are visited for 10-minute counts twice during each baseline monitoring day. All pinnipeds hauled out were counted from the same vantage point(s) at each haul-out using a high-powered spotting scope or binoculars.

Estuary Management Event Monitoring

Lagoon Outlet Channel—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A 1-day pre-event channel survey would be made within 1 to 3 days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to the maximum 2 days allowed for channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring of outlet channel construction and maintenance would correspond with that described under the ''Baseline'' section previously, with the exception that management activity monitoring duration is defined by event duration, rather than being set at 8 hours. On the day of the management event, pinniped monitoring begins at least 1 hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least 1 hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with monitoring of outlet channel construction and maintenance activities. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out during lagoon outlet channel excavation and maintenance. This monitoring would not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked, but is useful in tracking general trends in haul-out use during lagoon outlet channel excavation and maintenance. As volunteers are required to monitor these peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority would be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

Artificial Breaching Events—Pinniped responses to SCWA's artificial breaching activities were extensively monitored from 1996 to 2000 (Merritt Smith Consulting, 1997, 1998, 1999, 2000; SCWA and Merritt Smith Consulting, 2001). In accordance with the Russian River BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two

such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS and CDFG may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the term of the IHA. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline'' section, which were also used for the 1996 to 2000 monitoring events (Merritt Smith Consulting, 1997, 1998, 1999, 2000; SCWA and Merritt Smith Consulting, 2001). The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least 1 hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least 1 hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in 30-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (e.g., temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than 1 week old) observations. Characteristics of a neonate pup include: body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than 1 week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' Southwest Regional Office and NMFS Headquarters within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Staffing—Monitoring is conducted by qualified individuals, which may include professional biologists employed by NMFS or SCWA or volunteers trained by the Stewards' Seal Watch program (Stewards). All volunteer monitors are required to attend classroom-style training and field site visits to the haul-outs. Training covers the MMPA and conditions of the IHA, SCWA's pinniped monitoring protocols, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification would include harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area. Generally, SCWA staff and volunteers collect baseline data on Jenner haul-out use during the twice-monthly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff monitors lagoon outlet channel excavation and maintenance activities and artificial breaching events at the Jenner haul-out, with assistance from Stewards volunteers as available. Stewards volunteers monitor the coastal and river haul-out locations during lagoon outlet channel excavation and maintenance activities.

Training on the MMPA, pinniped identification, and the conditions of the IHA is held for staff and contractors assigned to estuary management activities. The training includes equipment operators, safety crew members, and surveyors. In addition, prior to beginning each water surface elevation management event, the biologist monitoring the event participates in the onsite safety meeting to discuss the location(s) of pinnipeds at the Jenner haul-out that day and methods of avoiding and minimizing disturbances to the haul-out as outlined in the IHA.

Reporting

SCWA is required to submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the Southwest Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the IHA otherwise. This annual report will also be distributed to California State Parks and Stewards, and would be available to the public on SCWA's Web site. This report will contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- behavior prior to and during water level management events;
- start and end time of activity;
- estimated distances between source and pinnipeds when disturbance occurs;
- weather conditions (e.g., temperature, wind, etc.);
- haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- tide levels and estuary water surface elevation; and
- pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Estimated Take by Incidental Harassment

SCWA is requesting, and NMFS is proposing, authorization to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals, California sea lions, and northern elephant seals that may be harassed by the proposed activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. As described previously in this document, monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the haul-out declines during bar-closed conditions. Tables 5 and 6 detail the total number of estimated takes.

Events associated with lagoon outlet channel management would occur only during the lagoon management period, and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September, and (2) maintenance and

monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required. Outlet channel implementation events would only occur when the bar is closed; therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 2). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month—from July 2010—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month was used.

Artificial breaching activities would also occur during bar-closed conditions; however, data collected specifically during bar-closed conditions exists only for April through November (Table 2). These data may be used for estimating take associated with artificial breaching occurring during those months. For activity occurring from December through March, monitoring data that are not specific to bar conditions may be used for estimating take (Table 1). Harbor seal numbers from 2009–11 SCWA baseline surveys were used to estimate take associated with artificial breaching from December to March as this was the most recent information available for those months.

For monthly topographic surveys on the barrier beach SCWA believes that only a small percentage (estimated at 10 percent) of seals hauled out are likely to be disturbed by this activity, which involves two people walking along the barrier beach with a survey rod. During these surveys a pinniped monitor is positioned at the Highway 1 overlook and is able to notify the surveyors via radio when any seals on the haul-out begin to alert to their presence. At this time the surveyors retreat slowly away from the haul-out, typically resulting in no disturbance. The 10 percent is a conservative allowance for the occasions where a few seals may move or flush following their initial alert, despite the surveyors retreat. The number of seals expected to be encountered is based on the average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2009–11 (Table 1).

For electromagnetic imaging profiles associated with the jetty study, the estimate of take was calculated similar to that of the topographic surveys described above. The field work for these profiles will be conducted in a similar manner to the topographic surveys with a monitor present. In addition, these imaging profiles will be conducted outside of the harbor seal pupping season, in an effort to reduce disturbance to nursing females and young pups. As noted previously, SCWA believes that, due to the nature of the activity and mitigation measures to be implemented, other components of the jetty study are unlikely to result in incidental take.

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the three haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

TABLE 5—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 105 [d]	Implementation: 3	Implementation: 315
Maintenance and Monitoring:	Maintenance:	Maintenance: 1,089
May: 103	May: 1	
June: 100	June–Sept: 4/month	
July: 105	Oct: 1	
Aug: 17	Monitoring:	Monitoring: 504
Sept: 19	June–Sept: 2/month	
Oct: 22	Oct: 1	Total: 1,908
Artificial Breaching		
Oct: 22	Oct: 2	Oct: 44
Nov: 11	Nov: 2	Nov: 22
Dec: 45	Dec: 2	Dec: 90
Jan: 96	Jan: 1	Jan: 96
Feb: 89	Feb: 1	Feb: 89
Mar: 146	Mar: 1	Mar: 146
Apr: 173	Apr: 1	Apr: 173
May: 103	May: 1	May: 103
	11 events maximum	Total: 763
Topographic and Geophysical Beach Surveys		
Jan: 114	1 topographic survey/month	Jan: 22

TABLE 5—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Feb: 93 Mar: 142 Apr: 128 May: 100 Jun: 134 Jul: 217 Aug: 98 Sep: 46 Oct: 48 Nov: 86 Dec: 32	2 geophysical surveys/month, Sep–Dec; 1/month, Jul–Aug, Jan–Feb Surveys considered to have potential for take of 10 percent of animals present.	Feb: 18 Mar: 14 Apr: 13 May: 10 Jun: 13 Jul: 44 Aug: 20 Sep: 15 Oct: 15 Nov: 27 Dec: 9 Total: 220
Biological and Physical Habitat Monitoring in the Estuary		
1 [e]	65	65
Total		2,735

[a] For events occurring from April through November, average daily number of animals corresponds with data from Table 2. For events occurring from December through March, average daily number of animals corresponds with 2009–11 data from Table 1.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching derived from historical data. The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. These numbers likely represent an overestimate, as the average annual number of events is six.

[d] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[e] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at each of the three river haul-outs.

TABLE 6—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Species	Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)			
California sea lion (potential to encounter once per event)	1	3	3
Northern elephant seal (potential to encounter once per event)	1	3	3
Artificial Breaching			
California sea lion (potential to encounter once per event, Sep–Apr)	1	10	10
Northern elephant seal (potential to encounter once per event, Dec–Mar)	1	5	5
Topographic and Geophysical Beach Surveys			
California sea lion (potential to encounter once per event, Sep–Apr)	1	18	18
Northern elephant seal (potential to encounter once per event, Dec–Mar)	1	8	8
Biological and Physical Habitat Monitoring in the Estuary			
California sea lion (potential to encounter once per event, Sep–Apr)	1	8	8
Northern elephant seal (potential to encounter once per event, Dec–Mar)	1	4	4
Total			
California sea lion			39
Elephant seal			20

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined 'negligible impact' in 50 CFR 216 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 SCWA's estuary management activities may harass pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. No injury, serious injury, or mortality is anticipated, nor is the proposed action likely to result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. However, breaching the sandbar has been shown to increase seal abundance on the beach, with seals quickly re-inhabiting the haul-out following cessation of activity. In addition, the implementation of the lagoon management plan may provide increased availability of prey species (salmonids). No impacts would be expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

The proposed number of animals taken for each species of pinnipeds can be considered small relative to the population size. There are an estimated 34,233 harbor seals in the California stock, 238,000 California sea lions, and 124,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, NMFS is proposing to authorize take, by Level B harassment only, of 2,956 harbor seals, 39 California sea lions, and twenty northern elephant seals, representing 8.6, 0.02, and 0.02 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the proposed IHA, because these totals represent much smaller numbers of individuals that may be harassed multiple times.

The proposed action would not be likely to cause injury, serious injury, or mortality to any harbor seal pup, nor would it impact mother-pup bonding. The peak of pupping season occurs during May, when few management activities are anticipated. However, any management activity that is required during pupping season will be delayed in the event that a pup less than 1 week old is present on the beach. As described previously in this document, harbor seal pups are precocious, and mother-pup bonding is likely to occur within minutes. Delay of events would further ensure that mother-pup bonding is not interfered with.

Based on the foregoing analysis, behavioral disturbance to pinnipeds at the mouth of the Russian River would be of low intensity and limited duration. To ensure minimal disturbance, SCWA will implement the mitigation measures described previously, which NMFS has preliminarily determined will serve as the means for effecting the least practicable adverse impact on the relevant marine mammal stocks or populations and their habitat. NMFS preliminarily finds that SCWA's estuary management activities will result in the incidental take of small numbers of marine mammals, and that the requested 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; therefore, no consultation under the ESA is required. As described elsewhere in this document, SCWA and the Corps consulted with NMFS under section 7 of the ESA regarding the potential effects of their operations and maintenance activities, including SCWA's estuary management program, on ESA-listed salmonids. As a result of this consultation, NMFS issued the Russian River Biological Opinion (NMFS, 2008), including Reasonable and Prudent Alternatives, which prescribes modifications to SCWA's estuary management activities.

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, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of the original IHA to SCWA for the specified activities and found that it would not result in any significant impacts to the human environment. NMFS signed a Finding of No Significant Impact (FONSI) on March 30, 2010. NMFS has reviewed SWCA's application for a renewed IHA for ongoing estuary management activities for 2012 and the 2011 monitoring report. Based on that review, NMFS has determined that the proposed action follows closely the IHAs issued and implemented in 2010 and 2011 and does not present any substantial changes, or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2010 EA or preparation of a new NEPA document. Therefore, NMFS has preliminarily determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and will, after review of public comments determine whether or not to reaffirm its FONSI. The 2010 EA is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to SCWA's estuary management activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 8, 2012.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–6452 Filed 3–15–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 4/16/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

NSN: 7510–00–079–7905—Package Sealing Tape, Tan.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: General Services Administration, New York, NY.
Coverage: B–List for the Broad Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Locations: Facilities Maintenance Services,
Defense Information Systems Agency, JITC, 2001 Brainard Rd., Building 57305, Fort Huachuca, AZ.
Defense Information Systems Agency, JITC, 3341 Strauss Avenue, Building 900, Indian Head, MD.
Defense Information Systems Agency JITC, 4465 Indian Head Highway, Ely Building, Indian Head, MD.
Defense Information Systems Agency JITC, 6910 Cooper Avenue, Fort Meade, MD.
NPAs: Beacon Group SW., Inc., Tucson, AZ (Prime Contractor); The Centers for Habilitation/TCH, Tempe, AZ (Subcontractor); Didlake, Inc., Manassas, VA (Subcontractor).
Contracting Activity: Defense Information Systems Agency (DISA), Ditco-Ft Huachuca PL65, Fort Huachuca, AZ.
Service Type/Location: Fleet Service, Naval Research Laboratory, 4555 Overlook Ave. SW., Washington, DC.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Navy, Naval Research Laboratory, Washington, DC.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2012–6441 Filed 3–15–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 4/16/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 11/28/2011 (76 FR 72908–72909), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. Chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Corrosion Repair Services, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, HI.
NPA: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI.
Contracting Activity: Regional Contracting Office, Marine Corps Base Hawaii,

Kaneohe Bay, HI.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2012–6442 Filed 3–15–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission (''CFTC'').

ACTION: Notice of meeting of Technology Advisory Committee.

SUMMARY: The CFTC announces that on March 29, 2012, the CFTC's Technology Advisory Committee (''TAC'') will hold a public meeting at the CFTC's Washington, DC headquarters, from 10 a.m. to 5 p.m. The TAC committee will focus on automated and high frequency trading, final recommendations of the subcommittee on data standardization, and market structure and technology issues relating to credit limit checks.

DATES: The meeting will be held on March 29, 2012 from 10 a.m. to 5 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by March 28, 2012.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary. Please use the title ''Technology Advisory Committee'' in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Laura Gardy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5354.

SUPPLEMENTARY INFORMATION: The TAC meeting will focus on three significant issues facing the futures and swaps industries as the Commission continues to finalize rules under the Dodd-Frank Act. Those issues are: (1) Automated and high frequency trading (HFT): Exchange oversight and definitions; (2) final recommendations from the Subcommittee on Data Standardization; and (3) credit limit checks: market structure and technology issues.

The meeting will be open to the public with seating on a first-come, first-served basis, and will be webcast on the CFTC's Web site, *www.cftc.gov.* Audio of the meeting will be available via listen-only conference call. Additionally, a video recording of the meeting will be published through a link on the CFTC's Web site. All written submissions provided to the CFTC in any form will also be published on the Web site of the CFTC.

Members of the public can listen to the meeting by telephone by calling a toll-free telephone line to connect to a live audio feed. Call-in participants should be prepared to provide their first name, last name and affiliation.

Domestic Toll Free: 1–866–844–9416.

International Toll: Under Related Documents to be posted on *www.cftc.gov.*

Conference ID: 7121049.

Call Leader Name: Michael Jones.

Pass Code/Pin Code: CFTC.

Authority: 5 U.S.C. app. 2 § 10(a)(2)

By the Commodity Futures Trading Commission.

Dated: March 12, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–6369 Filed 3–15–12; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings Notice

TIME AND DATE: Wednesday, March 21, 2012, 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Briefing Matter: § 1112 Lab Withdrawal, Codification & Audit Provisions. A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

TIME AND DATE: Wednesday, March 21, 2012; 3 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 13, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–6539 Filed 3–14–12; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its National Performance Measurement Assessment through a proposed survey and follow up interview of AmeriCorps State and National grantees and State Commissions. The purpose of this data collection is for CNCS to understand the tools and processes grantees and commissions have used to select, implement and report program performance using pilot measures developed for programs receiving AmeriCorps grants in 2010 and 2011. CNCS will use the results of this assessment to inform the ongoing adoption of AmeriCorps grantee measures as well as new performance measurement efforts within other CNCS programs. Completion of this information collection is considered completely voluntary and is *not*

required to be considered for or to obtain grant funding support from any CNCS program.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 15, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Strategy Office, Attention Joscelyn Silsby, Research and Evaluation Specialist, Room 10906A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 202–606–3464, Attention: Joscelyn Silsby, Research and Evaluation Specialist.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joscelyn Silsby, (202) 606–6772, or by email at *jsilsby@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation for National and Community Service (CNCS) is seeking timely feedback from State and National AmeriCorps grantees and State Service Commissions regarding the National Performance Measures Pilot to help the agency (1) improve guidance materials and technical assistance regarding performance measurement and (2) effectively use the measures for internal management and external accountability.

In order to achieve its strategic objectives, CNCS must create effective services, products, and communications materials for program partners (sponsors and grantees) pursuant to its goals. Performance measures are imbedded in objectives under each of the goals of CNCS's 2011–2015 Strategic Plan.

The three-year National Performance Measures Pilot will be completed in FY 2012; in FY 2013 AmeriCorps will begin to implement a standard set of national grantee measures. AmeriCorps staff, state service commissions, and grantees have been preparing for this shift in performance measurement over the past three years.

When fully implemented, the national performance measures are intended to (1) focus AmeriCorps-funded programs on producing measurable outcomes and (2) make it possible to assess and report the overall impact of performance in key areas outlined in the Serve America Act. These areas include Disaster Services, Economic Opportunity, Education, Environmental Stewardship, Healthy Futures, and Veterans and Military Families.

Current Action

This is a new information collection request by the Corporation for National and Community Service. An online survey and follow-up interview will be conducted with two categories of respondents: (1) State service commissions, sponsored by State or Tribal governments, and (2) nonprofit organizations awarded AmeriCorps grants in 2010 and 2011. Data collection will occur among respondents at the commission or grantee organization who are responsible for the oversight and implementation of performance measurement and evaluation activities.

Grantees implementing programs through a state service commission are referenced in the instruments and sampling plan as ''State Competitive'' grantees or ''subgrantees.'' Multi-state grantees are referenced as ''National Direct'' grantees.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Performance Measurement Assessment.

OMB Number: New.

Agency Number: None.

Affected Public: State Service Commissions and Grantees in AmeriCorps State and National.

Total Respondents: 243.

Frequency: All possible respondents (n=243) will receive and be asked to complete the online survey. A randomly selected sub-set of 36 respondents will be asked to participate in follow-up interviews.

Average Time per Response: 42 minutes (279 total responses/196.5 total burden hours).

BURDEN HOURS

Category of respondent	Number of respondents	Participation time (min)	Burden (hours)
State Service Commissions—survey	51	30	25.5
State Service Commissions—follow-up interview	12	45	9.0
Grantees—survey	192	45	144.0
Grantees—follow-up interview	24	45	18.0
Totals	243	.....	196.5 hours'

Estimated Total Burden Hours: 196.5 hours.

Total Burden Cost (capital/startup): $56,716.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 9, 2012.

John Kim,

Acting Chief Strategy Officer, Office of Strategy and Special Initiatives.

[FR Doc. 2012–6364 Filed 3–15–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket No. DARS–2012–0015–0002]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by April 16, 2012.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems-Definition and Administration; DFARS 234, Earned Value Management Systems, OMB Control Number 0704–0479; and Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems-Definition and Administration; DFARS 245, Contractors Property Management System, OMB Control Number 0704–0480.

Type of Request for 0704–0479: Extension.

Number of Respondents for 0704–0479: 186.

Responses per Respondent for 0704–0479: 48.

Annual Responses for 0704–0479: 8,928.

Average Burden per Response for 0704–0479: 40 hours.

Annual Burden Hours for 0704–0479: 357,120.

Type of Request for 0704–0480: Extension.

Number of Respondents for 0704–0480: 2,646.

Responses per Respondent for 0704–0480: 1.

Annual Responses for 0704–0480: 2,646.

Average Burden per Response for 0704–0480: 1.2 hours.

Annual Burden Hours for 0704–0480: 3,200.

Needs and Uses: a. DFARS 242.70, Contractor Business Systems, and the clauses at 252.242–7005, Contractor Business Systems, 252.234–7002, Earned Value Management Systems, and 252.245–7003, Contractor Property Management System Administration, require certain contractors to establish and maintain acceptable business systems which include contractor Earned Value Management Systems and property management systems, and respond in writing to an initial determination from the administrative contracting officer that identifies deficiencies in any of the contractor's business systems, as well as written notifications from the Government that identifies deficiencies in the contractor's business systems.

Affected Public: The business systems clause will be used in solicitations and contracts that include DFARS clause 252.234–7002, Earned Value Management System, or 252.245–7003, Contractor Property System Administration.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–6255 Filed 3–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 15, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the

information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 13, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title of Collection: Talent Search Annual Performance Report.

OMB Control Number: 1840–NEW.

Agency Form Number(s): N/A.

Total Estimated Number of Annual Responses: 461.

Total Estimated Number of Annual Burden Hours: 7,376.

Abstract: Talent Search grantees must submit the report annually. The report provides the U.S. Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04825. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–6458 Filed 3–15–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Alaska Native Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information: Alaska Native Education.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.356A.

DATES: *Applications Available:* March 16, 2012.

Deadline for Transmittal of Applications: May 15, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Alaska Native Education (ANE) program is to support innovative projects that enhance the educational services provided to Alaska Native children and adults. These projects may include the activities authorized under section 7304(a)(2) and (a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Note: Congress has expressly authorized the use of FY 2012 program funds for construction of facilities that support the operation of Alaska Native education programs.

Priorities: This competition includes four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), competitive preference priority one is from section 7304(c) of the ESEA, as amended (20 U.S.C. 7544(c)). Competitive preference priorities two and three are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). Competitive preference priority four is from 34 CFR 75.225.

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional two points to an application that meets priorities one through three (for a maximum of six points); and an additional five points to an application that meets priority four. Therefore, eleven is the maximum number of competitive preference points that an application can receive under this competition.

These priorities are:

Competitive Preference Priority 1—Alaska Native Regional Nonprofit Organizations (2 Points)

Applicants that are Alaska Native regional nonprofit organizations or consortia that include at least one Alaska Native regional nonprofit organization.

Note: In order to receive a competitive preference under this priority, the applicant must provide documentation supporting its claim that it meets this priority.

Competitive Preference Priority 2—Improving the Effectiveness and Distribution of Effective Teachers or Principals (2 Points)

Projects that are designed to address increasing the number or percentage of teachers or principals who are effective or reducing the number or percentage of teachers or principals who are ineffective, particularly in high-poverty schools (as defined in this notice), including through such activities as improving the preparation, recruitment, development, and evaluation of teachers and principals; implementing performance-based certification and retention systems; and reforming compensation and advancement systems.

For the purposes of this priority, teacher and principal effectiveness should be measured using—

(1) Teacher or principal evaluation data, in States or local educational agencies that have in place a high-quality teacher or principal evaluation system that takes into account student growth (as defined in this notice) in significant part and uses multiple measures, that, in the case of teachers, may include observations for determining teacher effectiveness (such as systems that meet the criteria for evaluation systems under the Race to the Top program as described in criterion (D)(2)(ii) of the Race to the Top notice inviting applications (74 FR 59803)); or

(2) Data that include, in significant part, student achievement (as defined in this notice) or student growth (as defined in this notice) data and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1).

Competitive Preference Priority 3—Turning Around Persistently Lowest-Achieving Schools (2 Points)

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Competitive Preference Priority 4—Novice Applicants (5 Points)

Applicants must be novice applicants as defined in 34 CFR 75.225(a). In accordance with 34 CFR 75.225, the Secretary will award competitive preference priority points to applicants who have never received a grant or subgrant under the Alaska Native Education program; have never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the Alaska Native Education program; and have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the Alaska Native Education program. For purposes of this competitive preference priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Definitions: These definitions are from section 7306 of the ESEA (20 U.S.C. 7546) and the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). For purposes of this competition, the following definitions apply:

Alaska Native has the same meaning as the term ''Native'' has in section 1602(b) of Title 43 [section 3(b) of the Alaska Native Claims Settlement Act].

Alaska Native Organization means a federally recognized tribe, consortium of tribes, regional nonprofit Native association, and another organization that has or commits to acquire expertise in the education of Alaska Natives; and has Alaska Natives in substantive and policymaking positions within the organization.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Program Authority: 20 U.S.C. 7544.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $22,051,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000 to $700,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 44.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Alaska Native organizations; (b) educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages; (c) cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives; and (d) consortia of organizations and entities described in this paragraph.

Note: A State educational agency (SEA) or local educational agency (LEA), including a charter school that is considered an LEA under State law, may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

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:* You can obtain an application package via the Internet or from the program office. To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/alaskanative/index.html*. To obtain a copy from the program office, contact: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW., room 3E335, Washington, DC 20202–6200. Telephone: (202) 260–1979 or by email: *Almita.Reed@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 compact disk) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at 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 either 12 point or larger or no smaller than 10 pitch (characters 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 the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 16, 2012.

Deadline for Transmittal of Applications: May 15, 2012. Applications for grants under this competition 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 competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7304(b) of the ESEA, as amended (20 U.S.C. 7544(b)), not more than five percent of the funds provided to a grantee under this competition for any fiscal year may be used for administrative purposes.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this 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 ANE program, CFDA number 84.356A, must be submitted electronically using

the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the ANE program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.356, not 84.356A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked

no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW., room 3E335, Washington, DC 20202–6200. Fax: (202) 260–8969.

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 84.356A), 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 84.356A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses. The selection criteria for this competition are as follows:

(a) *Need for project* (25 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Quality of the project design* (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks (10 points).

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (10 points).

(d) *Adequacy of resources (15 points).* The Secretary considers the adequacy of the resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (5 points).

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (5 points).

(iii) The extent to which the budget is adequate to support the proposed project (5 points).

(e) *Quality of project evaluation* (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which methods of evaluation are thorough, feasible and appropriate to the goals, objectives, and outcomes of the proposed project (5 points).

(ii) The extent to which the methods of evaluation include the use of the objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data the extent possible (5 points).

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 your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed the following performance measures for measuring the overall effectiveness of the ANE program: (1) The percentage of Alaska Native students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the Alaska State assessments; (2) the percentage of Alaska Native children participating in early learning and preschool programs who consistently demonstrate school readiness in language and literacy as measured by the Revised Alaska Development Profile; and (3) the percentage of Alaska Native students in schools served by the program who graduate from high school with a high school diploma in four years.

All grantees will be expected to submit an annual performance report that includes data addressing these performance measures, to the extent that they apply to the grantee's project.

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: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW., room 3E335, Washington, DC 20202–6200. Telephone: (202) 260–1979 or by email: *Almita.Reed@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 compact disc) 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: *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 the text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 13, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–6459 Filed 3–15–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC): Correction

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

ACTION: Notice of Establishment of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) and Solicitation of Nominations for Membership; Correction.

SUMMARY: The Department of Energy (DOE) published in the **Federal Register** on March 8, 2012, a notice of Establishment of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) and Solicitation of Nominations for Membership. The notice contained incorrect language. As a result, the language is being corrected in this notice.

Correction

In the **Federal Register** of March 8, 2012, in FR DOC. 2012–5661, on pages 14008–14009, please make the following corrections:

In the **SUPPLEMENTARY INFORMATION** heading, page 14009, second column, first paragraph, seventh line, please remove the language, ''minorities, women'', and add in its place ''the needs of women and men of all racial and ethnic groups''.

Issued in Washington, DC on March 12, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–6415 Filed 3–15–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2179–043]

Merced Irrigation District; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2179–043.

c. *Date Filed:* February 27, 2012.

d. *Applicant:* Merced Irrigation District (MID).

e. *Name of Project:* Merced River Hydroelectric Project.

f. *Location:* The existing project is located on the Merced River in Merced and Mariposa counties, California. The project would occupy 3,152.9 acres of federal land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Merced Irrigation District, P.O. Box 2288, Merced, CA 95344; Telephone (209) 722–5761.

i. *FERC Contact:* Matt Buhyoff, (202) 502–6824 or *matt.buhyoff@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:*

The project consists of two developments:

New Exchequer Development—(1) New Exchequer Dam—a 490 feet-high dam with a crest length of 1,220 feet and a crest elevation of 879 feet; (2) an ogee-type concrete spillway located about one mile north of New Exchequer dam in a saddle; (3) an earth and rock dike 62-feet-high and 1,500-feet-long, located in a saddle about 0.75 mile north of New Exchequer Dam; (4) Lake McClure—a reservoir formed by New Exchequer dam with normal maximum water surface elevation of 867 feet above mean sea level, a gross storage capacity of 1,024,600 acre-feet, a surface area of 7,110 acres, and a shoreline length of about 82 miles; (5) a diversion facility composed of an intake, tunnel and penstock; (6) a 94.5 feet-long, 108-inch-diameter steel pipe from New Exchequer power tunnel to Merced River north of New Exchequer powerhouse; (7) a semi-outdoor, above-ground, concrete powerhouse located at the base of New Exchequer dam on the south side of Merced River; (8) a switchyard located adjacent to New Exchequer Powerhouse and; (9) four developed recreation facilities (McClure Point, Barrett Cove, Horseshoe Bend, and Bagby) with 515 camping units, 4 boat launch facilities, boat rentals, showers, 28 comfort stations, 3 swimming lagoons, 2 marinas, gas and oil service stations, 186 water-electrical campsite hookups, washers and dryers, 117 picnic units and fish cleaning stations.

McSwain Development—(1) McSwain Dam—located 6.3 River Miles downstream from New Exchequer dam, McSwain is an 80 feet-high embankment structure, with a crest length of 1,620 feet and a crest elevation of 425 feet; (2) an ungated concrete overflow spillway located in a flat ridge on the southeast side of McSwain dam. The spillway includes two sections: a 150-feet-long section with a crest elevation at 402 feet, and a 475-feet-long section with a crest elevation at 400 feet; (3) McSwain Reservoir—a 4.8 mile long reservoir with a normal maximum water surface elevation at 400 feet above mean sea level, a gross storage capacity of 9,730 acre-feet of water, a surface area of 310 acres, and a shoreline length of about 12.5 miles; (4) a diversion facility composed of an intake, conduit and penstock; (5) a 160 feet-long, 96-inch diameter steel pipe from the McSwain power tunnel intake to Merced River north of McSwain powerhouse. The bypass releases directly into Pacific Gas and Electric Company's (PG&E) Merced Falls reservoir (P–2467); (6) an outdoor, above-ground, concrete powerhouse located at the base of McSwain dam on the north side of the Merced River. The Powerhouse releases directly into PG&E's Merced Falls reservoir; (7) a switchyard located adjacent to McSwain powerhouse, and; (8) one developed recreation facility with 99 camping units, 1 boat launch facility, boat rentals, showers, 5 comfort stations, a swimming lagoon, marina, gas and oil, 65 water-electrical campsite hookups, washers and dryers, 48 picnic units, a concession store, and fish cleaning stations.

The Merced River Project has a dependable capacity of 103.5 MW and an annual average generation of approximately 385 gigawatt-hours. MID is not proposing any structural changes to the project. However, MID is proposing to remove from the project, but retain in operation outside the license, seven water delivery facilities, which function, in part, to deliver water to a wildlife refuge. MID is also proposing capital improvements to recreation areas at 5 existing recreation sites, as well as the development of a new non-motorized recreation area along the west shore of Lake McClure.

l. *Locations of the Application:* A copy of the application 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, 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 item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis (*when FERC approved studies are complete*).	November 2013.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	January 2014.
Commission issues Draft EA or EIS.	July 2014.
Comments on Draft EA or EIS.	August 2014.
Modified Terms and Conditions.	November 2014.
Commission Issues Final EA or EIS.	February 2015.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6402 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–72–000; PF11–9–000]

Dominion Transmission, Inc.; Clarification of Notice of Application

On February 24, 2012, the Commission issued a *Notice of Application* in the above referenced proceeding. This Notice clarifies that any party wishing to obtain legal status by becoming a party to the proceeding should file a motion to intervene prior to the close of the comment date. Only parties to the proceeding can seek rehearing of the Commission's order and then further ask for court review of Commission orders in the proceeding.

Additionally, persons only wishing to comment on the proceeding should file their comments on any aspect of the application with the Secretary of the Commission and the Commission will consider these comments in determining the appropriate action to be taken. The filing of a comment alone will not serve to make the filer a party to the proceeding.

In light of this clarification, comments will be due by 5 p.m. Eastern Time on March 30, 2012.

Dated: March 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6366 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2172–006; ER10–2174–006; ER10–2176–006; ER10–2180–006; ER10–2178–006; ER10–2192–006; ER10–2184–006; ER10–1734–003.

Applicants: Constellation Energy Commodities Group, Inc., Baltimore Gas and Electric Company, Constellation Power Source Generation, Inc., Handsome Lake Energy, LLC, Constellation Energy Commodities Group Maine, LLC, CER Generation, LLC, Constellation NewEnergy, Inc., MX Energy Electric Inc.

Description: Supplemental Filing of the Constellation MBR Entities.

Filed Date: 2/29/12.

Accession Number: 20120229–5082.

Comments Due: 5 p.m. ET 3/21/12.

Docket Numbers: ER12–1085–001.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company Refund Report to be effective N/A.

Filed Date: 3/8/12.

Accession Number: 20120308–5126.

Comments Due: 5 p.m. ET 3/29/12.

Docket Numbers: ER12–1229–000.

Applicants: PacifiCorp.

Description: WAPA Casper Interconnection Agreement to be effective 5/8/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5064.

Comments Due: 5 p.m. ET 3/29/12.

Docket Numbers: ER12–1230–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3252; Queue No. W4–031 to be effective 2/14/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5067.

Comments Due: 5 p.m. ET 3/29/12.

Docket Numbers: ER12–1231–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3259; Queue No. X2–033 to be effective 2/20/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5076.

Comments Due: 5 p.m. ET 3/29/12.

Docket Numbers: ER12–1232–000.

Applicants: Shell Energy North America (US), L.P.

Description: SENA Reassignment of Transmission Rights Tariff to be effective 3/9/2012.

Filed Date: 3/8/12.

Accession Number: 20120308–5087.

Comments Due: 5 p.m. ET 3/29/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6395 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–41–000.

Applicants: Magic Valley Wind Farm I, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Magic Valley Wind Farm I, LLC.

Filed Date: 3/7/12.

Accession Number: 20120307–5137.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: EG12–42–000.

Applicants: Wildcat Wind Farm I, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wildcat Wind Farm I, LLC.

Filed Date: 3/7/12.

Accession Number: 20120307–5140.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: EG12–43–000.

Applicants: Sherbino I Wind Farm LLC.

Description: Notice of Self-Certification of EWG status of Sherbino I Wind Farm LLC.

Filed Date: 3/7/12.

Accession Number: 20120307–5180.

Comments Due: 5 p.m. ET 3/28/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1459–002.

Applicants: FirstEnergy Solutions Corp.

Description: Revised Affiliate Sales Tariff to be effective 6/1/2012.

Filed Date: 3/7/12.

Accession Number: 20120307–5111.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: ER10–1782–002.

Applicants: Tampa Electric Company.

Description: Annual Compliance Report Regarding Operational Penalties of Tampa Electric Company.

Filed Date: 3/7/12.

Accession Number: 20120307–5198.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: ER12–424–000.

Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.

Description: J122 Refund Report to be effective N/A.
Filed Date: 3/8/12.
Accession Number: 20120308–5045.
Comments Due: 5 p.m. ET 3/29/12.
Docket Numbers: ER12–425–000.
Applicants: Midwest Independent Transmission System Operator, Inc., Michigan Electric Transmission Company, LLC.
Description: J132 Refund Report to be effective N/A.
Filed Date: 3/8/12.
Accession Number: 20120308–5046.
Comments Due: 5 p.m. ET 3/29/12.
Docket Numbers: ER12–1219–001.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3249; Queue No. W2–088 to be effective 2/14/2012.
Filed Date: 3/7/12.
Accession Number: 20120307–5160.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1221–000.
Applicants: AEP Texas North Company.
Description: 20120307 TNC-Oncor IA to be effective 2/13/2012.
Filed Date: 3/7/12.
Accession Number: 20120307–5146.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1222–000.
Applicants: Wisconsin Electric Power Company.
Description: FERC Rate Schedule 115 Amended Service Agreement Filing to be effective 3/8/2012.
Filed Date: 3/7/12.
Accession Number: 20120307–5181.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1223–000.
Applicants: Wildcat Wind, LLC.
Description: Application for Market-Based Rate Authorization to be effective 5/1/2012.
Filed Date: 3/7/12.
Accession Number: 20120307–5182.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1224–000.
Applicants: Atlantic Path 15, LLC.
Description: Offer of Settlement—Base Transmission Revenue Requirement to be effective 10/13/2011.
Filed Date: 3/7/12.
Accession Number: 20120307–5183.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1225–000.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Compliance Filing—Certificate of Concurrence to be effective N/A.
Filed Date: 3/7/12.
Accession Number: 20120307–5184.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1226–000.
Applicants: California Independent System Operator Corporation.
Description: 2012 CAISO REM Compliance Filing to Modify Effective Date to be effective 4/10/2012.
Filed Date: 3/7/12.
Accession Number: 20120307–5185.
Comments Due: 5 p.m. ET 3/28/12.
Docket Numbers: ER12–1227–000.
Applicants: Citizens Energy Corporation.
Description: Notice of Cancellation of Citizens Energy Corporation.
Filed Date: 3/8/12.
Accession Number: 20120308–5023.
Comments Due: 5 p.m. ET 3/29/12.
Docket Numbers: ER12–1228–000.
Applicants: High Majestic Wind II, LLC.
Description: High Majestic Wind II, LLC MBR Application to be effective 5/7/2012.
Filed Date: 3/8/12.
Accession Number: 20120308–5048.
Comments Due: 5 p.m. ET 3/29/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6394 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–24–001]

Atmos Energy Corporation/Atmos Energy—Kentucky/Mid-States Division; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on March 9, 2012, Atmos Energy Corporation filed on behalf of Atmos Energy—Kentucky/Mid-States Division (Atmos) a motion requesting an extension consistent with the Federal Energy Regulatory Commission's (Commission) revised policy of periodic review from a triennial to a five year period. The Commission, in Order No. 735, modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, Atmos requests that the date for its next rate filing be extended to March 17, 2014, which is five years from the date of Atmos' most recent rate filing with this Commission.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

Comment Date: 5 p.m. Eastern Time on Friday, March 16, 2012.

Dated: March 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6401 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14336–000]

Peak Hour Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On December 14, 2011, Peak Hour, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Silver Creek Pumped Storage Project to be located on Silver Creek in Schuylkill County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A new 8,000-foot-long, 125- to 175-foot-high roller-compacted concrete semi-circular dam forming an upper reservoir having a surface area of 150 acres and a total storage capacity between approximately 6,138 and 9,207 acre-feet at a normal maximum water surface elevation between 1,650 and 1,750 feet above mean sea level (msl); (2) a lower reservoir encompassing the existing Silver Creek Reservoir and neighboring abandoned mines land and having a surface area of 100 acres and a total storage capacity of 10,000 acre-feet at a normal maximum water surface elevation between 1,200 and 1,300 feet msl; (3) a 3,000-foot-long tunnel connecting the upper and lower reservoirs; (4) a powerhouse containing two turbine units with a total rated capacity of 250 megawatts; (5) a 230-kilovolt, 2-mile-long transmission line; and (6) appurtenant facilities. The project would have an annual generation of 784,750 megawatt-hours.

Applicant Contact: Paul DiRenzo, Jr., Peak Hour Power, LLC, 1389 Bunting Street, Pottsville, PA 17901; phone: 570–617–7810.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14336–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6365 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12486–007]

Twin Lakes Canal Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 8, 2012, Twin Lakes Canal Company filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Bear River Narrows Project (project) to be located on Bear River, in Franklin County, Idaho. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 700-foot-long, 108-foot-high embankment dam; (2) a reservoir having a surface area of 420 acres, having a storage capacity of 17,300 acre-feet and normal water surface elevation of 4,734 feet mean sea level; (3) a powerhouse containing two generating units with a total installed capacity of 11 megawatts; (4) a 0.8-mile-long transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 51 gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Clair Boesen, Twin Lakes Canal Company, P.O. Box 247, 2 North State Street, Preston, Idaho 83263; phone: (208) 852–0415.

FERC Contact: Shana Murray; phone: (202) 502–8333.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can

be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12486) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6367 Filed 3–15–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 03/05/2012 through 03/09/2012 pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120062, Draft EIS, NPS, CO, Grand Ditch Breach Restoration, To Restore the Natural Hydrological Processes, Ecological Services and Wilderness Character of the Area in the Upper Kawuneeche Valley, Rocky Mountain National Park, Grand County, CO, *Comment Period Ends:* 05/25/2012, *Contact:* Ben Bobowski 970–586–1350.

EIS No. 20120063, Final EIS, USFS, OR, Wallowa-Whitman National Forest Travel Management Plan, Designate Roads Trails and Areas for Motor Vehicle User, Baker, Grant, Umatilla, Union and Wallowa Counties, OR, *Review Period Ends:* 04/16/2012, *Contact:* Cindy Christensen 541–962–8501.

EIS No. 20120064, Final EIS, USFS, MT, Cabin Gulch Vegetation Treatment Project, Restore Fire-Adapted Ecosystems, Existing and Desired Conditions, Townsend Ranger District, Helena National Forest, Broadwater County, MT, *Review Period Ends:* 04/16/2012, *Contact:* Sharon Scott 406–449–5201.

EIS No. 20120065, Final EIS, BLM, UT, Uinta Basin Natural Gas Development Project, To Develop Oil and Natural Gas Resources within the Monument Butte-Red Wash and West Tavaputs Exploration and Developments Area, Applications for Permit of Drill and Right-of-Way Grants, Uintah and Duchesne Counties, UT, *Review Period Ends:* 04/16/2012, *Contact:* Stephanie Howard 435–781–4469.

EIS No. 20120066, Draft EIS, USFWS, WA, Malheur National Wildlife Refuge Comprehensive Conservation Plan, Implementation, Harney County, WA, *Comment Period Ends:* 05/04/2012, *Contact:* Tim Bodeen 541–493–2612.

EIS No. 20120067, Final EIS, BIA, NV, K Road Moapa Solar Facility, Construction and Operation of a 350MW Solar Generation Facility, Approval of Right-of-Way Applications, Clark County, NV, *Review Period Ends:* 04/16/2012, *Contact:* Amy Heuslein 602–379–6570.

EIS No. 20120068, Final EIS, USCG, 00, Programmatic—Ballast Water Discharge Standard, Rulemaking for Standards for Living Organisms in Ships, U.S. Waters, *Review Period Ends:* 04/16/2012, *Contact:* Greg Kirkbride 202–372–1479.

Amended Notices

EIS No. 20120017, Draft EIS, FHWA, NY, Tappan Zee Hudson River Crossing Project, To Provide an Improved Hudson River Crossing between Rockland and Westchester Counties, Funding, USACE Section 10 and 404 Permits, Rockland and Westchester Counties, NY, *Comment Period Ends:* 03/30/2012, *Contact:* Jonathan D. McDade 518–431–4125; Revision to FR Notice Published 01/27/2012; Extending Comment Period from 03/15/2012 to 3/30/2012.

Dated: March 13, 2012.

Aimee Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–6431 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0681; FRL–9332–4]

Final Test Guidelines; OCSPP 810 Series; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of the final test guidelines for Series 810—Product Performance Test Guidelines, specifically public health uses of antimicrobial agents (OCSPP 810.2000), sterilants (OCSPP 810.2100), disinfectants (OCSPP 810.2200), and sanitizers (OCSPP 810.2300). These test guidelines are part of a series of test guidelines established by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and section 408 of the Federal Food, Drug and Cosmetic (FFDCA). As guidance documents, the test guidelines are not binding on either EPA or any outside parties.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Melissa Chun, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; email address: *chun.melissa@epa.gov.*

For technical information contact: Michele E. Wingfield, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–6349; email address: *wingfield.michele@epa.gov.*

FIFRA information contact: Communications Services Branch (7506P), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5017; fax number: (703) 305–5558.

SUPPLEMENTARY INFORMATION:

I. Introduction

These test guidelines are part of a series of test guidelines established by OCSPP for use in testing pesticides and chemical substances to develop data for submission to the Agency under TSCA (15 U.S.C. 2601 *et seq.*), FIFRA (7 U.S.C. 136 *et seq.*), and section 408 of the FFDCA (21 U.S.C. 346a).

The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and the companies that are subject to data submission

requirements under TSCA, FIFRA, and/or FFDCA.

II. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA, FFDCA, and/or FIFRA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

1. *Docket for this document.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0681. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access to OCSPP test guidelines.* To access OCSPP test guidelines electronically, please go to *http://www.epa.gov/ocspp/pubs/frs/home/testmeth.htm.* You may also access the test guidelines in *http://www.regulations.gov,* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159 and EPA–HQ–OPPT–2009–0576.

III. What action is EPA taking?

EPA is announcing the availability of the final test guidelines for Group B—Product Performance Test Guidelines for Public Health Uses of Antimicrobial Agents in OCSPP Series 810—Product Performance Test Guidelines:

1. General Considerations for Public Health Uses of Antimicrobial Agents (OCSPP 810.2000).
2. Sterilants—Efficacy Data Recommendations (OCSPP 810.2100).
3. Disinfectants for Use on Hard Surfaces—Efficacy Data Recommendations (OCSPP Guideline 810.2200).
4. Sanitizers for Use on Hard Surfaces—Efficacy Data Recommendations (OCSPP 810.2300).

These final test guidelines address efficacy testing for antimicrobial agents intended to be used on hard, inanimate, environmental surfaces and which bear label claims as sterilants, disinfectants, and sanitizers.

As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in this guidance, the Agency uses the word ''should.'' In this guidance, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. Alternatives to the recommendations described in the test guidelines may be proposed, and the Agency will assess them for appropriateness on a case-by-case basis.

IV. How were these test guidelines developed?

The product performance guidelines for antimicrobial agents were last updated in 1982 under the ''Pesticide Assessment Guidelines—Subdivision G, Product Performance.'' Since then, the Agency has presented several issues at two separate meetings of the FIFRA Scientific Advisory Panel (SAP) related to the conduct of studies for antimicrobial agents (the first meeting September 9–10, 1997, announced in the **Federal Register** issue of July 14, 1997 (62 FR 37584) (FRL–5731–4) and the second meeting July 17–19, 2007, announced in the **Federal Register** issue of March 14, 2007 (72 FR 11867) (FRL–8118–7). Information and recommendations regarding these two FIFRA SAPs can be found at the Office of Science and Coordination and Policy's Web site at *http://www.epa.gov/scipoly/sap/index.htm.* The test guidelines were also published for comment in the **Federal Register** issue of January 2010 (75 FR 4380) (FRL–8437–2) and revised based on comments received from industry. In addition to formatting changes to incorporate the test guidelines into the OCSPP 810 Series, EPA has added sections that incorporate new guidelines and clarifications from other guidance documents. In particular, data recommendations for testing against the spore formers *Bacillus anthracis* and *Clostridium difficile* have been added.

List of Subjects

Environmental protection, Antimicrobials, Chemical testing, Test guideline.

Dated: March 5, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–6432 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9648–2]

Meetings of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee (SCAS) will meet via teleconference on Tuesday, March 27, 2012, 2 p.m.–3 p.m. (ET), and the SCAS will meet at EPA's Region 8 office in Denver, CO, on Thursday, April 18, 2012, 3 p.m.–5 p.m. (MT). The Subcommittee will discuss decentralized wastewater treatment and other issues and recommendations to the Administrator regarding environmental issues affecting small communities. These are open meetings, and all interested persons are invited to participate. The Subcommittee will hear comments from the public during the teleconference on Tuesday, March 27, 2012 between 2:50 p.m. and 3 p.m. (ET) and during the meeting on Thursday, April 18, 2012 between 4:45 p.m. and 5 p.m. (MT). Individuals or organizations wishing to address the Subcommittee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *davis.catherinem@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

The Local Government Advisory Committee (LGAC) will meet at EPA's Region 8 office in Denver, CO, on Thursday, April 19, 2012, 10 a.m.–4:15 p.m. (MT), and Friday, April 20, 2012, 9 a.m.–12 p.m. (MT). The Committee will discuss integrated water quality planning, hydraulic fracturing, air quality issues and environmental justice

and Title VI. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 4 p.m.–4:15 p.m. (MT) on Thursday, April 19, 2012. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Small Communities Advisory Subcommittee and Local Government Advisory Committee meetings will be held at U.S. EPA Region 8 Office, 1595 Wynkoop St., Denver, CO 80202–1129. [Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO].

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) contact Frances Eargle at (202) 564–3115 or email at *eargle.frances@epa.gov.* For the Small Communities Advisory Subcommittee (SCAS), contact Cathy Davis, Designated Federal Officer at (202) 564–2703 or email at *davis.catherinem@epa.gov.*

Information On Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 7, 2012.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2012–6423 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9648–4]

Notice of Proposed Prospective Purchaser Agreement Amendment Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice. Request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement amendment (''PPA Amendment'') associated with the GE-Pittsfield/Housatonic River Site, in Pittsfield, Massachusetts, was executed by the Environmental Protection Agency (''EPA'') and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent to the PPA Amendment if comments received disclose facts or considerations indicating that the PPA Amendment is inappropriate, improper, or inadequate. The PPA Amendment would resolve certain potential EPA claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and other statutes, against the Pittsfield Economic Development Authority (''PEDA''). In lieu of financial consideration, in exchange for EPA's covenant not to sue, the PPA Amendment would require PEDA to acquire certain parcels along the banks of Silver Lake in Pittsfield, impose institutional controls on such parcels, and refrain from damaging certain natural resources plantings on the Silver Lake bank parcels.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the PPA Amendment. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region I Office, 5 Post Office Square, Boston, MA 02109.

DATES: Comments must be submitted on or before April 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–CERCLA 01–2002–0007, by one of the following methods:

- *Email:* John W. Kilborn, Senior Enforcement Counsel at *Kilborn.john@epa.gov.*
- *Mail:* John W. Kilborn, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square (Mail Code OES4–3), Boston, MA 02109.
- *Hand Delivery:* John W. Kilborn, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square (Mail Code OES4–3), Boston, MA 02109. Business Hours: Monday through Friday 9 a.m. to 4 p.m. Such deliveries are accepted only during business hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–CERCLA 01–2002–0007. EPA's policy is that all comments received will be included in the public docket without change, 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 email. If you send an email comment directly to EPA, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The PPA Amendment and additional background information are available for public inspection at the U.S. Environmental Protection Agency, Region I Office, 5 Post Office Square, Boston, MA 02109. A copy of the PPA Amendment may be obtained from Ann Gardner, U.S. Environmental Protection Agency, Region I Office, 5 Post Office Square, Boston, MA 02109 (617–918–1895) or by email at *Gardner.ann@epa.gov.* The PPA Amendment is also posted on EPA's GE-Pittsfield Web site at: *http://www.epa.gov/region1/ge/publiccomment.html.*

FOR FURTHER INFORMATION CONTACT: John W. Kilborn, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square—Suite 100, Mail Code (OES4–3), Boston, MA 02109–3912. Phone: (617) 918–1893.

SUPPLEMENTARY INFORMATION: This notice is given in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, (''CERCLA''), 42 U.S.C. 9601–9675.

Dated: March 1, 2012.

James T. Owens III,

Director, Office of Site Remediation and Restoration, Region I.

[FR Doc. 2012–6425 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9648–8]

Request for Nominations of Experts for a Science Advisory Board Panel To Review EPA's Web-Based Report on the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office requests public nominations of technical experts to form an SAB panel to review the Agency's Web-based Report on the Environment.

DATES: Nominations should be submitted by April 6, 2012 per the instructions below.

FOR FURTHER INFORMATION: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2155, by fax at (202) 565–2098, or via email at *armitage.thomas@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB Web site at *www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Web-based Report on the Environment (ROE) has been developed to provide a comprehensive online source of scientific indicators describing the condition of and trends in the nation's environment and human health. The ROE indicators are numerical values derived from actual measurements of human health and ecological condition over specified geographic areas of the United States. The ROE indicators are intended to inform strategic planning, priority setting, and decision making across EPA and provide information for the public on the state of the environment.

In 2004 and 2007, the SAB reviewed two draft versions of EPA's ROE. The findings and recommendations of those SAB reviews are available on the SAB Web site at *www.epa.gov/sab* (see reports EPA–SAB–05–004 and EPA–SAB–08–007). The ROE was subsequently published by EPA in 2008, and in 2009 SAB members provided additional advice on continued development of future versions of the ROE (see report EPA–SAB–09–017). Since the 2008 publication of the ROE, EPA has maintained and updated the ROE indicators online at *www.epa.gov/roe.* EPA is developing a new user-friendly and interactive Web site to provide improved access to the data and information in the ROE for a variety of audiences. EPA has also addressed recommendations from previous SAB reviews in order to develop a more robust environmental reporting program. Specifically, EPA has developed: (1) Conceptual frameworks, based on a sustainability paradigm, to illustrate connections among ROE indicators and Agency programs, (2) new and revised ROE indicators, including sustainability indicators that incorporate economic data, and (3) statistical information to address indicator variability and uncertainty. EPA has asked the SAB to review the scientific and technical merit of this work to improve the ROE. In response to EPA's request, the SAB Staff Office will form an expert panel to conduct the review.

Availability of the Review Materials

SAB review materials will be made available via EPA's Web site and will consist of a newly designed ROE Web site and accompanying issue papers. All new ROE developments described above (*e.g.,* conceptual frameworks, new and revised indicators, and statistical data) will be presented online rather than in a traditional hard copy report. For information concerning the ROE, please contact Ms. Madalene Stevens, National Center for Environmental Assessment, Office of Research and Development, U.S. EPA, 1200 Pennsylvania Avenue NW., Mail Code 8601–P, Washington, DC 20460, phone (703) 347–8655 or at *stevens.madalene@epa.gov.*

Request for Nominations

The SAB Staff Office requests nominations of recognized experts from a wide range of scientific and engineering disciplines with experience and expertise in: designing environmental and human health indicators, and evaluating and/or communicating indicator information and data at regional or national scales. Nominations of experts in various disciplines are requested including: (a) Environmental scientists and engineers with knowledge of the sources, fate, and transport of air pollutants and outdoor and indoor air quality indicators; (b) aquatic biologists, ecologists, hydrologists, chemists, oceanographers and microbiologists with expertise in assessing the condition of surface water, ground water, drinking water, wetlands, coastal waters, and/or recreational waters; (c) environmental scientists, ecologists, soil scientists, and environmental engineers with expertise in the use of indicators (*e.g.,* land cover, land use, wastes on land, chemicals used on land, and contaminated land) to assess the condition of land; (d) health scientists (*e.g.,* in the fields of public health, epidemiology, and risk assessment) with expertise in assessing human exposure to environmental pollutants, health risks associated with environmental pollutants, and/or indicators for assessing human health condition; (e) ecologists with expertise in the use of indicators to assess the ecological effects of exposure to pollutants and the condition of whole ecosystems; (f) statisticians with expertise in analysis of environmental information to determine the status of and trends in environmental condition; (g) environmental economists with knowledge of sustainability analysis; (h) experts from any of the above disciplines with knowledge of sustainability science and sustainability indicators; and (i) communication and information scientists with expertise in using and/or communicating environmental indicator information to inform planning and decision making.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert panel. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels

and Ad Hoc Committees Being Formed,'' *http://www.epa.gov/sab* provided on the SAB Web site. The instructions can be accessed through the ''Nomination of Experts'' link on the blue navigational bar at the SAB Web site *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Thomas Armitage, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than April 6, 2012. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and (f) for the Panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: March 9, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–6422 Filed 3–15–12; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting Notice

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, March 20, 2012, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendments to the Guidelines for Appeals of Material Supervisory Determinations and to the Guidelines for Appeals of Deposit Insurance Assessment Determinations.

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking on Assessments, Large Bank Pricing.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding the Enforcement of Subsidiary and Affiliate Contracts by the FDIC as Receiver for a Covered Financial Company.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: March 13, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–6515 Filed 3–14–12; 11:15 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 12, 2012.
Federal Deposit Insurance Corporation.

Pamela Johnson,
Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION
[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10429	New City Bank	Chicago	IL	3/9/2012

[FR Doc. 2012–6417 Filed 3–15–12; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Revision, Without Extension, of the Following Reports

Report title: Consolidated Financial Statements for Bank Holding Companies.
Agency form number: FR Y–9C.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies (BHCs).
Estimated annual reporting hours: 192,561 hours.
Estimated average hours per response: 47.15 hours.
Number of respondents: 1,021.
General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

Current Actions: On November 21, 2011, the Federal Reserve published a notice in the **Federal Register** (76 FR 71968) requesting public comment for 60 days on the revision, without extension, of the FR Y–9C report. The comment period for this notice expired on January 20, 2012. The Federal Reserve received six comment letters on this proposal. In addition, the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (the banking agencies) received these six comment letters and two additional comment letters on proposed revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) that parallel the proposed revisions to the FR Y–9C and are taken into consideration for this proposal.

The FR Y–9C changes proposed in the Federal Reserve's November 2011 **Federal Register** notice, the first four of which were proposed for implementation in June 2012 and the last of which was proposed for implementation in March 2012, included:

• A new Schedule HI–C, Disaggregated Data on the Allowance for Loan and Lease Losses, in which institutions with total assets of $1 billion or more would report a breakdown by key loan category of the end-of-period allowance for loan and lease losses (ALLL) disaggregated on the basis of impairment method and the end-of-period recorded investment in held-for-investment loans and leases related to each ALLL balance;

• A new Schedule HC–U, Loan Origination Activity (in Domestic Offices), in which institutions with total assets of $500 million or more would report, separately for several loan categories, the quarter-end amount of loans (in domestic offices) reported in Schedule HC–C, Loans and Lease Financing Receivables, that was originated during the quarter, and institutions with total assets of $1 billion or more would also report for these loan categories the portions of the quarter-end amount of loans originated during the quarter that were (a) originated under a newly established loan commitment and (b) not originated under a loan commitment;

• New Memorandum items in Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, for the total outstanding balance and related carrying amount of purchased credit-impaired loans accounted for under Accounting Standards Codification (ASC) Subtopic 310–30 that are past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status;

• New items in Schedule HC–P, 1–4 Family Residential Mortgage Banking Activities, in which institutions with $1 billion or more in total assets and smaller institutions with significant mortgage banking activities would report the amount of representation and warranty reserves for 1–4 family residential mortgage loans sold (in domestic offices), with separate disclosure of reserves for representations and warranties made to U.S. government and government-sponsored agencies and to other parties;

• Instructional revisions addressing the discontinued use of specific valuation allowances by savings and loan holding companies, and the accounting and reporting treatment for capital contributions in the form of cash or notes receivable.

Further details concerning the preceding proposed FR Y–9C reporting changes may be found in Sections A.1 through A.5.(2) of the November 2011 **Federal Register** notice.

Summary of Comments

The Federal Reserve received comment letters from six entities on proposed revisions to the FR Y–9C: two banking organizations, two bankers' associations, a commercial lending software company, and a news organization. The banking agencies received these six comment letters and two additional comment letters from banking organizations on proposed changes to the Call Report.

One bankers' association offered the general statement that its ''members expressed no concerns with many of the [agencies'] proposed revisions.'' None of the commenters specifically addressed the reporting changes proposed for implementation as of March 31, 2012. All eight of the commenters addressed one or both of the two new schedules proposed to be added to the FR Y–9C as of June 30, 2012: Schedule HI–C, Disaggregated Data on the Allowance for Loan and Lease Losses (ALLL), and Schedule HC–U, Loan Origination Activity (in Domestic Offices). One bankers' association expressed support for the proposed new items for past due and nonaccrual purchased credit-impaired loans, which were also proposed to be added to the FR Y–9C as of June 30, 2012, and recommended ''that the [banking agencies] adopt these proposed revisions without change.'' The news organization supported the proposed collection of data on representation and warranty reserves for 1–4 family residential mortgage loans beginning June 30, 2012. The Federal Reserve concurs with this commenter's suggestion that the instructions for the new items for these reserves clarify that representations and warranties made to mortgage insurers of loans sold fall within the scope of these items.

In addition, the news organization recommended that the Federal Reserve consider significantly revising the information they collect on mortgage banking activities in Schedule HC–P by adding further detail in certain areas and deleting certain existing items. These recommendations go well beyond the Federal Reserve's current proposal to add new items for representation and warranty reserves to Schedule HC–P. The Federal Reserve will consider the news organization's ideas in conjunction with their evaluation of other possible FR Y–9C reporting revisions that would be included in a future proposal.

After considering the comments received, the Federal Reserve is proceeding with the instructional revisions proposed for implementation as of the March 31, 2012, report date as well as the proposed new items for past due and nonaccrual purchased credit-impaired loans and representation and warranty reserves for 1–4 family residential mortgages effective as of the June 30, 2012, report date. As for the new schedules for disaggregated ALLL data and selected loan origination data proposed for implementation as of June 30, 2012, the Federal Reserve is continuing to evaluate these two proposed schedules in light of the comments received and will publish a separate **Federal Register** notice once a decision has been made with regard to these two proposed schedules. Because of the additional time necessary for the Federal Reserve to determine the outcome of proposed new FR Y–9C Schedules HI–C and HC–U and to allow sufficient lead time for affected institutions to prepare for any resulting new reporting requirements, the collection of disaggregated ALLL data and selected loan origination data would not take effect before the September 30, 2012, report date.

The list below summarizes each of the FR Y–9C reporting changes included in the November 2011 proposal along with its implementation status:

• Proposed new Schedule HI–C, Disaggregated Data on the Allowance for Loan and Lease Losses: Remains under review by the Federal Reserve; not to be implemented before September 30, 2012;

• Proposed new Schedule HC–U, Loan Origination Activity (in Domestic Offices): Remains under review by the Federal Reserve; not to be implemented before September 30, 2012;

• New Memorandum items in Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets: Implement June 30, 2012;

• New items in Schedule HC–P, 1–4 Family Residential Mortgage Banking Activities: Implement June 30, 2012;

• Instructional revisions addressing the discontinuation of certain valuation allowances by savings and loan holding companies; and the accounting and reporting treatment for certain capital contributions: Implement March 31, 2012.

Consistent with longstanding practice, for the June 30, 2012, report date, institutions may provide reasonable estimates for any new or revised FR Y–9C reporting item initially required to be reported as of that date for which the requested information is not readily available.

Board of Governors of the Federal Reserve System, March 12, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–6332 Filed 3–15–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

Report title: Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs.

Agency form number: Reg K.

OMB control number: 7100–0310.

Frequency: Annually.

Reporters: State member banks; Edge and agreement corporations; and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve.

Estimated annual reporting hours: Establish compliance program, 128 hours; and maintenance of compliance program, 4,476 hours.

Estimated average hours per response: Establish compliance program, 16 hours; and maintenance of compliance program, 4 hours.

Number of respondents: Establish compliance program, 8; and maintenance of compliance program, 1,119.

General description of report: This information collection is mandatory pursuant to the Bank Secrecy Act (BSA) (31 U.S.C. 513(h)). In addition, sections 11, 21, 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 483, 602, and 611(a)) authorize the Federal Reserve to require the information collection and recordkeeping requirements set forth in Regulations K and H. Section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for sections 211.5(m) and 211.24(j)(1) of Regulation K. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, if a BSA compliance program becomes a Federal Reserve record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require Edge and agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act (BSA) and related regulations. Section 208.63 of Regulation H requires state member banks to establish and maintain the same procedures. There are no required reporting forms associated with this information collection.

Current actions: On January 6, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 794) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs. The comment period for this notice expired on March 6, 2012. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, March 12, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–6347 Filed 3–15–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *River Valley Bancorp Employee Stock Ownership Plan and Trust,* Madison, Indiana; to acquire voting shares of River Valley Bancorp, Inc., and thereby indirectly acquire voting shares of River Valley Financial Bank, both in Madison, Indiana.

Board of Governors of the Federal Reserve System, March 13, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6436 Filed 3–15–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through March 31, 2015, the current Paperwork Reduction Act (''PRA'') clearance for the information collection requirements in

the Fair Packaging and Labeling Act (''FPLA'') rules. That clearance expires on March 31, 2012.

DATES: Comments must be submitted by April 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fair Packaging & Labeling Regs, PRA Comments, P074200'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fplaPRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald D. Lewis, Supervisory Investigator, Division of Enforcement, Bureau of Consumer Protection, (202) 326–2985, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: FPLA Rules, 16 CFR Parts 500–503.

OMB Control Number: 3084–0110.

Type of Review: Extension of currently approved collection.

Number of Respondents: 857,490.

Frequency of Response: Once per commodity unit.

Abstract: The FPLA, 15 U.S.C. 1451–1461, was enacted to eliminate consumer deception concerning product size and package content. Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product. The FPLA rules, 16 CFR Parts 500–503, specify how manufacturers, packagers, and distributors of ''consumer commodities'' [1] must do this.

On November 14, 2011, the Commission sought comment on the information collection requirements associated with the FPLA rules. 76 FR 70451. No comments were received. Pursuant to the OMB rules, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: [2]

(a) Total Burden Hours: 8,574,900 (solely relating to disclosure [3]);

(b) Labor Costs: $186,932,820;

(c) Capital/Non-Labor Costs: $0.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ''Fair Packaging & Labeling Regs, PRA Comments, P074200'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give you comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c)).[4] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fplaPRA2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Fair Packaging & Labeling Regs, PRA comments, P074200'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102,

[1] ''The term consumer commodity or commodity means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.'' 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[2] The calculations and explanations underlying the estimates for annual burden were detailed in the November 14, 2011, **Federal Register** Notice. *See* 76 FR at 70451–70452.

[3] To the extent that the FPLA-implementing rules require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, Commission staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

[4] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), CFR 4.9(c), 16 CFR 4.9(c).

725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Willard K. Tom,

General Counsel.

[FR Doc. 2012–6400 Filed 3–15–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112; Docket 2012–0001; Sequence 2]

Information Collection; Federal Management Regulation; GSA Form 3040, State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Acquisition Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding GSA Form 3040, State Agency Monthly Donation Report of Surplus Property.

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: May 15, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce Spalding, Federal Acquisition Service, GSA at telephone (703) 605–2888 or via email to *joyce.spalding@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' 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 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property.

Instructions: Please submit comments only and cite Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property, 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 report complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55.
Responses per Respondent: 4.
Total Responses: 220.
Hours per Response: 1.5.
Total Burden Hours: 330.

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 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Dated: March 8, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–6405 Filed 3–15–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Savannah River Site in Aiken, South Carolina, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On February 2, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

> All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Savannah River Site from January 1, 1953, through September 30, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on March 3, 2012, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on March 3, 2012, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–6474 Filed 3–15–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health

(NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Linde Ceramics Plant in Tonawanda, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On February 2, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked in any area at the Linde Ceramics Plant in Tonawanda, New York, from November 1, 1947, through December 31, 1953, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

This designation became effective on March 3, 2012, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on March 3, 2012, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–6473 Filed 3–15–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on April 18, 2012, from 9 a.m. to 3 p.m./ Eastern Time.

Location: Renaissance Washington, DC Downtown Hotel, 999 Ninth Street NW., Washington, DC 20001. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, 202–260–1944, Fax: 202–690–6079, email: *maryjo.deering@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 17, 2011. Oral comments from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m./ Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: March 8, 2012.

Mary Jo Deering,

Acting Director, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–6433 Filed 3–15–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on April 4, 2012, from 10 a.m. to 3 p.m./ Eastern Time.

Location: Washington Marriott, 1221 22nd Street NW., Washington, DC 20037. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, 202–260–1944, Fax: 202–690–6079, email: *maryjo.deering@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's

Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: March 8, 2012.

Mary Jo Deering,

Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–6437 Filed 3–15–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Health, Statement of Organization, Functions, and Delegation of Authority

Part A. Office of the Secretary, Statement of Organization, Functions, and Delegation of Authority for the U.S. Department of Health and Human Services is being amended at Chapter AC, Office of the Assistant Secretary for Health (OASH), as last amended at 60 FR 56605–06, dated November 9, 1995; 60 FR 8410, dated February 14, 1995; and most recently at 75 FR 53304–05, dated August 31, 2010, as follows:

1. Under Chapter AC, delete Paragraph H, ''Office of HIV/AIDS Policy (ACJ)'', in its entirety and replace with the following:

H. Office of HIV/AIDS and Infectious Disease Policy (ACJ)

The Office of HIV/AIDS and Infectious Disease Policy (OHAIDP) is under the direction of the Deputy Assistant Secretary for Health, Infectious Diseases, who serves as the Director of the Office of HIV/AIDS and Infectious Disease Policy, and as the principal advisor to the Assistant Secretary for Health (ASH) and the Secretary on health policy and program issues related to HIV disease and infectious diseases of public health significance. These issues cut across Health and Human Services (HHS) components which provide research, services, prevention, treatment, and education and information dissemination to susceptible populations.

OHAIDP is responsible for coordinating, integrating, and directing the Department's policies, programs, and activities related to HIV/AIDS, viral hepatitis, other infectious diseases of public health significance, and blood safety and availability. The Office: (1) Facilitates and/or coordinates policy planning processes related to infectious diseases, including viral hepatitis and HIV/AIDS, across HHS and monitors progress toward achieving established goals; (2) Advises on issues related to blood and blood products; (3) Monitors the implementation of the National HIV/AIDS Strategy across HHS; (4) Identifies critical HIV/AIDS policy issues, including the inter-and intra-agency coordination need, and advises on how best to address/resolve these issues; (5) Serves as HHS liaison with the Office of the National AIDS Policy Coordinator, Executive Office of the President; (6) Assists in the preparation of responses to inquiries regarding programs and policies intended to promote effective prevention and advancement of research for HIV/AIDS, viral hepatitis, and other infectious diseases of public health significance; (7) Provides liaison with other Federal organizations involved in addressing HIV/AIDS, viral hepatitis and/or other infectious diseases of public health significance; (8) Provides analytic and administrative support to the Advisory Committee on Blood Safety and Availability (ACBSA), the Presidential Advisory Council on HIV/AIDS (PACHA), cross-Departmental, coordinating groups, and other subsidiary or independent task forces, work groups, or subgroups; (9) Provides guidance on the cooperative dissemination and exchange of scientific, prevention, educational information, and clinical guidelines between public health interest groups, health professional, and private sector organizations; (10) Guides, supports, and promotes methods of dissemination and exchange of information to and among the public; (11) Reviews and makes recommendations on OPDIVs budget requests related to departmental research, prevention, services, training, information, and infrastructure priorities as incorporated in planning documents or budget proposals.

II. Delegations of Authority. Pending further re-delegation, directives or orders made by the Secretary, the Assistant Secretary for Health, or the Deputy Assistant Secretary for Health, Infectious Diseases, all delegations and re-delegations of authority made to officials and employees of the affected organizational component will continue in them pending further re-delegations, provided they are consistent with this reorganization.

Dated: March 6, 2012.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2012–6466 Filed 3–15–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., April 11, 2012.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a verbal public comment period. Written comment should be provided to the contact person below in advance of the meeting. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the

compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters to be Discussed: The agenda for the Subcommittee meeting includes discussion of the following Oak Ridge Associated Universities (ORAU) and Division of Compensation Analysis and Support (DCAS) procedures: Office of Compensation Analysis and Support (OCAS) TIB–0010 ''Best Estimate External Dose Reconstruction for Glovebox Workers''); DCAS TIB–0013 (''Selected Geometric Exposure Scenario Considerations for External Dose Reconstruction at Uranium Facilities''), OTIB–0052 (''Parameters to Consider When Processing Claims for Construction Trade Workers''), OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), and PER 20 (''Blockson TBD Revision''); Identification of Overarching Dose Reconstruction Issues; Discussion of Completed Procedure Reviews for Summarization; and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 9, 2012.

John Kastenbauer,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–6475 Filed 3–15–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0627]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 16, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0183. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions—(OMB Control Number 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)), provides that every Agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to Division of Dockets Management), a citizen petition requesting the Commissioner of FDA (the Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, not-for-profit institutions or groups.

Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under 21 CFR 10.25 (initiation of administrative

proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions who are requesting from the Commissioner a reconsideration of a matter.

Section 10.35 (21 CFR 10.35), issued under section 701(a) of the FD&C Act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20, the Commissioner to stay the effective date of any administrative action.

Such a petition must do the following: (1) Identify the decision involved; (2) state the action requested, including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the FD&C Act sets forth the format and procedures by which an interested person may request, in accordance with § 10.20, an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the Agency's formal position for matters of general applicability.

In accordance with 5 CFR 1320.8(d), FDA published a 60-day notice for public comment in the **Federal Register** of September 7, 2011 (76 FR 55396), to which the Agency received one comment. However, this comment did not address the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.30	207	1	207	24	4,968
10.33	4	1	4	10	40
10.35	5	1	5	10	50
10.85	4	1	4	16	64
Total					5,122

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on Agency records and experience over the past 3 years. In 2010, FDA received approximately 207 petitions (§ 10.30), 4 administrative reconsiderations of action (§ 10.33), 5 administrative stays of action (§ 10.35), and 4 advisory opinions (§ 10.85).

Dated: March 12, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6392 Filed 3–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0625]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 16, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0184. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12 (OMB Control Number 0910–0184)—Extension

The regulations in 21 CFR 12.22, issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), set forth the instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 12.24 (21 CFR 12.24) and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

In accordance with 5 CFR 1320.8(d), FDA published a 60-day notice for public comment in the **Federal Register** of September 9, 2011 (76 FR 55922), to which the Agency received two comments. However, these comments did not address the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
12.22	3	1	3	20	60

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on past filings. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order estimate approximately three requests are received by the Agency annually, with each requiring approximately 20 hours of preparation time.

Dated: March 12, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6393 Filed 3–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0747]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 16, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0575. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles—21 CFR 514.1(b)(7) and (b)(8) (OMB Control Number 0910–0575)—Extension

The Center for Veterinary Medicine has written this guidance to address a perceived need for Agency guidance in its work with the animal health industry. This guidance describes the procedures that the Agency recommends for the review of requests for waiver of in vivo demonstration of bioequivalence for generic soluble powder oral dosage form products and Type A medicated articles.

The Generic Animal Drug and Patent Term Registration Act of 1988 (Pub. L. 100–670) permitted generic drug manufacturers to copy those pioneer drug products that were no longer subject to patent or other marketing exclusivity protection. The approval for marketing these generic products is based, in part, upon a demonstration of bioequivalence between the generic product and pioneer product. This guidance clarifies circumstances under which FDA believes the demonstration of bioequivalence required by the statute does not need to be established on the basis of in vivo studies for soluble powder oral dosage form products and Type A medicated articles. The data submitted in support of the waiver request are necessary to validate the waiver decision. The requirement to establish bioequivalence through in vivo studies (blood level bioequivalence or clinical endpoint bioequivalence) may be waived for soluble powder oral dosage form products or Type A medicated articles in either of two alternative ways. A biowaiver may be granted if it can be shown that the generic soluble powder oral dosage form product or Type A medicated article contains the same active and inactive

ingredient(s) and is produced using the same manufacturing processes as the approved comparator product or article. Alternatively, a biowaiver may be granted without direct comparison to the pioneer product's formulation and manufacturing process if it can be shown that the active pharmaceutical ingredient(s) (API) is the same as the pioneer product, is soluble, and that there are no ingredients in the formulation likely to cause adverse pharmacologic effects. For the purpose of evaluating soluble powder oral dosage form products and Type A medicated articles, solubility can be demonstrated in one of two ways: ''USP definition'' approach or ''Dosage adjusted'' approach. The respondents for this collection of information are pharmaceutical companies manufacturing animal drugs. FDA estimates the burden for this collection of information as follows in tables 1 and 2 of this document. The source of the above data is records of generic drug applications over the past 10 years.

In the **Federal Register** of October 24, 2011 (76 FR 65733), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment, which, however, did not address the questions posed in 60-day notice regarding the collection of information. The comment supported the bioequivalence program but suggested a revision to the determination of bioequivalence, which relates to the substance of the scientific recommendations in the guidance document. Under FDA's good guidance practices regulations (21 CFR 10.115(f)(4)), the public may suggest at anytime that FDA revise a guidance document and under 21 CFR 10.115(g)(5), FDA will revise guidance documents in response to comments when appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR WATER SOLUBLE POWDERS [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Same formulation/manufacturing process approach	1	1	1	5	5
Same API/solubility approach	5	5	5	10	50
Total burden hours					55

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR TYPE A MEDICATED ARTICLES [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Same formulation/manufacturing process approach	2	2	2	5	10
Same API/solubility approach	10	10	10	20	200
Total burden hours					210

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 8, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6391 Filed 3–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 028

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 028'' (Recognition List Number: 028), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of ''Modifications to the List of Recognized Standards, Recognition List Number: 028'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–847–8149. Submit electronic comments concerning this document to *standards@cdrh.fda.gov.* Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). This document may also be accessed on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 028 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 3628, Silver Spring, MD 20993, 301–796–6574.

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register,** are identified in table 1 of this document.

TABLE 1—PREVIOUS PUBLICATION OF STANDARD RECOGNITION LISTS

February 25, 1998 (63 FR 9561)
October 16, 1998 (63 FR 55617)
July 12, 1999 (64 FR 37546)
November 15, 2000 (65 FR 69022)
May 7, 2001 (66 FR 23032)
January 14, 2002 (67 FR 1774)
October 2, 2002 (67 FR 61893)
April 28, 2003 (68 FR 22391)
March 8, 2004 (69 FR 10712)
June 18, 2004 (69 FR 34176)
October 4, 2004 (69 FR 59240)
May 27, 2005 (70 FR 30756)
November 8, 2005 (70 FR 67713)
March 31, 2006 (71 FR 16313)
June 23, 2006 (71 FR 36121)
November 3, 2006 (71 FR 64718)
May 21, 2007 (72 FR 28500)
September 12, 2007 (72 FR 52142)
December 19, 2007 (72 FR 71924)
September 9, 2008 (73 FR 52358)
March, 18, 2009 (74 FR 11586)
September 8, 2009 (74 FR 46203)
May 5, 2010 (75 FR 24711)
June 10, 2010 (75 FR 32943)
October 4, 2010 (75 FR 61148)
March 14, 2011 (76 FR 13631)
August 2, 2011 (76 FR 46300)

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains ''hypertext markup language (HTML)'' and ''portable document format (PDF)'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 028

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term ''Recognition List Number: 028'' to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Anesthesia	
1–15		ISO 5361–4 Second edition 1987–12–15 Tracheal tubes—Part 4: Cole type.	Contact person.
1–18		ISO 8359 Second edition 1996–12–15 Oxygen concentrators for medical use—Safety requirements.	Contact person.
1–35		ISO 5361 First edition 1999–09–15 Corrected and reprinted 1999–12–15 Anaesthetic and respiratory equipment—Tracheal tubes and connectors.	Contact person.
1–36		ISO 5366–3 Second edition 2001–08–15 Anaesthetic and respiratory equipment—Tracheostomy tubes—Part 3: Pediatric tracheostomy tubes.	Contact person.
1–44		ISO 5366–1 Fourth edition 2000–12–15 Anaesthetic and respiratory equipment—Tracheostomy tubes—Part 1: Tubes and connectors for use in adults.	Contact person.
1–46		ISO 5367 Fourth edition 2000–06–01 Breathing tubes intended for use with anaesthetic apparatus and ventilators.	Contact person.
1–56		CGA V–7.1:1997 (Reaffirmed 2008) Standard Method of Determining Cylinder Valve Outlet Connections for Medical Gases.	Contact person.
1–57		ASTM F1101–90 (Reapproved 2003) [1] Standard Specification for Ventilators Intended for Use During Anesthesia.	Contact person.
1–58		ASTM G175–03 (Reapproved 2011) Standard Test Method for Evaluating the Ignition Sensitivity and Fault Tolerance of Oxygen Regulators Used for Medical and Emergency Applications.	Reaffirmation.
1–60		IEC 60601–2–12 [ISO 10651–1] Second edition 2001–10 Medical electrical equipment—Part 2–12: Particular requirements for the safety of lung ventilators—Critical care ventilators.	Contact person.
1–62		ISO 5356–1 Third edition 2004–05–15 Anaesthetic and respiratory equipment—Conical connectors: Part 1: Cones and sockets.	Contact person.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
1–69		ASTM F 1464–93 (Reapproved 2005) Standard Specification for Oxygen Concentrators for Domiciliary Use.	Contact person.
1–70		ASTM F 1246–91 (Reapproved 2005) Standard Specification for Electrically Powered Home Care Ventilators, Part 1—Positive-Pressure Ventilators and Ventilator Circuits.	Contact person.
1–72		ISO 10651–5 First edition 2006–02–01 Lung ventilators for medical use—Particular requirements for basic safety and essential performance—Part 5: Gas-powered emergency resuscitators.	Contact person.
1–73		ISO 10651–4 First edition 2002–03–01 Lung ventilators—Part 4: Particular requirements for operator-powered resuscitators.	Contact person.
1–75		ISO 5362 Fourth edition 2006–06–01 Anaesthetic reservoir bags	Contact person.
1–79		ISO 26825 First edition 2008–08–15 Corrected version 2009–09–15 Anaesthetic and respiratory equipment—User-applied labels for syringes containing drugs used during anaesthesia—Colours, design and performance.	Contact person.
		B. Biocompatibility	
2–87	2–174	ISO 10993–10 Third Edition 2010–08–01 Biological evaluation of medical devices—Part 10: Tests for irritation and skin sensitization.	Withdrawn and replaced with newer version.
2–93		ASTM F763–04 (Reapproved 2010) Standard Practice for Short-Term Screening of Implant Materials.	Reaffirmation.
2–94		ASTM F981–04 (Reapproved 2010) Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone.	Reaffirmation.
2–108		ASTM F1905–98 Standard Practice for Selecting Tests for Determining the Propensity of Materials to Cause Immunotoxicity.	Withdrawn.
2–114		ASTM F1877–05 (Reapproved 2010) Standard Practice for Characterization of Particles.	Reaffirmation.
2–117		ANSI/AAMI/ISO 10993–3:2003(R)2009 Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Extent of recognition and Contact person.
2–118		ANSI/AAMI/ISO 10993–11:2006/(R)2010 Biological evaluation of medical devices—Part 11: Tests for systemic toxicity.	Reaffirmation.
2–120		ANSI/AAMI/ISO 10993–6:2007/(R)2010 Biological evaluation of medical devices—Part 6: Tests for local effects after implantation.	Reaffirmation.
2–126		ASTM F748–06 (Reapproved 2010) Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices.	Reaffirmation.
2–134		ASTM F2065–00 (Reapproved 2010) Standard Practice for Testing for Alternative Pathway Complement Activation in Serum by Solid Materials.	Reaffirmation.
2–155		ASTM F2147–01 (Reapproved 2010) Standard Practice for Guinea Pig: Split Adjuvant and Closed Patch Testing for Contact Allergens.	Reaffirmation.
2–157	2–184	USP34–NF29:2011<87> Biological Reactivity Tests, In Vitro—Direct Contact Test.	Withdrawn and replaced with newer version.
2–158	2–185	USP 34–NF29:2011 Biological Tests <87> Biological Reactivity Test, In Vitro—Elution Test.	Withdrawn and replaced with newer version.
2–159	2–186	USP 34–NF29:2011 Biological Tests <88> Biological Reactivity Tests, In Vivo, Procedure Preparation of Sample.	Withdrawn and replaced with newer version.
2–160	2–187	USP 34–NF29:2011 Biological Tests <88> Biological Reactivity Test, In Vitro, Classification of Plastics—Intracutaneous Test.	Withdrawn and replaced with newer version.
2–161	2–188	USP 34–NF29:2011 Biological Tests <88> Biological Reactivity Tests, In Vivo Classification of Plastics—Systemic Injection Test.	Withdrawn and replaced with newer version.
2–165		ANSI/AAMI/ISO 10993–14:2001 (Reapproved 2006) Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products from ceramics.	Reaffirmation.
2–166	2–180	ANSI/AAMI/ISO 10993–16:2010 Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables.	Withdrawn and replaced with newer version.
		C. Cardiovascular	
3–52		ANSI/AAMI EC12:2000/(R)2010 Disposable ECG electrodes	Reaffirmation.
3–61	3–95	IEC 60601–2–27 Edition 3.0 2011–03 Medical electrical equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment.	Newer version with transition period.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		D. Dental/ENT	
4–76		ISO 7785–2 Second edition 1995–08–01 Dental handpieces—Part 2: Straight and geared angle handpieces.	Contact person.
4–83		ISO 11498 First edition 1997–02–15 Dental handpieces—Dental low-voltage electrical motors.	Contact person.
4–84		ISO 13294 First edition 1997–05–01 Dental handpieces—Dental air-motors.	Contact person.
4–90		ANSI S3.39 Reaffirmed by ANSI May 18, 2007 Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance).	Contact person.
4–119		ANSI/ADA Specification No. 82–1998 (R2009) Reversible/Irreversible Hydrocolloid Impression Material Systems.	Reaffirmation.
4–121		ISO 7494–2 First edition 2003–03–01 Dentistry—Dental units—Part 2: Water and air supply.	Contact person.
4–123		ANSI/ASA S3.6–2004 Specification for Audiometers	Contact person.
4–126		ISO 10477 Second edition 2004–10–01 Dentistry—Polymer-based crown and bridge materials.	Contact person.
4–134		ISO 7494–1 First edition 2004–08–15 Dentistry—Dental units—Part 1: General requirements and test methods.	Contact person.
4–136		ASTM Designation: F2504–05 Standard Practice for Describing System Output of Implantable Middle Ear Hearing Devices.	Contact person.
4–150		ANSI/ADA Specification No. 19–2003 Dental Elastometric Impression Material:2003.	Contact person.
4–154		ISO 4823 Third edition 2000–12–15 Dentistry—Elastometric impression materials.	Contact person.
4–155		ISO 4823:2000 Technical Corrigendum 1 Published 2004–07–15 Dentistry—Elastomeric impression materials.	Contact person.
4–156		ISO 4823 Third edition 2000–12–15 Amendment 1 2007–07–01 Dentistry—Elastometric impression materials.	Contact person.
4–160		ANSI S3.1–1999 (Reaffirmed by ANSI October 28, 2008) American National Standard Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms.	Contact person.
4–162		ANSI S3.4–2007 American National Standard Procedure for the Computation of Loudness of Steady Sounds.	Contact person.
4–163		ANSI S3.5–1997 (R1986) Reaffirmed by ANSI May 18, 2007 American National Standard Methods for Calculation of the Speech Intelligibility Index.	Contact person.
4–164		ANSI S3.7–1995 (Reaffirmed by ANSI October 28, 2008) American National Standard Method for Coupler Calibration of Earphones.	Contact person.
4–165		ANSI S3.13–1987 Reaffirmed by ANSI June 1, 2007 American National Standard Mechanical Coupler for Measurement of Bone Vibrators.	Contact person.
4–170		ANSI S3.36–1985 Reaffirmed by ANSI on 4/27/2006 American National Standard Specification for a Manikin for Simulated in-situ Airborne Acoustic Measurements.	Contact person.
4–171		ANSI S3.37–1987 (Reaffirmed by ANSI May 18, 2007) American National Standard Preferred Earhook Nozzle Thread for Postauricular Hearing Aids.	Contact person.
4–172		ANSI S3.42–1992 Reaffirmed by ANSI May 18, 2007 American National Standard Testing Hearing Aids with a Broad-Band Noise Signal.	Contact person.
4–173		ANSI S3.44–1996 Reaffirmed by ANSI on 27 April 2006 American National Standard Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Impairment.	Contact person.
4–175		ANSI S3.46–1997 American National Standard Methods of Measurement of Real-Ear Performance Characteristics of Hearing Aids.	Contact person.
4–177		ANSI S12.65–2006 (Reaffirmed by ANSI March 30, 2011) American National Standard For Rating Noise with Respect to Speech Interference.	Reaffirmation.
4–179		ISO 7405 Second edition 2008–12–15 Dentistry—Evaluation of biocompatibility of medical devices used in dentistry.	Contact person.
4–180		ISO 9168 Third edition 2009–07–15 Dentistry—Hose connectors for air driven dental handpieces.	Contact person.
4–183		ANSI S3.2–2009 American National Standard Method for Measuring the Intelligibility of Speech over Communication Systems.	Contact person.
4–184		ANSI/ASA S3.25–2009 American National Standard For an Occluded Ear Simulator.	Contact person.
4–185		ANSI/ASA S3.45–2009 American National Standard Procedures for Testing Basic Vestibular Function.	Contact person.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
4–186		ANSI/ASA S12.2–2008 American National Standard Criteria for Evaluating Room Noise.	Contact person.
4–190		ANSI/ASA S3.35–2010 American National Standard Method of Measurement of Performance Characteristics of Hearing Aids Under Simulated Real-Ear Working Conditions.	Contact person.
4–192		ANSI/ADA Specification No. 58–2010 Root Canal Files Type H (Hedstrom): 2007.	Contact person.
		E. General	
5–29		AAMI/ANSI HE74–2001 (R 2009) Human factors design process for medical devices.	Withdrawn, see 5–67.
5–39		IEC 60812 Second edition 2006–01 Analysis techniques for system reliability—Procedure for failure mode and effects analysis (FMEA).	Contact person.
5–40		ISO 14971 Second edition 2007–03–01 Medical devices—Application of risk management to medical devices.	Contact person.
5–42		ASTM D903–98 (Reapproved 2010) Standard Test Methods for Peel or Stripping Strength of Adhesive Bonds.	Reaffirmation.
5–58		IEC 60601–1–11 Edition 1.0:2010 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral Standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment.	Extent of recognition and relevant guidance.
		F. General Hospital/General Plastic Surgery	
6–117		ASTM F2172–02(2011) Standard Specification for Blood/Intravenous Fluid/Irrigation Fluid Warmers.	Reaffirmation and Contact person.
6–161		ISO 10555–1 First edition 1995–06–15 Sterile, Single-use intravascular catheters—Part 1: General requirements.	Title and Contact person.
6–164		ISO 10555–5 First edition 1996–06–15 Sterile, single-use intravascular catheters—Part 5: Over-needle peripheral catheters.	Title and Contact person.
6–164	6–266	ISO 10555–5 First edition 1996–06–15 AMENDMENT 1 1999–01–15 Corrected and reprinted 1999–07–15 Sterile, single-use intravascular catheters—Part 5: Over-needle peripheral catheters.	See 6–164.
6–164	6–267	ISO 10555–5:1996 TECHNICAL CORRIGENDUM 1 Published 2002–06–15 Sterile, single-use intravascular catheters—Part 5: Over-needle peripheral catheters TECHNICAL CORRIGENDUM.	See 6–164.
6–176		ASTM D7103–06 [1] Standard Guide for Assessment of Medical Gloves	Editorial change.
6–177		ASTM E1112–00 (Reapproved 2011) Standard Specification for Electronic Thermometer for Intermittent Determination of Patient Temperature.	Reaffirmation.
6–198	6–254	ASTM F2100–11, Standard Specification for Performance of Materials Used in Medical Face Masks.	Withdrawn and replaced with newer version.
6–203		ASTM D6499–07, Standard Test Method for The Immunological Measurement of Antigenic Protein in Natural Rubber and its Products.	Extent of recognition.
6–219	6–255	USP 34–NF 29<11>:2011 Sodium Chloride Irrigation	Withdrawn and replaced with newer version.
6–226	6–256	USP 34–NF 29<11>:2011 Sodium Chloride Injection	Withdrawn and replaced with newer version.
6–246	6–257	USP 34–NF 29 2011 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version.
6–248	6–258	USP 34–NF 29 2011 <881> Tensile Strength	Withdrawn and replaced with newer version.
6–249	6–259	USP 34–NF 29 2011 <861> Sutures Diameter	Withdrawn and replaced with newer version.
6–250	6–260	USP 34–NF 29 2011 <871> Sutures—Needle	Withdrawn and replaced with newer version.
6–251	6–261	USP 34–NF 29 <11>:2011 Sterile Water for Irrigation	Withdrawn and replaced with newer version.
6–252	6–262	USP 34–NF 29 <11>:2011 Heparin Lock Flush Solution	Withdrawn and replaced with newer version.
		G. In Vitro Diagnostics	
7–102	7–221	CLSI H01–A6 Tubes and Additives for Venous and Capillary Blood Specimen Collection; Approved Standard—Sixth Edition.	Withdrawn and replaced with newer version.
7–112		CLSI H49–A Point-of-Care Monitoring of Anticoagulation Therapy; Approved Guideline.	Withdrawn duplicate, see 7–162.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
7–126	7–222	CLSI M24–A2 Susceptibility Testing of Mycobacteria, Nocardiae, and Other Aerobic Actinomycetes; Approved Standards—Second Edition.	Withdrawn and replaced with newer version Contact person.
7–128		CLSI EP14–A2 Evaluation of Matrix Effects; Approved Guideline—Second Edition.	Withdrawn duplicate, see 7–143.
7–130		CLSI H20–A2 Reference Leukocyte (WBC) Differential Count (Proportional) and Evaluation of Instrumental Methods; Approved Standard—Second Edition.	Withdrawn duplicate, see 7–165.
7–134		CLSI GP20–A2 Fine Needle Aspiration Biopsy (FNAB) Techniques; Approved Guideline—Second Edition.	Withdrawn duplicate, see 7–166.
7–140	7–223	GP22–A3—Quality Management System: Continual Improvement; Approved Guideline—Third Edition.	Withdrawn and replaced with newer version.
7–143		CLSI EP14–A2 Evaluation of Matrix Effects; Approved Guideline—Second Edition.	Contact person, Type of standard, Processes impacted.
7–147		CLSI M22–A3 Quality Control for Commercially Prepared Microbiological Culture Media; Approved Standard—Third Edition.	Withdrawn duplicate, see 7–178.
7–150		CLSI H43–A2 Clinical Flow Cytometric Analysis of Neoplastic Hematolymphoid Cells; Approved Guideline—Second Edition.	Title, Contact person.
7–162		CLSI H49–A Point-of-Care Monitoring of Anticoagulation Therapy; Approved Guideline.	Contact person, Devices affected, Processes affected, Type of standard, CFR citation and product codes.
7–165		CLSI H20–A2 Reference Leukocyte (WBC) Differential Count (Proportional) and Evaluation of Instrumental Methods; Approved Standard—Second Edition.	Contact person, Devices affected, Processes affected, Type of standard, CFR citation and product codes.
7–166		CLSI GP20–A2 Fine Needle Aspiration Biopsy (FNAB) Techniques; Approved Guideline—Second Edition.	Devices affected, Process affected, CFR citation and product codes.
7–169		CLSI M27–A3 Reference Method for Broth Dilution Antifungal Susceptibility Testing of Yeasts; Approved Standard—Third Edition.	Withdrawn duplicate, see 7–204.
7–172		CLSI C28–A3 Defining, Establishing, and Verifying Reference Intervals in the Clinical Laboratory; Approved Guideline—Third Edition.	Withdrawn duplicate, see 7–224.
7–202	7–224	CLSI C28–A3c Defining, Establishing, and Verifying Reference Intervals in the Clinical Laboratory; Approved Guideline—Third Edition.	Withdrawn and replaced with newer version.
7–178		CLSI M22–A3 Quality Control for Commercially Prepared Microbiological Culture Media; Approved Standard—Third Edition.	Extent of recognition, CFR citation and product codes.
7–204		CLSI M27–A3 Reference Method for Broth Dilution Antifungal Susceptibility Testing of Yeasts; Approved Standard—Third Edition.	Contact person.
7–206		CLSI I/LA 20–A2 Analytical Performance Characteristics and Clinical Utility of Immunological Assays for Human Immunoglobulin E (IgE) Antibodies and Defined Allergen Specificities; Approved Guideline—Second Edition.	Title, Contact person.
		H. Materials	
11–219	8–203	ASTM F2026–08 Standard Specification for Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	Transferred.
8–101	8–204	ASTM F2118–10 Standard Test Method for Constant Amplitude of Force Controlled Fatigue Testing of Acrylic Bone Cement Materials.	Withdrawn and replaced with newer version.
8–105	8–205	ASTM F1635–11 Standard Test Method for in vitro Degradation Testing of Hydrolytically Degradable Polymer Resins and Fabricated Forms for Surgical Implants.	Withdrawn and replaced with newer version.
8–114		ASTM F2255–05 (Reapproved 2010) Standard Test Method for Strength Properties of Tissue Adhesives in Lap-Shear by Tension Loading.	Reaffirmation.
8–115		ASTM F2256–05 (Reapproved 2010) Standard Test Method for Strength Properties of Tissue Adhesives in T-Peel by Tension Loading.	Reaffirmation.
8–116		ASTM F2258–05 (Reapproved 2010) Standard Test Method for Strength Properties of Tissue Adhesives in Tension.	Reaffirmation.
8–119	8–206	ASTM F688–10 Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035).	Withdrawn and replaced with newer version.
8–121		ASTM F2005–05 (Reapproved 2010) Standard Terminology for Nickel-Titanium Shape Memory Alloys.	Reaffirmation.
8–125		ASTM F2004–05 (Reapproved 2010) Standard Test Method for Transformation Temperature of Nickel-Titanium Alloys by Thermal Analysis.	Reaffirmation.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
8–126		ASTM F561–05a (Reapproved 2010) Standard Practice for Retrieval and Analysis of Medical Devices, and Associated Tissues and Fluids.	Reaffirmation.
8–132		ASTM F1088–04a (Reapproved 2010) Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation.	Reaffirmation and contact person.
8–135		ASTM F2392–04 (Reapproved 2010) Standard Test Method for Burst Strength of Surgical Sealants.	Reaffirmation.
8–136		ASTM F2458–05 (Reapproved 2010) Standard Test Method for Wound Closure Strength of Tissue Adhesives and Sealants.	Reaffirmation.
8–172	8–207	ASTM F1926/F1926M–10 Standard Test Method for Evaluation of the Environmental Stability of Calcium Phosphate Granules, Fabricated Forms, and Coatings.	Withdrawn and replaced with newer version.
8–178	8–208	ASTM F648–10a Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	Withdrawn and replaced with newer version.
8–181	8–209	ASTM F899–11 Standard Specification for Wrought Stainless Steels for Surgical Instruments.	Withdrawn and replaced with newer version.
8–191	8–210	ASTM F2182–11 Standard Test Method for Measurement of Radio Frequency Induced Heating On or Near Passive Implants During Magnetic Resonance Imaging.	Withdrawn and replaced with newer version.
8–195		ASTM F2024–10, Standard Practice for X-Ray Diffraction Determination of Phase Content of Plasma-Sprayed Hydroxyapatite Coatings.	Extent of Recognition, devices affected, CFR citations and associated procodes and contact person.
		I. Neurology	
17–1		ANSI/AAMI NS28:1988/(R) 2010 Intracranial pressure monitoring devices.	Reaffirmation.
17–3		ISO 7197:2006 Third edition 2006–06–01 Neurosurgical implants—Sterile, single-use hydrocephalus shunts and components.	Contact person.
17–4		ASTM F 647–94 (Reapproved 2006) Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application.	Contact person.
17–7		ISO 7197:2006 Technical Corrigendum 1 Published:2007–07–01 Neurological implants—Sterile, single-use hydrocephalus shunts and components.	Contact person.
		J. OB–GYN/Gastroenterology	
9–21		ISO 8600–4 First edition 1997–07–01 Optics and optical instruments—Medical endoscopes and certain accessories—Part 4: Determination of maximum width of insertion portion.	Contact person.
9–37		ISO 8600–1 Second edition 2005–05–01 Optics and photonics—Medical endoscopes and endotherapy devices—Part 1: General requirements.	Contact person.
9–38		ISO 8600–3 First edition 1997–07–01 AMENDMENT 1 2003–12–01 Optics and optical instruments—Medical endoscopes and endoscopic accessories Part 3: Determination of field of view and direction of view of endoscopes with optics.	Contact person.
9–39		ISO 8600–5 First edition 2005–03–15 Optics and photonics—Medical endoscopes and endotherapy devices—Part 5: Determination of optical resolution of rigid endoscopes with optics.	Contact person.
9–40		ISO 8600–6 First edition 2005–03–15 Optics and photonics—Medical endoscopes and endotherapy devices—Part 6: Vocabulary.	Contact person.
9–44		ASTM Designation: F 623–99 (Reapproved 2006) Standard Performance Specification for Foley Catheter.	Contact person.
9–49		AAMI/ANSI RD61:2006, Concentrates for hemodialysis	Withdrawn, see 9–73.
9–50		ANSI/AAMI RD52:2004/(R)2010 Dialysate for Hemodialysis	Withdrawn, see 9–70 and 9–71.
9–53		ASTM F 1992–99 (Reapproved 2007) Standard Practice for Reprocessing of Reusable, Heat-Stable Endoscopic Accessory Instruments (EAI) Used with Flexible Endoscopes.	Contact person.
9–55		AAMI/ANSI RD62:2006 and ANSI/AAMI RD62:2006/A1:2009, Water treatment equipment for hemodialysis applications.	Withdrawn, see 9–69.
9–61		IEC 60601–2–18 Edition 3.0 2009–08 Medical electrical equipment—Part 2–18: Particular requirements for the basic safety and essential performance of endoscopic equipment.	Contact person.
9–59		AAMI/ANSI RD5:2003/(R)2008, Hemodialysis	Withdrawn, see 9–72.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		K. Ophthalmic	
10–15		ISO 9394 Second edition 1998–08–15 Ophthalmic optics—Contact lenses and contact lens care products—Determination of biocompatibility by ocular study using rabbit eyes.	Contact person.
10–24	10–67	ISO 11986 Second edition 2010–11–01 Ophthalmic optics—Contact lenses and contact lens care products—Determination of preservative uptake and release.	Withdrawn and replaced with newer version.
10–26	10–68	ISO 13212 Second edition 2011–05–15 Ophthalmic optics—Contact lens care products—Guidelines for determination of shelf-life.	Withdrawn and replaced with newer version.
10–28		ISO 14729 First edition 2001–04–15 Ophthalmic optics—Contact lens care products—Microbiological requirements and test methods for products and regimens for hygienic management of contact lenses.	Contact person.
10–29		ISO 14730 First edition 2000–09–15 Ophthalmic optics—Contact lens care products—Antimicrobial preservative efficacy testing and guidance on determining discard date.	Contact person.
10–33	10–69	ANSI Z80.18–2010 for Ophthalmics—Contact Lens Care Products—Vocabulary, Performance Specifications, and Test Methodology.	Withdrawn and replaced with newer version.
10–38	10–70	ISO 10943 Third edition 2011–08–15 Ophthalmic instruments—Indirect ophthalmoscopes.	Withdrawn and replaced with newer version.
10–59		ISO 11980 Second edition 2009–10–15 Ophthalmic optics—Contact lenses and contact lens care products—Guidance for clinical investigations.	Contact person.
		L. Orthopedic	
11–167	11–226	ASTM F1089–10 Standard Test Method for Corrosion of Surgical Instruments.	Withdrawn and replaced with newer version.
11–180	11–227	ASTM F366–10 Standard Specification for Fixation Pins and Wires	Withdrawn and replaced with newer version; change contact.
11–196		ASTM F1672–95 (Reapproved 2011) Standard Specification for Resurfacing Patellar Prosthesis.	Reaffirmation.
11–201	11–228	ASTM F564–10 Standard Specification and Test Methods for Metallic Bone Staples.	Withdrawn and replaced with newer version.
11–217	11–229	ASTM F2083–10 Standard Specification for Total Knee Prosthesis	Withdrawn and replaced with newer version.
11–221	11–230	ASTM F1717–10 Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model.	Withdrawn and replaced with newer version.
11–155	11–231	ISO 7207–2 Second edition 2011–07–01 Implants for surgery—Components for partial and total knee joint prostheses—Part 2: Articulating surfaces made of metal, ceramic and plastics materials.	Withdrawn and replaced with newer version.
11–219	8–203	ASTM F2026–10 Standard Specification for Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	Transferred and replaced with a newer version.
		M. Radiology	
12–52		UL 544 (1998), Standard for Medical and Dental Equipment—Ed. 4.0	Withdrawn, see 5–4 and 5–52.
12–62		UL 187 (1998), Standard for X-ray Equipment—Ed. 7.0	Withdrawn, see 5–4 and 5–52.
12–100		NEMA UD 3–2004 (R2009), Standard for Real Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment, Revision 2.	Reaffirmation.
12–105		NEMA UD 2–2004 (R2009), Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment, Revision 3.	Reaffirmation.
12–106		ISO 17526 First edition 2003–06–15, Optics and optical instruments—Lasers and laser-related equipment—Lifetime of lasers.	Contact person.
12–108	12–246	ISO 21254–2 First edition 2011–07–15 Lasers and laser-related equipment—Test methods for laser-induced damage threshold—Part 2: Threshold determination.	Withdrawn and replaced with newer version.
12–109	12–245	ISO 21254–1 First edition 2011–07–15 Lasers and laser-related equipment—Test methods for laser-induced damage threshold—Part 1: Definitions and general principles.	Withdrawn and replaced with newer version.
12–110		ISO 11551 Second edition 2003–12–01, Optics and optical instruments—Lasers and laser-related equipment—Test method for absorptance of optical laser components.	Contact person.
12–113		ISO 12005 Second edition 2003–04–01, Lasers and laser-related equipment—Test methods for laser beam parameters—Polarization.	Contact person.
12–115		ISO 13695 First edition 2004–06–01, Optics and photonics—Lasers and laser-related equipment—Test methods for the spectral characteristics of lasers.	Contact person.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
12–117		ISO 15367–1 First edition 2003–09–15, Lasers and laser-related equipment—Test methods for determination of the shape of a laser beam wavefront—Part 1: Terminology and fundamental aspects.	Contact person.
12–134		ISO 11146–1 First edition 2005–01–15, Lasers and laser-related equipment—Test methods for laser beam widths, divergence angles and beam propagation ratios—Part 1: Stigmatic and simple astigmatic beams.	Contact person.
12–140		AIUM RTD2–2004, Standard for Real-Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment Revision 2.	Title.
12–142		ISO 11146–2 First edition 2005–02–15, Lasers and laser-related equipment—Test methods for laser beam widths, divergence angles and beam propagation ratios—Part 2: General astigmatic beams.	Contact person.
12–143		ISO 15367–2 First edition 2005–03–15, Lasers and laser-related equipment—Test methods for determination of the shape of a laser beam wavefront—Part 2: Shack-Hartman sensors.	Contact person.
12–144	12–247	ISO 11990–1 First edition 2011–08–01 Lasers and laser-related equipment—Determination of laser resistance of tracheal tubes—Part 1: Tracheal tube shaft.	Withdrawn and replaced with newer version.
12–154	12–248	ISO 21254–3 First edition 2011–07–15 Lasers and laser-related equipment—Test methods for laser-induced damage threshold—Part 3: Assurance of laser power (energy) handling capabilities.	Withdrawn and replaced with newer version.
12–155		ISO 11554 Third edition 2006–05–01, Optics and photonics—Lasers and laser-related equipment—Test methods for laser beam power, energy and temporal characteristics.	Contact person.
12–156		ISO 11670:2003 Technical Corrigendum 1 Published 2004–05–15, Lasers and laser-related equipment—Test methods for laser beam parameters—Beam positional stability.	Contact person.
12–157		ISO 13694:2000 Technical Corrigendum 1 Published 2005–11–01, Optics and optical instruments—Lasers and laser-related equipment—Test methods for laser beam power (energy) density distribution.	Contact person.
12–174		ISO 13697 First edition 2006–05–15, Optics and photonics—Lasers and laser-related equipment—Test methods for specular reflectance and regular transmittance of optical laser components.	Contact person.
12–175		ISO 24013 First edition 2006–11–15, Optics and photonics—Lasers and laser-related equipment—Measurement of phase retardation of optical components for polarized laser radiation.	Contact person.
12–177	12–249	ANSI/UL 122–2007 Standard for Photographic Equipment—Ed. 5.0	Withdrawn and replaced with newer version.
12–125	12–231	NEMA MS 5–2010, Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging.	Withdrawn and replaced with newer version.
12–151	12–232	NEMA MS 4–2010, Acoustic Noise Measurement Procedure for Diagnosing Magnetic Resonance Imaging Devices.	Withdrawn and replaced with newer version.
12–160	12–234	NEMA MS 12–2010, Quantification and Mapping of Geometric Distortion for Special Applications.	Withdrawn and replaced with newer version.
12–162	12–235	IEC 60731 Edition 3.0 2011–02, Amendment 1, Medical electrical equipment—Dosimeters with ionization chambers as used in radiotherapy.	Withdrawn and replaced with newer version.
12–178	12–236	IEC 60601–2–45 Edition 3.0 2011–02, Medical electrical equipment—Part 2–45: Particular requirements for the basic safety and essential performance of mammographic X-ray equipment and mammographic stereotactic devices.	Newer version with transition period.
12–191	12–237	IEC 62359 Edition 2.0 2010–10, Ultrasonics—Field characterization—Test methods for the determination of thermal and mechanical indices related to medical diagnostic ultrasonic fields.	Withdrawn and replaced with newer version.
12–218	12–238	NEMA PS 3.1–3.20 (2011), Digital Imaging and Communications in Medicine (DICOM) Set.	Withdrawn and replaced with newer version.
		N. Software/Informatics	
13–11	13–30	CLSI AUTO3–A2 Laboratory Automation: Communications with Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard, Second Edition 2009.	Withdrawn and replaced with newer version.
		O. Sterility	
14–135		AAMI/ANSI ST63:2002, Sterilization of health care products—Requirements for the development, validation and routine control of an industrial sterilization process for medical devices—Dry heat.	Withdrawn, see 14–339.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
14–169		ASTM F2391–05 (Reapproved 2011) Standard Test Method for Measuring Package and Seal Integrity Using Helium as the Tracer Gas.	Reaffirmation.
14–170	14–313	ASTM F2475–11 Standard Guide for Biocompatibility Evaluation of Medical Device Packaging Materials.	Withdrawn and replaced with newer version.
14–181		ANSI/AAMI ST58:2005/(R)2010 Chemical sterilization and high-level disinfection in health care facilities.	Reaffirmation and contact person.
14–193		ANSI/AAMI/ISO 11607–1:2006/(R)2010 Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems, and packaging systems.	Reaffirmation.
14–194		ANSI/AAMI/ISO 11607–2:2006/(R)2010 Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing, and assembly processes.	Reaffirmation.
14–195		ANSI/AAMI/ISO 11140–1:2005(R)2010 Sterilization of health care products—Chemical indicators—Part 1: General requirements.	Reaffirmation, extent of recognition, and type of standard.
14–201		ANSI/AAMI ST77:2006/(R)2010 Containment devices for reusable medical device sterilization.	Reaffirmation and contact person.
14–214		AOAC 6.2.04:2009 Official Method 955.15, Testing Disinfectants Against Staphylococcus aureus, Use—Dilution Method.	Reaffirmation.
14–216		AOAC 6.2.06:2009 Official Method 964.02, Testing Disinfectants Against Pseudomonas aeruginosa, Use—Dilution Method.	Reaffirmation.
14–219		AOAC 6.3.06:2008 Official Method 965.12, Tuberculocidal Activity of Disinfectants.	Reaffirmation.
14–222		ANSI/AAMI/ISO 18472:2006/(R)2010 Sterilization of health care products—Biological and chemical indicators—Test equipment.	Reaffirmation, and contact person.
14–225		ANSI/AAMI/ISO 11137–2:2006 Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose.	Extent of recognition and relevant guidance.
14–227		ANSI/AAMI/ISO 11737–1:2006 Sterilization of health care products—Microbiological methods—Part 1: Determination of the population of microorganisms on product.	Extent of recognition and title.
14–228		ANSI/AAMI/ISO 11135–1:2007 Sterilization of health care products—Ethylene oxide—Part 1: Requirements for development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–238		ANSI/AAMI/ISO 11140–5:2007, Sterilization of health care products—Chemical indicators—Part 5: Class 2 indicators for Bowie and Dick-type air removal tests.	Relevant guidance.
14–261		ANSI/AAMI/ISO 17665–1:2006 Sterilization of health care products—Moist heat—Part 1: Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition, relevant guidance and contact person.
14–274		ANSI/AAMI/ISO 15882:2008 Sterilization of health care products—Chemical indicators—Guidance for selection, use, and interpretation of results.	Extent of recognition.
14–276	14–314	ANSI/AAMI ST67:2011 Sterilization of health care products—Requirements and guidance for selecting a sterility assurance level (SAL) for products labeled ''sterile''.	Withdrawn and replaced with newer version.
14–285		ANSI/AAMI/ISO 14161:2009 Sterilization of health care products—Biological indicators—Guidance for the selection, use and interpretation of results.	Title, contact person.
14–287		ANSI/AAMI/ISO 11737–2:2009 Sterilization of medical devices—Microbiological methods—Part 2: Tests of sterility performed in the definition, validation and maintenance of a sterilization process.	Extent of recognition and title.
14–291		ANSI/AAMI/ISO 14937:2009 Sterilization of health care products—General requirements for characterization of a sterilizing agent and the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–295		ANSI/AAMI ST81:2004/(R)2010, Sterilization of medical devices—Information to be provided by the manufacturer for the processing of resterilizable medical devices.	Relevant guidance and contact person.
14–296		ANSI/AAMI/ISO 11138–1:2006/(R)2010 Sterilization of health care products—Biological indicators—Part 1: General requirements.	Extent of recognition, contact person and relevant guidance.
14–297		ANSI/AAMI/ISO 11137–1:2006/(R)2010 Sterilization of health care products—Radiation—Part 1: Requirements for development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition, and relevant guidance.
14–298		ANSI/AAMI/ISO 11137–3:2006/(R)2010 Sterilization of health care products—Radiation—Part 3: Guidance on dosimetric aspects.	Extent of recognition and relevant guidance.
14–301	14–315	USP 34:2011 <61> Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests.	Withdrawn and replaced with newer version.
14–302	14–316	USP 34:2011 <71> Sterility Tests	Withdrawn and replaced with newer version.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
14–303	14–317	USP 34:2011 <85> Bacterial Endotoxins Test	Withdrawn and replaced with newer version.
14–304	14–318	USP 34:2011 <151> Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version.
14–305	14–319	USP 34:2011 <161> Transfusion and Infusion Assemblies and Similar Medical Devices.	Withdrawn and replaced with newer version.
14–306	14–320	USP 34:2011 Biological Indicator for Steam Sterilization—Self Contained.	Withdrawn and replaced with newer version.
14–307	14–321	USP 34:2011 Biological Indicator for Dry-Heat Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–308	14–322	USP 34:2011 Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–309	14–323	USP 34:2011 Biological Indicator for Steam Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–310	14–324	USP 34:2011 <62> Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms.	Withdrawn and replaced with newer version.
		P. Tissue Engineering	
15–7	15–27	ASTM F2315–11 Standard Guide for Immobilization or Encapsulation of Living Cells or Tissue in Alginate Gels.	Withdrawn and replaced with newer version.
15–8		ASTM F2064–00 (Reapproved 2006) [1] Standard Guide for Characterization and Testing of Alginates as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Products Application.	Editorial change.
15–10		ASTM F2451–05 (Reapproved 2010) Standard Guide for in vivo Assessment of Implantable Devices Intended to Repair or Regenerate Articular Cartilage.	Reaffirmation.
15–12	15–28	ASTM F2103–11 Standard Guide for Characterization and Testing of Chitosan Salts as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Product Applications.	Withdrawn and replaced with newer version.
15–15	15–29	ASTM F2259–10 Standard Test Method for Determining the Chemical Composition and Sequence in Alginate by Proton Nuclear Magnetic Resonance (1H NMR) Spectroscopy.	Withdrawn and replaced with newer version.
15–18	15–30	ASTM F2212–11 Standard Guide for Characterization of Type I Collagen as Starting Material for Surgical Implants and Substrates for Tissue Engineered Medical Products (TEMPs).	Withdrawn and replaced with newer version.
15–25	15–31	ASTM F2312–11 Standard Terminology Relating to Tissue Engineered Medical Products.	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 028.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference Number and date
	A. Biocompatibility	
2–173	Biological evaluation of medical devices—Part 10: Tests for irritation and skin sensitization	ANSI/AAMI/ISO 10993–10:2010.
2–175	Biological evaluation of medical devices Part 3: Tests for genotoxicity, carcinogenicity and reproductive toxicity.	ISO 10993–3 Second edition 2003–10–15.
2–176	Biological evaluation of medical devices Part 11: Tests for systemic toxicity	ISO 10993–11 Second edition 2006–08–15.
2–177	Biological evaluation of medical devices—Part 6: Tests for local effects after implantation	ISO 10993–6 Second edition 2007–04–15.
2–178	Biological evaluation of medical devices—Part 12: Sample preparation and reference materials.	ISO 10993–12 Third edition 2007–11–15 Corrected version 2008–02–15.
2–179	Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process.	ISO 10993–1 Fourth edition 2009–10–15.
2–181	Clinical investigation of medical devices for human subjects—Good clinical practice	ANSI/AAMI/ISO 14155:2011.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference Number and date
2–182	Clinical investigation of medical devices for human subjects—Good clinical practice	ISO 14155 Second edition 2011–02–01.
2–183	Clinical investigation of medical devices for human subjects—Good clinical practice TECHNICAL CORRIGENDUM 1.	ISO 14155: 2011 Technical Corrigendum 1 Published 2011–07–15.
	B. Cardiovascular	
3–96	Non-invasive sphygmomanometers—Part 1: Requirements and test methods for non-automated measurement type.	ISO 81060–1 First edition 2007–12–01.
3–97	Non-invasive sphygmomanometers—Part 2: Clinical validation of automated measurement type.	ISO 81060–2 First edition 2009–05–01.
3–98	Non-invasive sphygmomanometers—Part 2: Clinical validation of automated measurement type TECHNICAL CORRIGENDUM 1.	ISO 81060–2:2009 TECHNICAL CORRIGENDUM 1 Published 2011–02–15.
3–99	Evaluation of particulates associated with vascular medical devices	AAMI TIR42:2010.
3–100	Medical electrical equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment.	ANSI/AAMI/IEC 60601–2–27:2011.
	C. General	
5–68	Medical devices—Symbols to be used with medical device labels, labelling, and information to be supplied—Part 2: Symbol development, selection and validation.	ANSI/AAMI/ISO 15223–2:2010.
5–69	Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral Standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment Corrigendum 1.	IEC 60601–1–11 (First edition—2010) April 2011.
5–70	Medical devices—Application of risk management to medical devices	ANSI/AAMI/ISO 14971:2007/(R)2010.
	D. General Hospital/General Plastic Surgery	
6–263	Absorbable Surgical Suture	USP 34–NF 28 2011.
6–264	Sterile, single-use intravascular catheters—Part 1: General requirements	ISO 10555–1 First edition 1995–06–15 Amendment 1 1999–07–15.
6–265	Sterile, single-use intravascular catheters—Part 1: General requirements	ISO 10555–1 First edition 1995–06–15 AMENDMENT 2 2004–05–15.
6–268	Standard Terminology Relating to Hemostatic Forceps	ASTM F921—10 (Reapproved 2011).
6–269	Standard Terminology for Surgical Scissors—Inserted and Non-Inserted Blades	ASTM F1078—10 (Reapproved 2011).
6–270	Standard Terminology for Surgical Suture Needles	ASTM F1840–10 [1].
6–271	Standard Test Method for Bend Testing of Needles Used in Surgical Sutures	ASTM F1874—98 (Reapproved 2011).
6–272	Standard Specification for Square Drive Interconnections on Surgical Instruments	ASTM F2062—00 (Reapproved 2011).
6–273	Sharps injury protection—Requirements and test methods—Sharps protection features for single-use hypodermic needles, introducers for catheters and needles used for blood sampling.	ISO 23908 First edition 2011–06–11.
	E. In Vitro Diagnostics	
7–225	Validation and Verification of Tubes for Venous and Capillary Blood Specimen Collection; Approved Guideline.	CLSI GP34–A.
7–226	Quality Management System: A Model for Laboratory Services; Approved Guideline—Fourth Edition.	CLSI GP26–A4.
7–227	Criteria for Laboratory Testing and Diagnosis of Human Immunodeficiency Virus Infection; Approved Guideline.	CLSI M53–A.
	F. Materials	
8–211	Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 1: Powder form	ISO 5834–1 Third edition 2005–06–01.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference Number and date
8–212	Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 1: Powder form TECHNICAL CORRIGENDUM 1.	ISO 5834–1:2005 TECHNICAL CORRIGENDUM 1 Published 2007–05–01.
8–213	Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 3: Accelerated ageing methods.	ISO 5834–3 First edition 2005–07–15.
8–214	Implants for surgery—Ultra-high molecular weight polyethylene—Part 4: Oxidation index measurement method.	ISO 5834–4 First edition 2005–05–01.
8–215	Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 5: Morphology assessment method.	ISO 5834–5 First edition 2005–06–01.
	G. Neurology	
17–9	Implants for surgery—Active implantable medical devices Part 3: Implantable neurostimulators.	ANSI/AAMI/ISO 14708–3:2008.
	H. OB–GYN/Gastroenterology	
9–69	Water for hemodialysis and related therapies	ANSI/AAMI/ISO 13959:2009.
9–70	Guidance for the preparation and quality management of fluids for hemodialysis and related therapies.	ANSI/AAMI/ISO 23500:2011.
9–71	Quality of dialysis fluid for hemodialysis and related therapies	ANSI/AAMI/ISO 11663:2009.
9–72	Medical electrical equipment, Part 2–16: Particular requirements for basic safety and essential performance of hemodialysis, hemodiafiltration and hemofiltration equipment.	ANSI/AAMI/IEC 60601–2–16:2008.
9–73	Concentrates for haemodialysis and related therapies	ANSI/AAMI/ISO 13958:2009.
9–74	Concentrates for haemodialysis and related therapies	ISO 13958 Second edition 2009–4–15.
	I. Ophthalmic	
10–71	Ophthalmic optics—Contact lens care products—Microbiological requirements and test methods for products and regimens for hygienic management of contact lenses.	ISO 14729 First edition 2001–04–15 AMENDMENT 1 2010–10–01.
10–72	Ophthalmic instruments—Fundamental requirements and test methods—Part 1: General requirements applicable to all ophthalmic instruments.	ISO 15004–1 First edition 200–606–01.
	J. Orthopedic	
11–232	Implants for surgery—Components for partial and total knee joint prostheses—Part 1: Classification, definitions and designation of dimensions.	ISO 7207–1 Third edition 2007–02–01.
11–233	Standard Specifications and Test Methods for Metallic Angled Orthopedic Fracture Fixation Devices.	ASTM F384—06 (Reapproved 2011).
11–234	Standard Test Method for Wear Testing of Polymeric Materials Used in Total Joint Prostheses.	ASTM F732—00 (Reapproved 2011).
	K. Radiology	
12–233	Lasers and laser-related equipment—Test methods for laser beam parameters—Beam positional stability.	ISO 11670 Second edition 2003–04–01.
12–239	SAFETY OF LASER PRODUCTS—Part 1: Equipment classification and requirements, INTERPRETATION SHEET 1.	IEC 60825–1 (Second edition—2007) I–SH 01 December 2009.
12–240	SAFETY OF LASER PRODUCTS—Part 1: Equipment classification and requirements, INTERPRETATION SHEET 2.	IEC 60825–1 (2007), second edition/I–SH 02 January 2011.
12–241	Medical electrical equipment—Safety of radiotherapy record and verify systems	IEC 62274 First edition 2005–05.
12–242	Medical electrical equipment—Part 2–57: Particular requirements for the basic safety and essential performance of non-laser light source equipment intended for therapeutic, diagnostic, monitoring and cosmetic/aesthetic use.	IEC 60601–2–57 Edition 1.0 2011–01.
12–243	Optics and optical instruments—Lasers and laser-related equipment—Test methods for laser beam power [energy] density distribution.	ISO 13694, First edition 2000–04–01.
12–244	Ultrasonics—Field characterization—Test methods for the determination of thermal and mechanical indices related to medical diagnostic ultrasonic fields CORRIGENDUM 1.	IEC 62359 (Second edition—2010).

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference Number and date
	L. Sterility	
14–325	Sterilization of health care products—Vocabulary	ISO/TS 11139 Second edition 2006–01–15.
14–326	Sterilization of medical devices—Microbiological methods—Part 1: Determination of a population of microorganisms on products.	ISO 11737–1 Second edition 2006–04–01.
14–327	Sterilization of medical devices—Microbiological methods—Part 2: Tests of sterility performed in the definition, validation and maintenance of a sterilization process.	ISO 11737–2 Second edition 2009–11–15.
14–328	Sterilization of health care products—Radiation—Part 1: Requirements for development, validation and routine control of a sterilization process for medical devices.	ISO 11137–1 First edition 2006–04–15.
14–329	Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose	ISO 11137–2 First edition 2006–04–15.
14–330	Sterilization of health careproducts—Radiation—Part 3: Guidance on dosimetric aspects	ISO 11137–3 First edition 2006–04–15.
14–331	Sterilization of health care products—Ethylene oxide—Part 1: Requirements for development, validation and routine control of a sterilization process for medical devices.	ISO 11135–1 First edition 2007–05–01.
14–332	Sterilization of health care products—Chemical indicators—Part 5: Class 2 indicators for Bowie and Dick-type air removal tests.	ISO 11140–5 Second edition 2007–03–15.
14–333	Sterilization of health care products—Moist heat—Part 1: Requirements for the development, validation and routine control of a sterilization process for medical devices.	ISO 17665–1 First edition 2006–08–15.
14–334	Sterilization of health care products—Chemical indicators—Guidance for selection, use and interpretation of results.	ISO 15882 Second edition 2008–09–01.
14–335	Biological evaluation of medical devices—Part 7: Ethylene oxide sterilization residuals	ISO 10993–7 Second edition 2008–10–15.
14–336	Sterilization of health care products—Biological indicators—Guidance for the selection, use and interpretation of results.	ISO 14161 Second edition 2009–09–15.
14–337	Sterilization of health care products—General requirements for characterization of a sterilizing agent and the development, validation and routine control of a sterilization process for medical devices.	ISO 14937 Second edition 2009–10–15.
14–338	Sterilization of health care products—Biological indicators—Part 1: General requirements	ISO 11138–1 Second edition 2006–07–01.
14–339	Sterilization of health care products—Dry heat—Requirements for the development, validation and routine control of a sterilization process for medical devices.	ANSI/AAMI/ISO 20857:2010.
14–340	Sterilization of health care products—Dry heat—Requirements for the development, validation and routine control of a sterilization process for medical devices.	ISO 20857 First edition 2010–08–15.
14–341	Standard Guide for Absorbed-Dose Mapping in Radiation Processing Facilities	ASTM E2303—11.
14–342	Standard Practice for Dosimetry in Radiation Processing	ASTM E2628—09 [1].
14–343	Standard Guide for Performance Characterization of Dosimeters and Dosimetry Systems for Use in Radiation Processing.	ASTM E2701—09.
14–344	Standard Practice for Climatic Stressing of Packaging Systems for Single Parcel Delivery	ASTM F2825—10 [1].
14–345	Standard guide for selection and calibration of dosimetry systems for radiation processing	ISO/ASTM 51261 First edition 2002–03–15.
14–346	Standard Practice for Use of a Polymethylmethacrylate Dosimetry System	ISO/ASTM 51276 Second edition 2002–12–15.
14–347	Standard Practice for Dosimetry in Gamma Irradiation Facilities for Radiation Processing	ISO/ASTM 51702 Second edition 2004–08–15.
14–348	Aseptic processing of health care products—Part 2: Filtration	ANSI/AAMI/ISO 13408–2:2003.
14–349	Aseptic processing of health care products—Part 3: Lyophilization	ANSI/AAMI/ISO 13408–3:2006.
14–350	Aseptic processing of health care products—Part 4: Clean-in-place technologies	ANSI/AAMI/ISO 13408–4:2005.
14–351	Aseptic processing of health care products—Part 5: Sterilization in place	ANSI/AAMI/ISO 13408–5:2006.
14–352	Aseptic processing of health care products—Part 6: Isolator systems	ANSI/AAMI/ISO 13408–6:2005.
14–353	Sterilization of health care products—Chemical indicators—Part 1: General requirements	ISO 11140–1 Second edition 2005–07–15.
14–354	Sterilization of health care products—Biological and chemical indicators—Test equipment	ISO 18472 First edition 2006–06–01.
14–355	Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems and packaging systems.	ISO 11607–1 First edition 2006–04–15.
14–356	Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing and assembly processes.	ISO 11607–2 First edition 2006–04–15.
14–357	Sterilization of medical devices—Microbiological methods—Part 1: Determination of a population of microorganisms on products.	ISO 11737–1:2006 TECHNICAL CORRIGENDUM 1 Published 2007–05–15.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference Number and date
	M. Tissue Engineering	
15–32	Standard Test Method for Determining Degree of Deacetylation in Chitosan Salts by Proton Nuclear Magnetic Resonance (^{1}H NMR) Spectroscopy.	ASTM F2260–03 (Re-approved 2008).
15–33	Standard Test Method for Determining the Molar Mass of Chitosan and Chitosan Salts by Size Exclusion Chromatography with Multi-angle Light Scattering Detection (SEC–MALS).	ASTM F2602–08 [1].
15–34	Standard Test Method for Determining the Molar Mass of Sodium Alginate by Size Exclusion Chromatography with Multi-angle Light Scattering Detection (SEC–MALS).	ASTM F2605–08 [1].
15–35	Standard Guide for Characterization of Hydrogels used in Regenerative Medicine	ASTM F2900–11.
15–36	Standard Guide for Assessment of Adventitious Agents in Tissue Engineered Medical Products (TEMPs).	ASTM F2383–11.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards-related documents. After publication in the **Federal Register**, this notice announcing ''Modification to the List of Recognized Standards, Recognition List Number: 028'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/MedicalDevices.*

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for ''FDA Recognized Consensus Standards'' at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards.*

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 028. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: March 12, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6389 Filed 3–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–M–0735, FDA–2011–M–0736, FDA–2011–M–0737, FDA–2011–M–0746, FDA–2011–M–0786, FDA–2011–M–0791, FDA–2011–M–0792, FDA–2011–M–0796, FDA–2011–M–0832, FDA–2011–M–0837, FDA–2011–M–0848, FDA–2011–M–0865, FDA–2011–M–0866, FDA–2011–M–0910, and FDA–2011–M–0917]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2011, through December 31, 2011. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2011, THROUGH DECEMBER 31, 2011

PMA No., Docket No.	Applicant	Trade name	Approval date
P110003, FDA–2011–M–0746	Pluromed, Inc	LEGOO	September 28, 2011.
P090024, FDA–2011–M–0737	Siemens Healthcare Diagnostics	ADVIA CENTAUR HBEAG assay and quality control material.	October 11, 2011.
P040024 (S51), FDA–2011–M–0735	Medicis Aesthetics, Inc	RESTYLANE injectable gel	October 11, 2011.
P010029 (S8), FDA–2011–M–0736	Ferring Pharmaceuticals, Inc	EUFLEXXA (1% sodium hyaluronate)	October 11, 2011.
P110022, FDA–2011–M–0786	Roche Diagnostics Corp	ELECSYS anti-HBC IGM immunoassay and ELECSYS PRECICONTROL anti-HBC IGM.	October 26, 2011.
P110011, FDA–2011–M–0791	Medtronic Ireland	ASSURANT COBALT iliac balloon-expandable stent system.	October 26, 2011.
P100042, FDA–2011–M–0792	Gen-Probe Incorporated	APTIMA HPV assay	October 28, 2011.
P110019, FDA–2011–M–0796	Abbott Vascular	XIENCE PRIME and XIENCE PRIME LL EVEROLIMUS-eluting coronary stent system.	November 1, 2011.
P100041, FDA–2011–M–0837	Edwards Lifesciences, LLC	EDWARDS SAPIEN transcatheter heart valve and RETROFLEX 3 delivery system, RETROFLEX balloon catheter and crimper.	November 2, 2011.
P090016, FDA–2011–M–0832	Merz Aesthetics, Inc	BELOTERO balance	November 14, 2011.
H090002, FDA–2011–M–0848	BSD Medical Corp	BSD–2000 hyperthermia system	November 18, 2011.
P110010, FDA–2011–M–0865	Boston Scientific Corp	PROMUS ELEMENT PLUS EVEROLIMUS-eluting platinum chromium coronary stent system.	November 22, 2011.
P100024, FDA–2011–M–0866	Dako Denmark A/S	*HER2* CISH PHARMDX kit	November 30, 2011.
P110025, FDA–2011–M–0917	Roche Diagnostics Corp	ELECSYS anti-HBC IGM immunoassay and ELECSYS PRECICONTROL anti-HBC IGM for use on the MODULAR ANALYTICS E170 immunoassay analyze.	December 14, 2011.
P100046, FDA–2011–M–0910	AtriCure Inc	ATRICURE SYNERGY ablation system.	December 14, 2011.

II. Electronic Access

Persons with access to the Internet may obtain the documents at:

http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm; and

http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/HDEApprovals/ucm161827.htm.

Dated: March 12, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6390 Filed 3–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

New Proposed Collection; Comment Request: Child Health Disparities Measurement 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.

Proposed Collection: Title: Child Health Disparities Substudy for the National Children's Study (NCS). *Type of Information Collection Request:* NEW. *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 Child Health Disparities Substudy will validate measures needed for studying health disparities and selected biomarkers. Utilizing cognitive interview techniques and components of standardized questionnaires, responses will be used to assess and validate measures of health literacy, discrimination, parenting self-efficacy, and health care accessibility.

Acceptability and feasibility of saliva collection from a subsample of women and young children will also be evaluated. The incorporation of saliva measurements will increase understanding of biological responses to environmental factors and how these may be correlated with health disparities within this population.

Background: The National Children's Study is a prospective, national longitudinal study of the interaction between environment, genetics on child health and development. The Study defines ''environment'' broadly, taking a number of natural and man-made environmental, biological, genetic, and psychosocial factors into account. By studying children through their different phases of growth and development, researchers will be better able to understand the role these factors have on health and disease. Findings from the Study will be made available as the research progresses, making potential benefits known to the public as soon as possible. The National Children's Study is led by a consortium of federal partners: the U.S. Department of Health and Human Services (including the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Institute of Environmental Health Sciences of the National Institutes of Health and the Centers for Disease Control and Prevention), and the U.S. Environmental Protection Agency.

To conduct the detailed preparation needed for a study of this size and complexity, the NCS was designed to include a preliminary pilot study known as the Vanguard Study. The purpose of the Vanguard Study is to assess the feasibility, acceptability, and cost of the recruitment strategy, study procedures, and outcome assessments that are to be used in the NCS Main Study. The Vanguard Study begins prior to the NCS Main Study and will run in parallel with the Main Study. At every phase of the NCS, the multiple methodological studies conducted during the Vanguard phase will inform the implementation and analysis plan for the Main Study.

In this information collection request, the NCS requests approval from OMB to perform a multi-center substudy called the Child Health Disparity Substudy. This substudy aims to validate measures needed for studying health disparities and selected biomarkers. Developing optimum measures for studying health disparities is of particular interest to the NCS because studies have shown that health literacy, discrimination, parenting self-efficacy, health care (access, utilization, and quality) contribute to health disparities. Additionally, aspects of the social environment such as social isolation, lack of control and contingency and social support, violence, discrimination, challenging and changing social relationships, and restricted access to health care are thought to interact with biological processes. Variation in these processes has been associated with negative emotional states, cognitive deficits, problem behavior, and a variety of metabolic and immune-related processes. Alone, or particularly in combination with other commonly collected measures of social forces and family relationships, salivary analytes have the potential to advance our understanding of maternal and child health and development. This project will make its contribution to the NCS Main Study and to the health disparities field as a whole by constructing a validated set of questionnaire measures and biomarker analyses that can be used among pregnant women and mothers of young children for the purpose of investigating disparities.

Frequency of Response: One-time data collection conducted in multiple phases.

Affected Public: Pregnant women, mothers with young children, and their children.

Type of Respondents: Pregnant women, mothers with young children, and their children who are not geographically eligible to enroll in the NCS Vanguard Study.

Annual Reporting Burden: See Table 1. The annualized cost to respondents is estimated at $24,600 (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, CHILD HEALTH DISPARITIES SUBSTUDY

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
Consent	Pregnant Women/ Mothers of children ages 0–5.	Members of NCS target population (not NCS participants).	1,260	1	0.08	105
Cognitive Interview	Mothers of children ages 0–5.	Members of NCS target population (not NCS participants).	60	1	1.33	80
Primary Data Collection	Pregnant Women/ Mothers of children ages 0–5. Mothers of children ages 0–5.	Members of NCS target population (not NCS participants).	600 600	2 1	1.08 1.08	1,300 650
Saliva Collection	Pregnant Women/ Mothers of children ages 0–5. Additional mothers of children ages 0–5. Children ages 0–5	Members of NCS target population (not NCS participants).	260 260 520	2 1 1	0.25 0.25 0.25	130 65 130
Total			1,780			2,460

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 email 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 60 days of the date of this publication.

Dated: March 12, 2012.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2012–6354 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, April 18, 2012, 1 p.m. to April 18, 2012, 5 p.m., National Institutes of Health, 6116 Executive Boulevard, 8055B, Rockville, MD 20852 which was published in the Federal Register on March 1, 2012, 77 FR 12600.

This notice is being amended to change the times of the meeting from 1 p.m.–5 p.m. to 12 p.m.–3 p.m. The meeting is closed to the public.

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6352 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Experimental Therapeutics Program (NExT).

Date: April 11, 2012.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Room C, Bethesda, MD 20814.

Contact Person: Barbara Mroczkowski, Ph.D., Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkowskib@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6345 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Infectious Diseases and Microbiology.

Date: March 22–23, 2012.

Time: 9 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: Alexander D Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel P01 Review: ''Presynaptic Mechanisms of Neural Plasticity''.

Date: April 3–4, 2012.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@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: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6342 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Nanotechnology Sensing Platforms.

Date: March 26, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Cancer Institute, 6116 Executive Blvd., Conference Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Virginia P. Wray, Ph.D., Deputy Chief, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8125, Bethesda, MD 20892–8328, 301–496–9236, *wrayv@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6337 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel Review of Program Project (P01) Application.

Date: April 10, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An12C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6336 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies on T2D.

Date: April 5, 2012.

Time: 2 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: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Diabetes Research Centers (P30).

Date: June 4–5, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6340 Filed 3–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0212]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC provides advice and recommendations to the Secretary of Homeland Security, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

DATES: Applicants must submit a cover letter and resume on or before June 29, 2012.

ADDRESSES: Applicants should send a cover letter and resume to Mr. Mike Sollosi, Alternate Designated Federal Officer (ADFO), at the following address: Commandant (CG–553), Attn: Mr. Mike Sollosi, U.S. Coast Guard, 2100 2nd Street SW., STOP 7580, Washington, DC 20593–7580.

You can also call 202–372–1531 or email *Dennis.Fahr@uscg.mil.* This notice is available in our online docket USCG–2012–0212, at *http://www.regulations.gov.* Members of the public should not submit personal information into a docket, as it becomes public record. During the vetting process, applicants may be asked to provide date of birth and social security number.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, the NAVSAC Alternate Designated Federal Officer (ADFO), at phone 202–372–1545, fax 202–372–1991, or email *Mike.M.Sollosi@uscg.mil;* or Mr. Dennis Fahr, at telephone 202–372–1531 or email *Dennis.Fahr@uscg.mil.*

SUPPLEMENTARY INFORMATION: The NAVSAC is a federal advisory committee authorized by 33 U.S.C. 2073 and chartered under the *Federal Advisory Committee Act* (Pub. L. 92–463; 5 U.S.C. App. 2). The NAVSAC provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The NAVSAC is expected to meet at least twice each year, or more often with the approval of the Designated Federal Officer (DFO). Members may be reimbursed for travel and per diem, as allowed by regulations and Department policy. All travel for NAVSAC business must be approved in advance by the DFO. The NAVSAC is comprised of not more than 21 members who shall have expertise in Inland and International vessel navigation Rules of the Road, aids to maritime navigation, maritime law, vessel safety, port safety, or commercial diving safety. Each member shall be appointed to represent the viewpoints and interests of one of the following groups or organizations, and at least one member shall be appointed to represent each membership category:

a. Commercial vessel owners or operators
b. Professional mariners
c. Recreational boaters
d. The recreational boating industry
e. State agencies responsible for vessel or port safety
f. The Maritime Law Association.

Members serve as representatives and are not Special Government Employees as defined in section 202(a) of Title 18, United States Code.

The Coast Guard will consider applications for eight positions that will become vacant on November 4, 2012, in the following categories:

a. Commercial vessel owners or operators
b. Professional mariners
c. Recreational boaters
d. The recreational boating industry

e. State agencies responsible for vessel or port safety.

To be eligible, you should have experience in one of the categories listed above.

Members shall serve terms of office of up to three years, and approximately one-third of members' terms of office shall expire each year. In the event NAVSAC is terminated, all appointments to the Council shall terminate.

Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure Act of 1995* (Pub. L. 104–65 as amended).

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and generic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Dated: March 9, 2012.

Dana A. Goward,

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

[FR Doc. 2012–6378 Filed 3–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4057–DR; Docket ID FEMA–2012–0002]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4057–DR), dated March 6, 2012, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 6, 2012.

Bath, Campbell, Carroll, Grant, Martin, Montgomery, and Rowan Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6361 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3342–EM; Docket ID FEMA–2012–0002]

Connecticut; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Connecticut (FEMA–3342–EM), dated October 31, 2011, and related determinations.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Stephen M. DeBlasio Sr. as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6357 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3331–EM; Docket ID FEMA–2012–0002]

Connecticut; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Connecticut (FEMA–3331–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Stephen M. DeBlasio Sr. as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6368 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2012–0002]

Connecticut; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Stephen M. DeBlasio Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6362 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4046–DR; Docket ID FEMA–2012–0002]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Connecticut (FEMA–4046–DR), dated November 17, 2011, and related determinations.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Stephen M. DeBlasio Sr., as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

[FR Doc. 2012–6358 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4057–DR; Docket ID FEMA–2012–0002]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4057–DR), dated March 6, 2012, and related determinations.

DATES: *Effective Date:* March 6, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 6, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of February 29 to March 3, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

The counties of Johnson, Kenton, Laurel, Lawrence, Menifee, Morgan, and Pendleton for Individual Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6355 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4056–DR; Docket ID FEMA–2012–0002]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4056–DR), dated March 5, 2012, and related determinations.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 5, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe winter storm, flooding, landslides, and mudslides during the period of January 14–23, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Clallam, Grays Harbor, King, Klickitat, Lewis, Mason, Pierce, Skamania, Snohomish, Thurston, and Wahkiakum Counties for Public Assistance.

All counties within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–6370 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–131, Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–131, Application for Travel Document.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2011, at 77 FR 81517, allowing for a 60-day public comment period. USCIS did not receive comments in connection with that information collection notice.

The purpose of this notice is to allow an additional 30 days for public

comments. Comments are encouraged and will be accepted until April 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding any item contained in this notice, especially those regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW. Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.*

When submitting comments by email please make sure to add OMB Control Number 1615–0013 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I–131. U.S. Citizenship and Immigration Services.

(4) *Affected Public who Will Be Asked or Required To Respond, as Well as Brief Abstract: Primary:* Individuals or households. Certain aliens, namely permanent or conditional residents, refugees or asylees and aliens abroad use this information collection to apply for a travel document to lawfully enter or reenter the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 338,940 responses at 1.9 hours (1 hour and 55 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 643,986 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: March 8, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–6418 Filed 3–15–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *GSA:* Mr. John Smith, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: 202–254–5522; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers.)

Dated: March 8, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/16/2012

Suitable Available Properties

Building

Maryland

3 Bldgs.
Residential Dwellings
Cheverly MD
Landholding Agency: Interior
Property Number: 61201210020
Status: Unutilized
Directions: 3601, 3603, 3605
Comments: Off-site removal only; sq. ft. varies; current use: residential; poor conditions—need extensive repairs

Michigan

B–780
Selfridge ANGB
Selfridge MI 48045
Landholding Agency: Air Force
Property Number: 18201210043
Status: Unutilized
Comments: Off-site removal only; 54,844 sq. ft.; current use: Admin. office; poor conditions—need repairs; lead based paint, asbestos, and mold identified

B–710
43901 Oak St.
Selfridge MI 48045
Landholding Agency: Air Force
Property Number: 18201210051
Status: Unutilized
Comments: Off-site removal only; 1,843 sq. ft.; current use: Admin. office; need repairs; asbestos possible

B–326
29865 Mitchell St.
Selfridge MI 48045
Landholding Agency: Air Force
Property Number: 18201210052
Status: Unutilized
Comments: Off-site removal only; 12,630 sq. ft.; current use: Admin. office; poor conditions—need repairs; possible asbestos

Missouri

Whiteman-Annex No.3
312 Northern Hill Rd.
Warrensburg MO 64093
Landholding Agency: GSA
Property Number: 54201210003
Status: Surplus
GSA Number: 7–D–MO–0694
Comments: 120 sq. ft.; current use: support bldg. for radio tower; previously reported by Air Force (18201020001)

New York

B–102
Rome Research Site
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18201210046
Status: Unutilized
Comments: 23,408 sq. ft.; current use: office; fair condition; asbestos and lead based paint identified

South Carolina

B–1033
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201210062
Status: Underutilized
Comments: 11,484 sq. ft.; current use: office; portion of facility is secured; will need prior permission before accessing; asbestos identified

Tennessee

B–675
Arnold AFB
Arnold TN 37389
Landholding Agency: Air Force
Property Number: 18201210080
Status: Underutilized
Comments: 17,589 sq. ft.; current use: lab and Admin. office; very poor conditions—need extensive repairs; transferee will be required to obtain a visitor's pass; Contact Air Force for further details.

Texas

2 Bldgs.
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210067
Status: Unutilized
Directions: 248, 249
Comments: sq. ft. varies; current use: training; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

4 Bldgs.
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210068
Status: Underutilized
Directions: 333, 332, 843, 980
Comments: sq. ft. varies; current use: Admin. offices; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 981
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210069
Status: Underutilized
Comments: 22,380 sf; current use: training classroom; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 1624
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210070
Status: Underutilized
Directions: Thrift Shop
Comments: 27,223 sf.; current use: thrift shop; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 1638
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210071
Status: Underutilized
Comments: 12,161 sf; current use: Admin. office; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 1713
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210072
Status: Unutilized
Comments: 1,395 sf; current use: latrine; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 1715

Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210073
Status: Underutilized
Comments: 2,590 sf; current use: latrine; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 2013
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210074
Status: Unutilized
Directions: Tech. Trng. Lab/Shop
Comments: 25,091 sf.; current use: vacant; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 247
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210075
Status: Excess
Comments: 2,452 sf.; current use; vacant; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 331
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210076
Status: Underutilized
Comments: 18,295 sf.; current use: unknown; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Fac. 250
Sheppard AFB
Sheppard TX
Landholding Agency: Air Force
Property Number: 18201210077
Status: Unutilized
Comments: 114 sf.; current use: vacant; poor conditions—need repairs; asbestos possible; military escort will be required each time the property will need to be accessed

Washington

Ran West Bunkhouse
418 Sikverbrook Rod.
Randle WA 98377
Landholding Agency: GSA
Property Number: 54201140007
Status: Excess
GSA Number: 9–A–WA–1258
Comments: Double wide trailer for off-site removal only; 960 sq. ft.; current use: bunkhouse; note: 60 day holding expires on or about March 26, 2012

Wisconsin

Wausau Army Reserve Ctr.
1300 Sherman St.
Wausau WI 54401
Landholding Agency: GSA
Property Number: 54201210004
Status: Excess
GSA Number: 1–D–WI–610
Comments: bldg. 12,680 sq. ft.; garage 2,676 sq. ft.; current use: vacant; possible asbestos; remediation may be required; property subjected to existing easements; Contact GSA for more details

Suitable/Available Properties

Land

California

Seal Beach RR Right of Way
West 19th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140015
Status: Surplus
GSA Number: 9–N–CA–1508–AF
Comments: 8,036.82 sq. ft.; current use: vacant lot

Seal Beach RR Right of Way
East 17th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140016
Status: Surplus
GSA Number: 9–N–CA–1508–AB
Comments: 9,713.88 sq. ft.; current use: private home

Seal Beach RR Right of Way
East of 16th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140017
Status: Surplus
GSA Number: 9–N–CA–1508–AG
Comments: 6,834.56 sq. ft.; current use: vacant

Seal Beach RR Right of Way
West of Seal Beach Blvd.
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140018
Status: Surplus
GSA Number: 9–N–CA–1508–AA
Comments: 10,493.60 sq. ft.; current use: vacant lot

Suitable/Unavailable Properties

Building

Arkansas

99 Shore Court Structure
99 Shore Court
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140010
Status: Surplus
GSA Number: 7–I–AR–0415–13
Comments: off-site removal only; 1,845 sq. ft.; current use: residential

132 Clubb Street Structure
132 Clubb Street
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140014
Status: Surplus
GSA Number: 7–I–AR–0415–14
Comments: off-site removal only; 1,090 sq. ft.; current use: residential

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: former 10 acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs

Former SSA Bldg.
1230 12th Street
Modesto CA 95354
Landholding Agency: GSA
Property Number: 54201020002
Status: Surplus
GSA Number: 9–G–CA–1610
Comments: 11,957 sq. ft., needs rehab/ seismic retrofit work, potential groundwater contamination below site, potential flooding

Georgia

Fed. Bldg. Post Office/Court
404 N. Broad St.
Thomasville GA 31792
Landholding Agency: GSA
Property Number: 54201110006
Status: Surplus
GSA Number: 4–G–GA–878AA
Comments: 49,366 total sq. ft. Postal Svc currently occupies 11,101 sq. ft. through Sept. 30, 2012. Current usage: A gov't office, asbestos has been identified as well as plumbing issues

Idaho

Moscow Federal Bldg.
220 East 5th Street
Moscow ID 83843
Landholding Agency: GSA
Property Number: 54201140003
Status: Surplus
GSA Number: 9–G–ID–573
Comments: 11,000 sq. ft.; current use: office

Illinois

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified most current use: unknown

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/ storage, subject to existing easements

Maine

Columbia Falls Radar Site
Tibbetstown Road
Columbia Falls ME 04623
Landholding Agency: GSA
Property Number: 54201140001
Status: Excess
GSA Number: 1–D–ME–0687
Directions: Buildings 1, 2, 3, and 4
Comments: Four bldgs. totaling 20,375 sq.ft. each one-story; current use: varies among properties

Maryland

Appraisers Store
null
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: 169,801 sq. ft., most recent use—federal offices, listed in the Natl Register of Historic Places, use restrictions

Michigan

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3891 sq. ft., 3-bay garage maintenance building

Beaver Island High Level Site
South End Road
Beaver Island MI 49782
Landholding Agency: GSA
Property Number: 54201140002
Status: Excess
GSA Number: 1–X–MI–664B
Comments: 89 sq. ft; current use: storage; non-friable asbestos and lead base paint present; currently under license to the CCE Central Dispatch Authority

Minnesota

FAA Outer Marker
9935 Newton Ave.
Minneapolis MN 55431
Landholding Agency: GSA
Property Number: 54201120010
Status: Excess
GSA Number: 1–I–MN–594
Comments: Public space and utilities easements; 108 sq. ft.

Bldg. 921
W. Main St.
Paynesville MN
Landholding Agency: GSA
Property Number: 54201120017
Status: Excess
GSA Number: 1–D–MN–0591
Comments: Bldg: 5,486 sf, Land: 3.9 acres, current use: Admin./Training Facility

Missouri

Federal Bldg/Courthouse
339 Broadway St.
Cape Girardeau MO 63701
Landholding Agency: GSA
Property Number: 54200840013
Status: Excess
GSA Number: 7–G–MO–0673
Comments: 47,867 sq. ft., possible asbestos/lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs

Montana

Rising Sun Boat
St. Mary Lake Glacier Nat'l Park
St. Mary Lake MT 59911
Landholding Agency: GSA
Property Number: 54201130005
Status: Surplus
GSA Number: 7–I–MT–0544–3
Comments: Off-site removal only; 358 sq. ft.; recent use: ticket office

Kalispell Shop
1899 Airport Rd.
Kalispell MT 59901
Landholding Agency: GSA
Property Number: 54201130006
Status: Surplus
GSA Number: 7–A–MT–0632
Comments: Off-site removal only; 560 sq. ft.; recent use: storage bldg.

Boulder Admin. Site
12 Depot Hill Rd.
Boulder MT 59632
Landholding Agency: GSA
Property Number: 54201130016
Status: Excess
GSA Number: 7–A–MT–532–AA
Comments: 4,799 sq. ft.; recent use: office, repairs are needed

New Jersey

Camp Pedricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

Belmont Cty Memorial USAR Ctr
5305 Guernsey St.
Bellaire OH 43906
Landholding Agency: GSA
Property Number: 54201020008
Status: Excess
GSA Number: 1–D–OH–837
Comments: 11,734 sq. ft.—office/drill hall; 2,519 sq. ft.—maint. shop

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

LTC Dwite Schaffner
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Landholding Agency: GSA
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Comments: 25,039 sq. ft., most recent use: Office; in good condition

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14,000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint

Rhode Island

FDA Davisville Site
113 Bruce Boyer Street
North Kingstown RI 02852
Landholding Agency: GSA
Property Number: 54201130008
Status: Excess
GSA Number: 1–F–RI–0520
Comments: 4,100 sq. ft.; recent use: storage; property currently has no heating (all repairs are the responsibility of owner)

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA
Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Comments: Redetermination: 399,836 sq. ft., most recent use: office

South Dakota

Main House
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130011
Status: Surplus
GSA Number: 7–A–0523–3–AE
Comments: Off-site removal only; The property is a 2-story structure with 1,024 sq. ft. per floor for a total of 2,048 sq. ft.; structure type: Log Cabin; recent use: residential

Main Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130012
Status: Surplus
GSA Number: 7–A–SD–0523–3–AF
Comments: Off-site removal only; 567 sq. ft.; structure type: Log Frame; recent use: vehicle storage

Metal Machine/Work Bldg.
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130013
Status: Surplus

GSA Number: 7–A–SD–0523–3–AG
Comments: Off-site removal only; 3,280 sq. ft.; structure type: Post/Pole w/Metal Siding; recent use: utility shed

Mobile Home
Lady C Ranch Rd.
Hot Springs SD 57477
Landholding Agency: GSA
Property Number: 54201130014
Status: Surplus
GSA Number: 7–A–0523–3–AH
Comments: Off-site removal only; 1,152 sq. ft.; structure type: manufactured home/ double wide; recent use: residential

Mobile Home Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130015
Status: Surplus
GSA Number: 7–A–SD–0523–3–AI
Comments: Off-site removal only; 729 sq. ft.; structure type: Post/Pole construction w/ metal side; recent use: storage

Tennessee

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab

Texas

FAA RML Facility
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Landholding Agency: GSA
Property Number: 54201110016
Status: Surplus
GSA Number: 7–U–TX–1129
Comments: 448 sq. ft., recent use: storage, asbestos has been identified in the floor

Rattle Snake Scoring Ste.
1085 County Rd. 332
Pecos TX 79772
Landholding Agency: GSA
Property Number: 54201120005
Status: Excess
GSA Number: 7–D–TX–0604–AM
Comments: 8,396 sq. ft., most recent use: training ste., previously reported by Air Force, deemed ''unsuitable'' because property was in a secured area, and published in May 2009.

Virginia

Hampton Rds, Shore Patrol Bldg
811 East City Hall Ave
Norfolk VA 23510
Landholding Agency: GSA
Property Number: 54201120009
Status: Excess
GSA Number: 4–N–VA–758
Comments: 9,623 sq. ft.; current use: storage, residential

Suitable/Unavailable Properties

Land

Arizona

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Parcel F–2 Right of Way
null
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201030012
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Comments: Correction: 631.62 sq. ft., encroachment

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Colorado

Common Pt. Shooting Rng.
Bureau of Reclamation
Drake CO 80515
Landholding Agency: GSA
Property Number: 54201120003
Status: Excess
GSA Number: 7–1–CO—0678
Comments: 35.88 acres; If the purchaser ceases using the property as a firing range they will be held to a higher standard of lead remediation by the local and Federal environmental protection agencies.

Louisiana

Almonaster
4300 Almonaster Ave.
New Orleans LA 70126
Landholding Agency: GSA
Property Number: 54201110014
Status: Surplus
GSA Number: 7–D–LA–0576
Comments: 9.215 acres

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Nevada

RBG Water Project Site
Bureau of Reclamation
Henderson NV 89011
Landholding Agency: GSA
Property Number: 54201140004
Status: Surplus
GSA Number: 9–I–AZ–0562
Comments: water easement (will not impact conveyance); 22+/ – acres; current use: water sludge disposal site; lead from shotgun shells on < 1 acre.

North Dakota

Vacant Land of MSR Site
Stanley Mickelsen
Nekoma ND

Landholding Agency: GSA
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: 20.2 acres; recent use: unknown

Pennsylvania

approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: vacant land

Marienville Lot
USDA Forest Service
Marienville PA
Landholding Agency: GSA
Property Number: 54201140005
Status: Excess
GSA Number: 4–A–PA–807AD
Comments: 2.42 acres; current use: unknown

Texas

FAA
Directional Finder
Lampasas TX
Landholding Agency: GSA
Property Number: 54201120015
Status: Excess
GSA Number: 7–U–TX–1131
Comments: 1.51 acres

Parcel 2
Camp Bowie
Brownwood TX 76801
Landholding Agency: GSA
Property Number: 54201130001
Status: Surplus
GSA Number: 7–D–TX–0589
Comments: 22.58 acres, two storage units on land approx. 600 sq. ft., recent use: storage, legal constraints: access easement, 10% of property in floodway

Unsuitable Properties

Building

California

Vandenberg AFB
1982 Cuatro Rd.
Vandenberg AFB CA 93437
Landholding Agency: Air Force
Property Number: 18201210050
Status: Unutilized
Comments: national security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

2 Bldgs.
Los Angeles AFB
ACJP CA
Landholding Agency: Air Force
Property Number: 18201210081
Status: Underutilized
Directions: 228, 285
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Florida

Fac. 666
Eglin AFB
Eglin FL
Landholding Agency: Air Force
Property Number: 18201210040
Status: Underutilized
Comments: national security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

6 Bldgs.
Cape Canaveral AFS
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210047
Status: Excess
Directions: 1794, 10911, 17704, 17781, 18805, 18806
Comments: national security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Fac. 727
Eglin AFB
Eglin AFB FL 32542
Landholding Agency: Air Force
Property Number: 18201210053
Status: Underutilized
Comments: national security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

3 Bldgs.
Eglin AFB
Eglin FL
Landholding Agency: Air Force
Property Number: 18201210055
Status: Underutilized
Directions: 724, 725, 726
Comments: nat'l security concerns; no public access and no alternative to gain access
Reasons: Secured Area

4 Bldgs.
Eglin AFB
Eglin FL 32542
Landholding Agency: Air Force
Property Number: 18201210066
Status: Underutilized
Directions: 718, 1345, 1346, 3011
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Idaho

5 Bldgs.
Mountain House AFB
Mountain House ID
Landholding Agency: Air Force
Property Number: 18201210057
Status: Excess
Directions: 2428, 2310, 2618, 2427, 2806
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Illinois

Bldg. 262
VEJR
Mascoutah IL 62258
Landholding Agency: Air Force
Property Number: 18201210054
Status: Unutilized
Comments: Landlocked; can only be reached by crossing onto private property; there is no established rights/means of entry; owner will deny access
Reasons: Not accessible by road

Kansas

Fac. 2243
Military Family Housing
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210079
Status: Excess
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Louisiana

B–7136
Barksdale AFB
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201210063
Status: Unutilized
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Maryland

Martin State Airport
MD Air Nat'l Guard
Baltimore MD 21220
Landholding Agency: Air Force
Property Number: 18201210041
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

New Mexico

B–20752
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201210044
Status: Unutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–29099
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201210045
Status: Underutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

2 Bldgs.
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201210048
Status: Unutilized
Directions: 48058, 20754
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–29040
84043 Lovelace Rd. SE
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201210049
Status: Underutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

10 Bldgs.
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201210056
Status: Unutilized
Directions: 1250, 1251, 1262, 1263, 816, 850, 909, 1166, 96, 629
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

2 Bldgs.
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201210058
Status: Unutilized
Directions: 1266, 1268
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

South Carolina

2 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201210060
Status: Underutilized
Directions: 3419, 3423
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–1501
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201210061
Status: Underutilized
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B523
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201210064
Status: Unutilized
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

South Carolina

6 Bldgs.
Tinker Rd.
Bellows AFB SC
Landholding Agency: Air Force
Property Number: 18201210065
Status: Unutilized
Directions: 453, 454, 544, 801, 804, 806
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–1713
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201210078
Status: Underutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Tennessee

B–1524 and B–2219
Arnold AFB
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201210042
Status: Underutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Virginia

7 Bldgs.
Willow St.
Langley AFB VA 23665
Landholding Agency: Air Force
Property Number: 18201210059
Status: Underutilized
Directions: 141, 142, 143, 147, 148, 720, 1329
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Land

Virginia

8.5 Acres
Joint Expeditionary Base
Little Creek VA
Landholding Agency: Navy
Property Number: 77201210003
Status: Unutilized
Comments: National security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

[FR Doc. 2012–6053 Filed 3–15–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed KRoad Moapa Solar Generation Facility, Clark County, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as the lead Federal agency, with the Bureau of Land Management (BLM), Environmental Protection Agency (EPA), United States Army Corps of Engineers (USACE) and the Moapa Band of Paiute Indians (Tribe) as Cooperating Agencies, has prepared a Final Environmental Impact Statement (FEIS) for the proposed KRoad Moapa Solar Generation Facility on the Moapa River Indian Reservation (Reservation) in Clark County, Nevada. This notice also announces the FEIS is now available on a public Web site and in hard copy at the addresses below.

DATES: The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS.

ADDRESSES: You may request a hard copy by writing or contacting Ms. Amy Heuslein, Regional Environmental Protection Officer, BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, Arizona 85004–3008; telephone (602) 379–6750; fax (602) 379–3833; email: *amy.heuslein@bia.gov.* The DEIS may be found on the following Web site: *http://projects2.pirnie.com/MoapaSolar/.* Hard copies of the document will be available at the BIA Western Regional Office, 2600 North Central Avenue, 12th Floor, Suite 210, Phoenix, Arizona; the BIA Southern Paiute Agency, 180 North 200 East, Suite 111, St. George, Utah; and BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Amy Heuslein or Garry Cantley, BIA Western Regional Office, Branch of Environmental Quality Services, 2600 North Central Avenue, Phoenix, Arizona 85004–3008, telephone number (602) 379–6750.

SUPPLEMENTARY INFORMATION: KRoad Moapa Solar LLC (KRoad) is proposing to construct a 350 megawatt (MW) solar generation facility and associated infrastructure on the Tribe's reservation; develop a 12 kV transmission line and water line; and obtain two rights-of-way (ROWs) grants for an up to 500 kV transmission line and access road on BLM land and within a BLM-administered utility corridor. The Proposed Project would provide land lease income, sustainable renewable resources, new jobs, and other benefits for the Tribe by using solar resources from reservation lands where exposure to levels of high solar radiation exists. The Proposed Project would also assist utilities in meeting their renewable energy goals, by providing electricity generated from solar resources from tribal lands that may be efficiently connected to existing transmission lines in a manner that minimizes adverse site impacts.

The BIA's purpose and need for the proposed Federal action is to respond to the proposed solar energy ground lease and other agreements entered into by the Tribe with KRoad, and the approval of ROWs for KRoad to construct, operate, and maintain an up to 350 MW solar photovoltaic electricity generating

facility on the reservation. The BLM's purpose and need for the proposed Federal action also would be to respond to KRoad's application for an up to 500 kV transmission line and access road ROWs within an existing utility corridor, of which 5 miles are located on the reservation and 0.5 miles is located on BLM land just south of the reservation boundary, pursuant to the Federal Land Policy and Management Act and BLM's ROWs regulations. The BIA and BLM will adopt the EIS to make decisions on the land lease and ROW application under their jurisdiction while the EPA and USACE may adopt the document to make decisions under their authorities. The Tribe may also use the EIS to make decisions under their Tribal Environmental Policy Ordinance and the U.S. Fish and Wildlife Service may use the EIS to support its decision under the Endangered Species Act.

Authority: This notice is published pursuant to 40 CFR 1506.10(a) of the Council of Environmental Quality Regulations (40 CFR part 1500 *et seq.*) and 43 CFR 46.305 of the Department of Interior Regulations (43 CFR part 46), the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 9, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–6203 Filed 3–15–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG01100–12–L13110000–EJ0000]

Notice of Availability of a Final Environmental Impact Statement for the Gasco Energy Inc. Uinta Basin Natural Gas Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Under the National Environmental Policy Act of 1969 (NEPA), Federal Land Policy and Management Act of 1976, and associated regulations, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) that evaluates, analyzes, and discloses to the public anticipated impacts of the Gasco Energy Inc. proposal to develop natural gas leases in Uintah and Duchesne Counties, Utah. This notice announces a 30-day availability period prior to preparation of a Record of Decision (ROD).

DATES: A ROD may be issued 30 calendar days following the date on which the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**.

ADDRESSES: Copies of the Final EIS have been sent to affected Federal, state, and local government agencies and other stakeholders. Copies of the Final EIS are available for public inspection at the BLM Vernal Field Office, 170 South 500 East, Vernal, Utah, and at the following Web site: *http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa_.html.*

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Environmental Coordinator; 435–781–4400; 170 South 500 East, Vernal, Utah, 84078; email: *BLM_UT_Vernal_Comments@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 prepared the Final EIS in response to Gasco's proposal to explore and develop their Federal oil and gas leases. The Final EIS analysis allows the BLM to choose a course of action that fulfills its responsibilities under Federal laws when future plans and applications related to this proposal or in the project area are received. The Gasco Project Area encompasses 206,826 acres in Uintah and Duchesne Counties within the following townships.

Salt Lake Meridian, Utah

T. 9 S., R. 15–19 E.
T. 10 S., R. 14–19 E.
T. 11 S., R. 15–18 E.

Under the Proposed Action (Alternative A), Gasco Energy Inc. would develop their existing oil and gas leases by drilling 1,491 wells from the same number of well pads over a period of 15 years, and by constructing 143 acres of evaporative ponds to dispose of produced water. The Proposed Action would result in approximately 7,584 acres of surface disturbance (about 4 percent of the total project area).

In response to the Proposed Action (Alternative A), the BLM published a Notice of Intent to Prepare an EIS in the **Federal Register** on February 10, 2006 [71 FR 7059]. The BLM used the resulting scoping comments to help identify impacts expected as a result of the proposed action, and to develop Alternatives B through E.

The BLM held a 90-day public comment period for the Draft EIS from October 1, 2010 through December 30, 2010, as announced through the **Federal Register**.Public comments focused on impacts to cultural resources within Nine Mile Canyon, the Green River and associated recreation activities, 100-year floodplains and endangered fish critical habitat, water quality (surface and ground), air quality, lands with wilderness characteristics, and valid existing lease rights. No single alternative in the Draft EIS (Alternatives A through E) adequately addressed the concerns raised, so the BLM, in close coordination with the Fish and Wildlife Service (FWS) and Environmental Protection Agency (EPA), used attributes of all five alternatives to create a new alternative, Alternative F. All aspects of Alternative F are contained entirely within the range of alternatives analyzed in the Draft EIS, so a determination was made that preparation of a Supplement to the Draft EIS was not necessary.

Under Alternative F, the Agency Preferred Alternative, up to 1,298 new gas wells would be drilled from 575 well pads over a period of 15 years, resulting in approximately 3,604 acres of disturbance (about 2 percent of the total project area). Water evaporation facilities were reduced to 78 acres. This is adequate for the first 5 years of the project while other disposal options are developed and implemented. The BLM also incorporated the measures to minimize impacts to resources, while allowing for the development of valid existing rights. No surface disturbance would occur below the rim of Nine Mile Canyon, within one-half mile of the Green River, in 100-year floodplains, or endangered fish critical habitat. A Programmatic Agreement (PA) was prepared in accordance with Section 106 of the National Historic Preservation Act to address potential cultural resource impacts. A water monitoring plan was developed to address water quality impacts. Extensive applicant-committed measures, including an adaptive management strategy, were developed or refined to minimize air quality impacts. Directional drilling was also incorporated to the maximum extent possible.

The BLM prepared the Final EIS in coordination with the FWS and EPA as described above, and in coordination with the Bureau of Indian Affairs and Uintah and Duchesne Counties, who participated as cooperating agencies

during the EIS process. The Final EIS tracks the changes made between the Draft EIS and Final EIS, and includes responses to all substantive comments received during the Draft EIS public comment period.

This Final EIS is not a decision document. Following conclusion of the 30-day availability period, a ROD will be signed to disclose the BLM's final decision and any project Conditions of Approval. Availability of the ROD will be announced through local media, the Vernal BLM Web site, and Utah BLM's Environmental Notification Bulletin Board.

Juan Palma,

State Director.

[FR Doc. 2012–6324 Filed 3–15–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0112]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian, Oregon

T. 18 S., R 6 W., accepted February 24, 2012
T. 27 S., R. 10 W., accepted March 2, 2012
T. 21 S., R. 29 E., accepted March 2, 2012
T. 20 S., R. 29 E., accepted March 2, 2012
T. 23 S., R. 6 W., accepted March 2, 2012
T. 33 S., R. 5 W., accepted March 2, 2012

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. 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: 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.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–6471 Filed 3–15–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs, and the Arizona State Museum, University of Arizona, in consultation with the appropriate Indian tribes, have determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Arizona State Museum, University of Arizona.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Arizona State Museum, University of Arizona, at the address below by April 16, 2012.

ADDRESSES: John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1979, cultural items were removed from the Pinnacle Site, site AZ P:14:71(ASM), in Navajo County, AZ, during a legally authorized survey conducted by the University of Arizona Archaeological Field School under the direction of Madeleine Hinkes. A report prepared by Hinkes describes the presence of five unauthorized excavation pits at this site. The items listed below were found with human burials, but the human remains are not present in the collection. There is no record in Arizona State Museum files regarding the accession of these cultural items. However, the collection likely entered the museum in the same year as other collections from the summer field school. The eight unassociated funerary objects are 2 animal bone fragments, 1 ceramic sherd, 4 pieces of chipped stone and 1 chert scraper.

The Pinnacle Site consists of a pueblo of about 10 rooms and dates from A.D. 1275–1400, based on the ceramic assemblage. The ceramic and architectural forms are consistent with the archeologically described Upland Mogollon or prehistoric Western Pueblo traditions.

In 1979, cultural items were removed from an unnamed site, site AZ P:14:281(ASM), in Navajo County, AZ, during a legally authorized survey conducted by the University of Arizona Archaeological Field School under the direction of Madeleine Hinkes. A report prepared by Hinkes describes the presence of at least 70 unauthorized excavation pits at this site. The items were found with human burials, but the human remains are not present in the collection. There is no record in Arizona

State Museum files regarding the accession of these cultural items. However, the collection likely entered the museum in the same year as other collections from the summer field school. The 1,116 unassociated funerary objects are 7 ceramic bowls, 2 ceramic jars and 1,107 ceramic sherds.

Site AZ P:14:281 contains a pueblo of about 31 rooms with additional stone alignments and dates from A.D. 1275–1400, based on the ceramic assemblage. The ceramic and architectural forms are consistent with the archeologically described Upland Mogollon or prehistoric Western Pueblo traditions.

A detailed discussion of the basis for cultural affiliation of archeological sites in the region where the above sites are located may be found in ''Cultural Affiliation Assessment of White Mountain Apache Tribal Lands (Fort Apache Indian Reservation),'' by John R. Welch and T.J. Ferguson (2005). To summarize, archeologists have used the terms Upland Mogollon or prehistoric Western Pueblo to define the archeological complexes represented by the sites listed above. Material culture characteristics of these traditions include a temporal progression from earlier pit houses to later masonry pueblos, villages organized in room blocks of contiguous dwellings associated with plazas, rectangular kivas, polished and paint-decorated ceramics, unpainted corrugated ceramics, inhumation burials, cradleboard cranial deformation, grooved stone axes, and bone artifacts. The combination of the material culture attributes and a subsistence pattern, which included hunting and gathering augmented by maize agriculture, helps to identify an earlier group. Archeologists have also remarked that there are strong similarities between this earlier group and present-day tribes included in the Western Pueblo ethnographic group, especially the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico. The similarities in ceramic traditions, burial practices, architectural forms, and settlement patterns have led archeologists to believe that the prehistoric inhabitants of the Mogollon Rim region migrated north and west to the Hopi mesas, and north and east to the Zuni River Valley. Certain objects found in Upland Mogollon archeological sites have been found to have strong resemblances to ritual paraphernalia that are used in continuing religious practices by the Hopi and Zuni. Some petroglyphs on the Fort Apache Indian Reservation have also persuaded archeologists of continuities between the earlier identified group and current-day Western Pueblo people. Biological information from the site of Grasshopper Pueblo, which is located in close proximity to the sites listed above, supports the view that the prehistoric occupants of the Upland Mogollon region had migrated from various locations to the north and west of the region.

Hopi and Zuni oral traditions parallel the archeological evidence for migration. Migration figures prominently in Hopi oral tradition, which refers to the ancient sites, pottery, stone tools, petroglyphs and other artifacts left behind by the ancestors as ''Hopi Footprints.'' This migration history is complex and detailed, and includes traditions relating specific clans to the Mogollon region. Hopi cultural advisors have also identified medicinal and culinary plants at archeological sites in the region. Their knowledge about these plants was passed down to them from the ancestors who inhabited these ancient sites. Migration is also an important attribute of Zuni oral tradition, and includes accounts of Zuni ancestors passing through the Upland Mogollon region. The ancient villages mark the routes of these migrations. Zuni cultural advisors remark that the ancient sites were not abandoned. People returned to these places from time to time, either to reoccupy them or for the purpose of religious pilgrimages—a practice that has continued to the present-day. Archeologists have found ceramic evidence at shrines in the Upland Mogollon region that confirms these reports. Zuni cultural advisors have names for plants endemic to the Mogollon region that do not grow on the Zuni Reservation. They also have knowledge about traditional medicinal and ceremonial uses for these resources, which has been passed down to them from their ancestors. Furthermore, Hopi and Zuni cultural advisors have recognized that their ancestors may have been co-resident at some of the sites in this region during their ancestral migrations.

There are differing points of view regarding the possible presence of Apache people in the Upland Mogollon region during the time that these ancient sites were occupied. Some Apache traditions describe interactions with Ancestral Puebloan people during this time, but according to these stories, Puebloan people and Apache people were regarded as having separate identities. The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, does not claim cultural affiliation with the human remains and funerary objects from this site. As reported by Welch and Ferguson (2005), consultations between the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona and the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; and Pueblo of Laguna, New Mexico, have indicated that that none of these tribes wish to pursue claims of affiliation with sites on White Mountain Apache Tribal lands. Finally, the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, supports the repatriation of human remains and funerary objects from this site and is ready to assist the Hopi Tribe of Arizona and Zuni Tribe of the Zuni Reservation, New Mexico, in their reburial.

Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Arizona State Museum, University of Arizona

Officials of the Bureau of Indian Affairs and the Arizona State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 1,124 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950 before April 16, 2012. Repatriation of the unassociated funerary objects to the Hopi Tribe of Arizona and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Hopi Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6334 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Colorado College, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Hopi Tribe of Arizona may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact The Colorado College.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact The Colorado College at the address below by April 16, 2012.

ADDRESSES: Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, CO 80903, telephone (719) 389–6201.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of The Colorado College that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The 36 unassociated funerary objects are ceramic vessels, at least two of which contain corn. The vessels are bowls, mugs, pitchers, vases (seed jars), jars and ladles. The vessel styles are black-on-gray, black-on-white, Tusayan black-on-red, corrugated and gray ware. Between 1897 and 1898, human remains, associated and unassociated funerary objects, as well as other cultural items were removed from a cliff ruin in a canyon tributary of Comb Wash, San Juan County, UT, under the auspices of the Lang Expedition of 1897–1898. Prior to 1900, General William Jackson Palmer acquired what became known as the Lang-Bixby Collection, which he subsequently transferred to The Colorado College. Beginning in the late 1960s, the Lang-Bixby Collection was transferred, along with other collections from The Colorado College Museum, through long-term loans to the Fine Arts Center (formerly known as the Taylor Museum and the Colorado Springs Fine Arts Center) and the Denver Museum of Nature & Science (formerly known as the Denver Museum of Natural History). In 1993, the Fine Arts Center included the unassociated funerary objects from the Lang-Bixby Collection in its NAGPRA summary.

The unassociated funerary objects are ancestral Puebloan based on type and style. The human remains and associated funerary objects from this collection were described in two Notices of Inventory Completion (NICs) published in the **Federal Register** (74 FR 42105–42106, August 20, 2009, and 69 FR 19232–19233, April 12, 2004). The human remains and associated funerary objects were determined to be Ancestral Puebloan. A relationship of shared group identity can reasonably be traced between ancestral Puebloan peoples and modern Puebloan peoples based on oral tradition and scientific studies. The human remains and associated funerary objects have been repatriated to the Hopi Tribe of Arizona. A preponderance of the evidence supports cultural affiliation of the unassociated funerary objects to the Hopi Tribe of Arizona.

Determinations Made by The Colorado College

Officials of The Colorado College have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 36 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, Colorado 80903, telephone (719) 389–6201, before April 16, 2012. Repatriation of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6330 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: San Francisco State University, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Francisco State University, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the San Francisco State University.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the San Francisco State University at the address below by April 16, 2012.

ADDRESSES: Jeffrey Boland Fentress, San Francisco State University, Academic Affairs-ADM 447, San Francisco, CA 94132, telephone (415) 338–3075.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the San

Francisco State University (SFSU) that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, a basket (item 1–3–42/86) was donated to the SFSU Treganza Museum. The coiled basket with a bundle warp in a round, shouldered, small necked shape measures 14 cm in height and 10.5 cm in diameter and is made of deer grass, sedge, redbud and bracken fern root. There are no records at the Treganza Museum concerning acquisition of this item.

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and ethnographic research, the basket has been identified as a stair-step coming of age basket. This type of basket was given to either a boy or girl by a female relative after completion of the coming of age ceremony. This type of basket often held special personal religious items such as crystals, beads, feathers or tobacco.

In 1976, Margaret Molarsky donated a basket (item 1–3–42/104) to the SFSU Treganza Museum. The donor records state it was originally in the collection of Frank Latta. The coiled basket with a bundle warp in a flared bowl shape measures 22 cm in height with a maximum diameter of 44 cm and is made of deer grass, saw grass, redbud and bracken fern root. A tag attached to the basket was labeled ''Wahnomkot, Yokuts, c. 1925.''

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and ethnographic research, the basket has been identified as a ceremonial cooking basket for the Yokut Spring Ceremony. The name on the basket tag, Wahnomkot, also known as Aida Icho, has been identified as a Wukchumne Yokut basket weaver. This type of basket uses a design with multiple bands of rattlesnakes and was used to prepare special foods and carry religious items.

At an unknown date, a basket (item 1–3–42/75) was donated to the SFSU Treganza Museum. The coiled basket, closed stitched, with a three-stick warp in a round, shouldered, bottle-neck shape measures 20 cm in height with a maximum diameter of 18 cm and is made of deer grass, sedge, redbud and bracken fern root. A row on the shoulder was decorated with dyed red wool and quail top-knot feathers. There are no records at the Treganza Museum concerning acquisition of this item.

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and ethnographic research, the basket has been identified as a rattlesnake treasure basket. This type of basket held special items such as abalone pendants and anklets that protected the dancers during the Rattlesnake Spring Ceremony.

At an unknown date, a basket (item 73–5–5) was donated to the SFSU Treganza Museum. The coiled basket, gap stitched, with a bundle warp in a flared bowl shape measures 16.5 cm in height with a maximum diameter of 31.6 cm and is made of deer grass and redbud. There are no records at the Treganza Museum concerning acquisition of this cultural item.

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and ethnographic research, the basket has been identified as an offering basket that was filled with food offerings to be left at sacred sites and burial grounds.

In 1977, Margaret Molarsky donated a basket (item 77–01–2) to the SFSU Treganza Museum. The coiled basket, gap stitched, with a bundle warp in a flared bowl shape measures 15.8 cm in height with a maximum diameter of 30.5 cm and is made of deer grass, sedge, redbud and bracken fern.

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Ranc heria, California, (Tachi Yokut Tribe) and ethnographic research, the basket has been identified as an offering basket that was filled with food offerings to be left at sacred sites and burial grounds.

In 1977, Margaret Molarsky donated a basket (item 77–01–3) to the SFSU Treganza Museum. The coiled basket, gap stitched, with a bundle warp in a large flared bowl shape measures 18 cm in height with a maximum diameter of 46.5 cm and is made of deer grass, sedge and redbud.

Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe), and ethnographic research, the basket has been identified as a ceremonial cooking basket for the Yokut Spring Ceremony. This type of basket was used for preparing or serving special foods during ceremonies or religious rites.

Determinations Made by the San Francisco State University

Officials of the San Francisco State University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the six cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the six baskets and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe).

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Jeffrey Boland Fentress, San Francisco State University, Academic Affairs-ADM 447, San Francisco, CA 94132, telephone (415) 338–3075 before April 16, 2012. Repatriation of the sacred objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) may proceed after that date if no additional claimants come forward.

The San Francisco State University is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe); Table Mountain Rancheria of California; and the Tule River Indian Reservation of the Tule River Reservation, California, that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6325 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: San Francisco State University, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Francisco State University, in consultation with the appropriate Indian tribes, has

determined that the cultural item meets the definition of a sacred object and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the San Francisco State University NAGPRA Program.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the San Francisco State University at the address below by April 16, 2012.

ADDRESSES: Jeffrey Boland Fentress, San Francisco State University, Academic Affairs-ADM 447, San Francisco, CA 94132, telephone (415) 338–3075.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the San Francisco State University (SFSU) that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d) (3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, a basket (item 75–6–4) was donated to the SFSU Treganza Museum. The coiled basket with a three-stick warp in a round, shouldered, narrow necked jar shape measures 8.3 cm in height and 14.2 cm in diameter and is made of willow, bracken-fern, redbud, yucca and bird quills. There are no records at the Treganza Museum concerning acquisition of this item.

Based on ethnographic research and consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and the Tubatulabals of Kern Valley, a non-Federally recognized Indian group, the basket has been identified as a treasure basket or Osa. This type of basket was used for the storage of sacred items such as crystals, abalone ornaments and paint and was used to hold a rattlesnake for the rattlesnake dance during both Yokut and Tubatulabal spring ceremonies.

Based on consultation, ethnographic research, and museum records, the basket is culturally affiliated with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and the Tubatulabals of Kern Valley, a non-Federally recognized group. The Tubatulabal people are intermarried with the Yokuts in the Kern County area of California. Descendants of these Yokuts and Tubatulabals are members of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and the Tubatulabals of Kern Valley, a non-Federally recognized Indian group.

Determinations Made by the San Francisco State University

Officials of the San Francisco State University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the basket and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (Tachi Yokut Tribe) and the Tubatulabals of Kern Valley, a non-Federally recognized Indian group.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Jeffrey Boland Fentress, San Francisco State University, Academic Affairs-ADM 447, San Francisco, CA 94132, telephone (415) 338–3075 before April 16, 2012. Repatriation of the sacred object to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) may proceed after that date if no additional claimants come forward.

The San Francisco State University is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe); Table Mountain Rancheria of California; Tule River Indian Reservation of the Tule River Reservation, California; and the Tubatulabals of Kern Valley, a non-Federally recognized Indian group, that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6326 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Fish and Wildlife Service, Southwest Regional Office, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In furtherance of notices sent to Federally-recognized tribes in 1995, the U.S. Fish and Wildlife Service has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the U.S. Fish and Wildlife Service, Southwest Regional Office. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the U.S. Fish and Wildlife Service, Southwest Regional Office, at the address below by April 16, 2012.

ADDRESSES: Dr. Benjamin J. Tuggle, Regional Director, U.S. Fish and Wildlife Service, 500 Gold Ave. SW., P.O. Box 1306, Albuquerque, NM 87103. Procedural questions may be addressed to David Siegel, U.S. Fish and Wildlife Service, telephone (505) 248–7396.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Fish and Wildlife Service and in the possession of the Maxwell Museum, Albuquerque, NM. The human remains were removed from the Sevilleta National Wildlife Refuge, Socorro County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal

agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

In 1995, a detailed assessment of the human remains was made by the U.S. Fish and Wildlife Service professional staff in consultation with the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

In 1980, human remains representing, at minimum, one individual were removed from Sevilleta National Wildlife Refuge, Socorro County, NM. The partial set of human remains, exposed and undercut by floodwaters, was removed by the University of New Mexico Office of Contract Archeology. The remains from the excavations are housed at the Maxwell Museum in Albuquerque, NM. No known individual was identified. No associated funerary objects are present. The remains are of prehistoric, Puebloan origins. Based on cultural traditions, ethnographic sources, and oral history, the remains are culturally affiliated to the Hopi Tribe of Arizona.

Determinations Made by the U.S. Fish and Wildlife Service, Southwest Regional Office

Officials of the U.S. Fish and Wildlife Service have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Benjamin J. Tuggle, Regional Director, U.S. Fish and Wildlife Service, 500 Gold Ave. SW., P.O. Box 1306, Albuquerque, NM 87103. Procedural questions may be addressed to David Siegel, U.S. Fish and Wildlife Service, telephone (505) 248–7396, before April 16, 2012. Repatriation of the human remains to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The U.S. Fish and Wildlife Service is responsible for notifying The Tribes that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6323 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the California Department of Parks and Recreation. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the California Department of Parks and Recreation at the address below by April 16, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the California Department of Parks and Recreation. The human remains and associated funerary objects were removed from the Morris Mound site (CA–SAC–199) in Sacramento County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the California Department of Parks and Recreation professional staff in consultation with representatives of Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and the United Auburn Indian Community of the Auburn Rancheria of California (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1950, human remains representing, at minimum, nine individuals were removed from Morris Mound (site CA–SAC–199) in Sacramento County, CA. James Sturgeon of Fair Oaks, CA, excavated the site and donated the collection to the California Department of Parks and Recreation on February 15, 1977. No known individuals were identified. The 11 associated funerary objects are 1 silicate flake scraper and 10 mammal bones.

The site was occupied during the Late Horizon Period (after A.D. 500). Archeologists believe that the Penutian-speaking Maidu and Miwok are descended from what have been identified as the Windmiller people who occupied the Central Valley of California 3,000 to 4,000 years ago. Geographic affiliation is consistent with the historically documented use of the area by the Nisenan (Southern Maidu) and the Plains Miwok. This collection is affiliated with the historic Nisenan or

the Northern Sierra Miwok, based on the movement of both groups near the borders of what is now identified as their historic territories. Therefore, the professional staff of the California Department of Parks and Recreation has determined that there is a relationship of shared group identity, which can be reasonably traced between these Native American human remains and The Tribes.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of nine individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 11 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, telephone (916) 653–8893, before April 16, 2012. Repatriation of the human remains and associated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6321 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Central Washington University Department of Anthropology, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Central Washington University Department of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Central Washington University Department of Anthropology. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Central Washington University Department of Anthropology at the address below by April 16, 2012.

ADDRESSES: Lourdes Henebry-DeLeon, Central Washington University Department of Anthropology, 400 E. University Drive, Ellensburg, WA 98926–7544, telephone (509) 963–2671.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Central Washington University Department of Anthropology, Ellensburg, WA. The human remains were removed from Grays Harbor County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Central Washington University Department of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation, Washington.

History and Description of the Remains

In November 1947, human remains representing, at minimum, one individual were removed from site 45–GH–15 (Minard) in Grays Harbor County, WA, by archeologist Richard Daugherty of the University of Washington during his systematic archeological survey of the Washington coast. Richard Daugherty noted that the property owner had inadvertently uncovered at least 27 human skeletons while plowing his fields. According to the Thomas Burke Memorial Washington State Museum (Burke Museum) accession ledger, Daugherty collected two femora and one humerus. The collection was formally accessioned by the Burke Museum in 1947 (Burke Accn. #3583). In 1974, the Burke Museum legally transferred the right humerus and left femur to Central Washington University Department of Anthropology (CWU ID BA).

The bones were examined by physical anthropologist Lourdes Henebry-DeLeon of Central Washington University, and the skeletal remains, which consist of a humerus and femur, cannot be used to establish conclusively cultural affiliation. However, the human remains have markings of 19–15(1) (right humerus) and 19–15(2) (left femur) written on them indicating the collecting location. Burke Museum records show 19–15 is the catalog number associated with site 45–GH–15. Based on the markings on the remains, the records at the Burke Museum and Richard Daugherty's survey records it is reasonably believed that these remains are from site 45–GH–15. There have been other Notices of Inventory Completion (NICs) published in the **Federal Register** for site 45–GH–15 (72 FR 27845–27846, May 17, 2007, and 73 FR 49484–49485, August 21, 2008). The materials reported in the earlier NICs were culturally affiliated with the Confederated Tribes of the Chehalis Reservation, Washington. Based on archeological context and the platymeric femoral morphology, the individual has been determined to be Native American. No known individual was identified. No associated funerary objects are present.

Site 45–GH–15 is located at or near the traditional Copalis village of Oyhut. The Copalis are considered to have been a band of the Lower Chehalis whose traditional territory encompassed the lower reaches of the Chehalis River and the present-day county of Grays Harbor, WA. The site is located within the area

identified by the Indian Claims Commission as the aboriginal territory of the Confederated Tribes of the Chehalis Reservation, Washington. Continuities within the archeological record and oral tradition indicate that ancestors of the present day Confederated Tribes of the Chehalis Reservation, Washington, resided at the site.

Determinations Made by the Central Washington University Department of Anthropology

Officials of Central Washington University Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry, based on the archeological context.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Chehalis Reservation, Washington.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lourdes Henebry-DeLeon, Central Washington University Department of Anthropology, 400 E. University Drive, Ellensburg, WA 98926–7544, telephone (509) 963–2671, before April 16, 2012. Repatriation of the human remains to Confederated Tribes of the Chehalis Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Central Washington University Department of Anthropology is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington, that this notice has been published.

Dated: March 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–6322 Filed 3–15–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Order Regarding Modification of Consent Decree in United States v. Kentucky Utilities Company Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 12, 2012, a proposed Stipulated Order Regarding Modification of Consent Decree (''Stipulated Order'') between Kentucky Utilities Company (''Kentucky Utilities'') and the United States in connection with Civil Action No. 5:07–CV–75–KSF, was lodged with the United States District Court for the Eastern District of Kentucky.

The original consent decree, which was entered by the court on March 17, 2009, resolved a complaint filed by the United States on March 14, 2007. The complaint had alleged that Kentucky Utilities violated Prevention of Significant Deterioration and other provisions of the Clean Air Act, 42 U.S.C. 7401, *et seq.,* in connection with its operation of the E.W. Brown Generating Station in Mercer County, Kentucky. Under the consent decree, Kentucky Utilities agreed to perform various compliance measures at the E.W. Brown Generating Station, and committed to pay a civil penalty of $1.4 million and complete certain environmental mitigation projects at a cost of $3 million. For reasons beyond Kentucky Utilities' control, however, it could not perform one of the mitigation projects—spending $1,000,000 to retrofit diesel school buses in Kentucky with EPA-verified emissions control technologies. Therefore, the Stipulated Order outlines substitute mitigation projects that Kentucky Utilities shall perform to fulfill its obligations under the Consent Decree. Specifically, Kentucky Utilities shall spend approximately $400,000 on the procurement of plug-in electric vehicles for its corporate fleet, and approximately $600,000 on the replacement of one or more coal-fired boilers at Kentucky public schools. Finally, if needed, it will spend up to $200,000 in funding forest restoration activities by the United States Forest Service.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulated Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Kentucky Utilities Company,* Case No. 5:07–cv–00075, D.J. Ref. 90–5–2–1–08850.

During the public comment period, the Stipulated Order may be examined on the following Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html,* maintained by the Department of Justice. A copy of the Stipulated Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.50 (@ 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–6385 Filed 3–15–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reintegration of Ex-Offenders, Adult Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Reintegration of Ex-Offenders, Adult Reporting System,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before April 16, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the DOL, ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone:

202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Reintegration of Ex-Offenders (RExO), Adult Program grantees provide selected standardized information pertaining to customers in the programs for the purposes of general program oversight, evaluation, and performance assessment. The ETA provides all grantees with a management information system to use for collecting participant data and for preparing and submitting the required quarterly reports. This ICR has been identified as a revision, because the BeneChoice information collection is cancelled, along with ETA–9140A, and the ICR has been renamed. The BeneChoice grant is now concluded.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0455. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 4, 2011 (76 FR 68509).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0455. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Reintegration of Ex-Offenders, Adult Reporting System.

OMB Control Number: 1205–0455.

Affected Public: Private Sector—Not-for-Profit Institutions—and Individuals or Households.

Total Estimated Number of Respondents: 5,738.

Total Estimated Number of Responses: 11,704.

Total Estimated Annual Burden Hours: 15,124.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 12, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–6435 Filed 3–15–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration Program Year (PY) 2012 Workforce Investment Act (WIA) Allotments; PY 2012 Wagner-Peyser Act Final Allotments and PY 2012 Workforce Information Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces allotments for PY 2012 for WIA Title I Youth, Adults and Dislocated Worker Activities programs; final allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2012 and Workforce Information Grants allotments for PY 2012. Allotments for the Work Opportunity Tax Credits will be announced separately.

WIA allotments for States and the State final allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary of Labor (Secretary). As required by WIA section 182(d), on February 17, 2000, a notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** notice. The formula for PY 2012 is the same as used for PY 2000 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas.

DATES: Comments on the formula used to allot funds to the outlying areas must be received April 16, 2012.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave. NW., Room N–4702, Washington, DC 20210, Attention: Mr. Samuel Jerome Cooper, (202) 693–2833 (phone), (202) 693–2859 (fax), email: *Cooper.Samuel@dol.gov.*

Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed.

Comments: All comments on this notice will be retained by the Department and released upon request via email to any member of the public. The Department also will make all the comments it received available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print, Braille and electronic file on computer disk. The Department will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the notice in an

alternative format, contact Mr. Cooper using the information listed above. The Department will retain all comments received without making any changes to the comments, including any personal information provided. If requested, the comments will be released to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information. If the comment is submitted by email, the email addresses of the commenter will not be released.

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments—Evan Rosenberg at (202) 693–3593 or LaSharn Youngblood at (202) 693–3606; WIA Adult and Dislocated Worker Activities and ES final allotments—Christine Ollis at (202) 693–3937; Workforce Information Grant allotments—Anthony Dais at (202) 693–2784. Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) is announcing WIA allotments for PY 2012 for Youth Activities, Adults and Dislocated Worker Activities, Wagner-Peyser Act PY 2012 final allotments and FY 2012 Workforce Information Grant allotments. This notice provides information on the amount of funds available during PY 2012 to States with an approved WIA Title I and Wagner-Peyser Act Strategic Plan for PY 2012, and information regarding allotments to the outlying areas.

The allotments are based on the funds appropriated in the Consolidated Appropriations Act, 2012, Public Law 112–74, Division F, signed December 23, 2011. The Act requires an across-the-board rescission of 0.189 percent to all Federal Fiscal Year (FY) 2012 discretionary program funding. Included below are tables listing the PY 2012 allotments for programs under WIA Title I Youth Activities (Table A), Adult and Dislocated Workers Employment and Training Activities (Tables B and C, respectively), and the PY 2012 Wagner-Peyser Act final allotments (Table D). Also attached is the PY 2012 Workforce Information Grant table (Table E).

Youth Activities Allotments

PY 2012 Youth Activities funds under WIA total $824,353,022 (including the 0.189 percent rescission). Table A includes a breakdown of the Youth Activities program allotments for PY 2012 and provides a comparison of these allotments to PY 2011 Youth Activities allotments for all States, and outlying areas. Before determining the amount available for States, the total funding available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities (after the 0.189 percent rescission). On December 17, 2003, Public Law 108–188, the *Compact of Free Association Amendments Act of 2003 (''the Compact''),* was signed. The Compact provided for consolidation of WIA Title I funding, for the Marshall Islands and Micronesia into supplemental grants provided from the Department of Education's appropriation. See 48 USC 1921d(f)(1)(B)(iii). The Compact also specified that the Republic of Palau remained eligible for WIA Title I funding. See 48 USC 1921d(f)(1)(B)(ix). The Consolidated Appropriations Act, 2012 (in the Department of Education's General Provisions at Section 306 of Title III, Division F, Pub. L. 112–74) amended the Compact to extend the availability of WIA Title I funding to Palau through FY 2012.

The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, i.e., funds are distributed among the remaining areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. As in PY 2011, data for the relative share calculation in the PY 2012 formula were from 2000 Census data for all outlying areas, obtained from the Bureau of the Census Bureau (Bureau) and are based on 2000 Census surveys for those areas conducted either by the Bureau or the outlying areas under the guidance of the Bureau.

The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities, in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the States for PY 2012 is $809,926,845. This total amount was below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, as in PY 2011, the WIA additional minimum provisions were not applied, and, instead, as required by WIA, the Job Training Partnership Act (JTPA) section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2012 allotments:

(1) Number of unemployed for Areas of Substantial Unemployment (ASUs) averages for the 12-month period, July 2010 through June 2011;

(2) Number of excess unemployed individuals or the ASU excess (depending on which is higher) averages for the same 12-month period used for ASU unemployed data; and

(3) Number of economically disadvantaged youth (age 16 to 21, excluding college students and military) from special 2000 Census calculations.

Beginning with the PY 2006 allotments, States identify the ASU data for the PY 2012 allotments using special 2000 Census data based on households, obtained under Employment and Training Administration contract with the Census Bureau and provided to States by the Bureau of Labor Statistics.

It should be noted that the most current Census, conducted in 2010, did not include the long form survey which ETA would have used to update the data from the 2000 Census. Instead, ETA will continue to work with the Census Bureau over the next years to use data from the American Community Survey (ACS). ETA will alert States when new data are available for use in within-State allocation formulas; however, updated data will not be available for use with PY 2012 funding.

Adult Employment and Training Activities Allotments

The total Adult Employment and Training Activities appropriation is $770,810,637 (including the 0.189 percent rescission). Table B shows the PY 2012 Adult Employment and Training Activities allotments and comparison to PY 2011 allotments by State. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adult Activities. As discussed in the Youth Activities section above, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, funding is provided in the Department of Education's

appropriation. The Adult Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the amount available for allotments to the States is $768,883,610. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2012 allotments because the total amount available for the States was below the $960 million threshold required for Adult Activities in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the same data as used for the PY 2012 Youth Activities formula, except that data from the 2000 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used.

As noted above, ETA will alert States when new census data are available for use in within-State allocation formulas; however, updated data will not be available for use with PY 2012 funding.

Dislocated Worker Employment and Training Activities Allotments

The total Dislocated Worker appropriation is $1,232,217,892 (including the 0.189 rescission). The total appropriation includes formula funds for the States, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas' Dislocated Worker allotments. Table C shows the PY 2012 Dislocated Worker Activities fund allotments by State. Like the Youth and Adult Activities programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities. WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed by the same pro rata share as the areas received for the PY 2012 WIA Adult Activities program, the same methodology used in PY 2011. For the State distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2012 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2010 through September 2011;

(2) Number of excess unemployed, averages for the 12-month period, October 2010 through September 2011; and

(3) Number of long-term unemployed, averages for the 12-month period, October 2010 through September 2011.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for States directly reflect the impact of changes in the number of unemployed.

Wagner-Peyser Act ES Final Allotments

The appropriated level for PY 2012 for ES grants totals $700,841,900 (including the 0.189 rescission). After determining the funding for outlying areas, allotments to States were calculated using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). PY 2012 formula allotments were based on each state's share of calendar year 2011 monthly averages of the civilian labor force (CLF) and unemployment. The Secretary is required to set aside up to three percent of the total available funds to assure that each State will have sufficient resources to maintain statewide ES activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total allotment. The set-aside funds were distributed in two steps to States that have lost in relative share of resources from the previous year. In Step 1, States that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds were distributed on a pro-rata basis in Step 2 to all other States losing in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of ES funds (Table D) includes $699,133,491 for States, as well as $1,708,409 for outlying areas.

Under section 7 of the Wagner-Peyser Act, 10 percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for ES offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

Workforce Information Grants Allotments

Total PY 2012 funding for Workforce Information Grants allotments to States is $31,939,520 (after the 0.189 percent rescission). The allotment figures for each State are listed in Table E. Funds are distributed by administrative formula, with a reserve of $176,655 for Guam and the Virgin Islands. The remaining funds are distributed to the States with 40 percent distributed equally to all States and 60 percent distributed based on each State's share of CLF for the 12 months ending September 2011.

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011

State	PY 2011	PY 2012	Difference	% Difference
Total	$825,913,862	$824,353,022	($1,560,840)	−0.19
Alabama	12,455,574	11,711,479	(744,095)	−5.97
Alaska	2,216,462	2,024,817	(191,645)	−8.65
Arizona	15,326,190	16,510,641	1,184,451	7.73
Arkansas	6,794,393	6,431,994	(362,399)	−5.33
California	117,952,080	123,857,750	5,905,670	5.01
Colorado	9,788,025	11,882,561	2,094,536	21.40
Connecticut	8,060,872	8,794,724	733,852	9.10
Delaware	2,028,651	2,024,817	(3,834)	−0.19
District of Columbia	2,402,872	2,323,591	(79,281)	−3.30
Florida	50,372,277	53,892,125	3,519,848	6.99
Georgia	24,305,197	25,482,266	1,177,069	4.84

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011—Continued

State	PY 2011	PY 2012	Difference	% Difference
Hawaii	2,272,811	2,243,958	(28,853)	−1.27
Idaho	3,428,419	4,027,145	598,726	17.46
Illinois	36,086,031	32,767,678	(3,318,353)	−9.20
Indiana	16,043,006	15,457,182	(585,824)	−3.65
Iowa	5,519,334	4,962,142	(557,192)	−10.10
Kansas	5,248,975	5,511,824	262,849	5.01
Kentucky	12,514,937	12,676,374	161,437	1.29
Louisiana	11,269,372	11,409,318	139,946	1.24
Maine	2,887,584	2,831,274	(56,310)	−1.95
Maryland	10,073,999	10,354,690	280,691	2.79
Massachusetts	15,988,686	15,009,154	(979,532)	−6.13
Michigan	41,642,666	37,407,571	(4,235,095)	−10.17
Minnesota	11,474,392	10,523,152	(951,240)	−8.29
Mississippi	10,523,093	9,452,885	(1,070,208)	−10.17
Missouri	14,549,044	15,108,428	559,384	3.84
Montana	2,174,750	2,405,630	230,880	10.62
Nebraska	2,288,141	2,207,155	(80,986)	−3.54
Nevada	8,303,837	9,104,832	800,995	9.65
New Hampshire	2,253,475	2,024,817	(228,658)	−10.15
New Jersey	20,362,826	20,322,861	(39,965)	−0.20
New Mexico	4,775,669	4,918,291	142,622	2.99
New York	46,253,787	45,892,839	(360,948)	−0.78
North Carolina	24,598,968	23,736,834	(862,134)	−3.50
North Dakota	2,028,651	2,024,817	(3,834)	−0.19
Ohio	31,915,350	29,136,945	(2,778,405)	−8.71
Oklahoma	6,877,913	6,676,111	(201,802)	−2.93
Oregon	11,026,583	10,760,018	(266,565)	−2.42
Pennsylvania	29,506,561	28,346,353	(1,160,208)	−3.93
Puerto Rico	23,908,509	21,476,993	(2,431,516)	−10.17
Rhode Island	3,767,218	3,687,520	(79,698)	−2.12
South Carolina	13,916,063	12,754,206	(1,161,857)	−8.35
South Dakota	2,028,651	2,024,817	(3,834)	−0.19
Tennessee	16,288,215	15,784,120	(504,095)	−3.09
Texas	52,833,195	55,664,646	2,831,451	5.36
Utah	4,121,624	5,347,985	1,226,361	29.75
Vermont	2,028,651	2,024,817	(3,834)	−0.19
Virginia	13,540,444	13,020,339	(520,105)	−3.84
Washington	15,992,583	16,959,549	966,966	6.05
West Virginia	4,315,932	4,577,244	261,312	6.05
Wisconsin	13,099,180	12,342,748	(756,432)	−5.77
Wyoming	2,028,651	2,024,817	(3,834)	−0.19
State Total	811,460,369	809,926,844	(1,533,525)	−0.19
American Samoa	117,342	117,112	(230)	−0.20
Guam	955,133	953,260	(1,873)	−0.20
Northern Marianas	353,447	352,754	(693)	−0.20
Palau	75,000	75,000	0	0.00
Virgin Islands	563,863	562,757	(1,106)	−0.20
Outlying Areas Total	2,064,785	2,060,883	(3,902)	−0.19
Native Americans	12,388,708	12,365,295	(23,413)	−0.19

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011

State	PY 2011 (Pre-FY 2012 0.189% rescission)	PY 2012	Difference	% Difference
Total	$770,921,920	$770,810,637	($111,283)	−0.01
Alabama	12,090,307	11,433,310	(656,997)	−5.43
Alaska	2,118,648	1,922,209	(196,439)	−9.27
Arizona	14,638,503	15,820,881	1,182,378	8.08
Arkansas	6,399,544	6,067,684	(331,860)	−5.19
California	113,937,862	120,000,208	6,062,346	5.32
Colorado	8,838,405	10,859,799	2,021,394	22.87
Connecticut	7,208,528	7,932,575	724,047	10.04
Delaware	1,922,487	1,922,209	(278)	−0.01
District of Columbia	2,040,921	1,973,348	(67,573)	−3.31
Florida	50,666,671	53,270,412	2,603,741	5.14
Georgia	22,840,137	24,047,603	1,207,466	5.29
Hawaii	2,375,218	2,357,815	(17,403)	−0.73

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011—Continued

State	PY 2011 (Pre-FY 2012 0.189% rescission)	PY 2012	Difference	% Difference
Idaho	3,112,389	3,566,489	454,100	14.59
Illinois	33,485,477	30,469,621	(3,015,856)	−9.01
Indiana	14,120,139	13,618,422	(501,717)	−3.55
Iowa	3,872,586	3,670,939	(201,647)	−5.21
Kansas	4,349,496	4,614,871	265,375	6.10
Kentucky	12,990,026	13,197,513	207,487	1.60
Louisiana	10,979,275	10,605,200	(374,075)	−3.41
Maine	2,730,113	2,687,582	(42,531)	−1.56
Maryland	9,553,233	9,857,689	304,456	3.19
Massachusetts	14,398,404	13,525,014	(873,390)	−6.07
Michigan	38,927,229	35,029,449	(3,897,780)	−10.01
Minnesota	10,065,109	9,134,795	(930,314)	−9.24
Mississippi	9,805,450	8,823,631	(981,819)	−10.01
Missouri	13,419,717	14,003,193	583,476	4.35
Montana	2,120,862	2,348,495	227,633	10.73
Nebraska	1,922,487	1,922,209	(278)	−0.01
Nevada	8,185,256	8,978,521	793,265	9.69
New Hampshire	1,922,487	1,922,209	(278)	−0.01
New Jersey	20,215,513	20,260,335	44,822	0.22
New Mexico	4,573,434	4,727,107	153,673	3.36
New York	45,933,685	45,779,283	(154,402)	−0.34
North Carolina	22,906,147	22,178,866	(727,281)	−3.18
North Dakota	1,922,487	1,922,209	(278)	−0.01
Ohio	29,608,861	27,089,923	(2,518,938)	−8.51
Oklahoma	6,455,261	6,289,462	(165,799)	−2.57
Oregon	10,347,514	10,151,677	(195,837)	−1.89
Pennsylvania	26,995,920	26,000,980	(994,940)	−3.69
Puerto Rico	25,392,538	22,849,985	(2,542,553)	−10.01
Rhode Island	3,245,983	3,182,636	(63,347)	−1.95
South Carolina	13,141,414	12,076,612	(1,064,802)	−8.10
South Dakota	1,922,487	1,922,209	(278)	−0.01
Tennessee	15,820,576	15,406,376	(414,200)	−2.62
Texas	49,503,599	52,386,229	2,882,630	5.82
Utah	3,276,560	4,258,913	982,353	29.98
Vermont	1,922,487	1,922,209	(278)	−0.01
Virginia	12,422,005	11,977,315	(444,690)	−3.58
Washington	14,762,815	15,738,264	975,449	6.61
West Virginia	4,403,989	4,670,162	266,173	6.04
Wisconsin	11,261,887	10,586,754	(675,133)	−5.99
Wyoming	1,922,487	1,922,209	(278)	−0.01
State Total	768,994,615	768,883,610	(111,005)	−0.01
American Samoa	109,235	109,218	(17)	−0.02
Guam	889,140	889,007	(133)	−0.01
Northern Marianas	329,026	328,977	(49)	−0.01
Palau	75,000	75,000	0	0.00
Virgin Islands	524,904	524,825	(79)	−0.02
Outlying Areas Total	1,927,305	1,927,027	(278)	−0.01

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011

State	PY 2011 (Pre-FY 2012 0.189% rescission)	PY 2012	Difference	% Difference
Total	$1,287,544,000	$1,232,217,892	($55,326,108)	−4.30
Alabama	16,128,630	15,469,879	(658,751)	−4.08
Alaska	1,804,590	1,617,337	(187,253)	−10.38
Arizona	21,992,101	21,499,925	(492,176)	−2.24
Arkansas	6,535,066	7,022,211	487,145	7.45
California	170,303,818	167,279,720	(3,024,098)	−1.78
Colorado	13,969,269	16,138,114	2,168,845	15.53
Connecticut	12,117,862	12,425,813	307,951	2.54
Delaware	2,526,887	2,364,143	(162,744)	−6.44
District of Columbia	2,592,780	2,584,544	(8,236)	−0.32

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2012 VS PY 2011—Continued

State	PY 2011 (Pre-FY 2012 0.189% rescission)	PY 2012	Difference	% Difference
Florida	81,270,552	77,488,229	(3,782,323)	−4.65
Georgia	35,502,366	36,619,541	1,117,175	3.15
Hawaii	2,539,205	2,544,104	4,899	0.19
Idaho	4,240,518	4,848,656	608,138	14.34
Illinois	52,391,500	45,174,858	(7,216,642)	−13.77
Indiana	22,971,198	19,764,183	(3,207,015)	−13.96
Iowa	6,222,410	5,396,211	(826,199)	−13.28
Kansas	5,780,312	6,269,130	488,818	8.46
Kentucky	14,985,351	14,426,545	(558,806)	−3.73
Louisiana	8,768,499	10,053,020	1,284,521	14.65
Maine	3,599,239	3,411,860	(187,379)	−5.21
Maryland	14,302,198	13,446,336	(855,862)	−5.98
Massachusetts	21,065,395	18,123,153	(2,942,242)	−13.97
Michigan	51,285,260	37,950,243	(13,335,017)	−26.00
Minnesota	12,889,304	12,016,430	(872,874)	−6.77
Mississippi	10,150,118	10,347,245	197,127	1.94
Missouri	19,187,040	19,339,341	152,301	0.79
Montana	2,047,301	2,228,454	181,153	8.85
Nebraska	2,059,689	1,769,045	(290,644)	−14.11
Nevada	14,332,064	14,404,698	72,634	0.51
New Hampshire	2,764,686	2,023,863	(740,823)	−26.80
New Jersey	32,250,359	30,891,644	(1,358,715)	−4.21
New Mexico	5,179,814	4,691,620	(488,194)	−9.42
New York	55,889,913	53,040,830	(2,849,083)	−5.10
North Carolina	35,096,512	33,775,540	(1,320,972)	−3.76
North Dakota	499,920	491,586	(8,334)	−1.67
Ohio	44,079,882	37,410,700	(6,669,182)	−15.13
Oklahoma	6,917,377	5,818,181	(1,099,196)	−15.89
Oregon	15,077,317	14,179,357	(897,960)	−5.96
Pennsylvania	37,972,551	33,628,882	(4,343,669)	−11.44
Puerto Rico	13,696,022	13,792,527	96,505	0.70
Rhode Island	5,104,108	4,729,397	(374,711)	−7.34
South Carolina	19,186,456	17,247,928	(1,938,528)	−10.10
South Dakota	840,914	914,615	73,701	8.76
Tennessee	22,128,000	21,002,405	(1,125,595)	−5.09
Texas	62,020,936	65,045,270	3,024,334	4.88
Utah	6,063,094	6,236,314	173,220	2.86
Vermont	1,243,942	1,060,351	(183,591)	−14.76
Virginia	18,481,552	16,429,934	(2,051,618)	−11.10
Washington	22,272,901	22,715,887	442,986	1.99
West Virginia	4,558,971	4,805,556	246,585	5.41
Wisconsin	17,345,523	15,286,735	(2,058,788)	−11.87
Wyoming	1,201,048	909,374	(291,674)	−24.28
State Total	1,063,432,320	1,008,151,464	(55,280,856)	−5.20
American Samoa	182,437	174,596	(7,841)	−4.30
Guam	1,484,984	1,421,166	(63,818)	−4.30
Northern Marianas	549,518	525,903	(23,615)	−4.30
Palau	125,260	119,895	(5,365)	−4.28
Virgin Islands	876,661	838,985	(37,676)	−4.30
Outlying Areas Total	3,218,860	3,080,545	(138,315)	−4.30
National Reserve	220,892,820	220,985,883	93,063	0.04

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2012 VS PY 2011 FINAL ALLOTMENTS

State	Final PY 2011	Final PY 2012	Difference	% Difference
Total	$702,168,848	$700,841,900	($1,326,948)	−0.19
Alabama	9,001,789	9,114,728	112,939	1.25
Alaska	7,632,911	7,618,486	(14,425)	−0.19
Arizona	13,258,184	13,416,510	158,326	1.19
Arkansas	5,681,857	5,641,422	(40,435)	−0.71
California	83,952,834	83,874,952	(77,882)	−0.09
Colorado	10,866,249	11,123,996	257,747	2.37

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2012 VS PY 2011 FINAL ALLOTMENTS—Continued

State	Final PY 2011	Final PY 2012	Difference	% Difference
Connecticut	7,819,386	7,886,732	67,346	0.86
Delaware	1,961,280	1,957,574	(3,706)	−0.19
District of Columbia	2,418,616	2,361,773	(56,843)	−2.35
Florida	41,764,675	41,597,929	(166,746)	−0.40
Georgia	20,557,324	20,518,463	(38,861)	−0.19
Hawaii	2,494,923	2,474,455	(20,468)	−0.82
Idaho	6,359,573	6,347,555	(12,018)	−0.19
Illinois	29,100,366	28,905,034	(195,332)	−0.67
Indiana	13,763,379	13,614,524	(148,855)	−1.08
Iowa	6,495,675	6,439,570	(56,105)	−0.86
Kansas	5,968,265	5,924,673	(43,592)	−0.73
Kentucky	9,075,114	9,063,496	(11,618)	−0.13
Louisiana	8,843,833	8,712,855	(130,978)	−1.48
Maine	3,781,977	3,774,830	(7,147)	−0.19
Maryland	11,722,275	11,687,183	(35,092)	−0.30
Massachusetts	14,234,162	14,148,935	(85,227)	−0.60
Michigan	24,113,898	23,547,173	(566,725)	−2.35
Minnesota	11,997,952	11,868,691	(129,261)	−1.08
Mississippi	6,165,253	6,118,274	(46,979)	−0.76
Missouri	12,903,606	12,837,723	(65,883)	−0.51
Montana	5,197,075	5,187,254	(9,821)	−0.19
Nebraska	6,245,863	6,234,060	(11,803)	−0.19
Nevada	6,550,359	6,505,421	(44,938)	−0.69
New Hampshire	2,833,820	2,803,840	(29,980)	−1.06
New Jersey	18,929,760	19,163,297	233,537	1.23
New Mexico	5,832,033	5,821,012	(11,021)	−0.19
New York	40,044,986	39,748,915	(296,071)	−0.74
North Carolina	19,923,339	19,836,199	(87,140)	−0.44
North Dakota	5,292,177	5,282,176	(10,001)	−0.19
Ohio	26,306,239	25,946,567	(359,672)	−1.37
Oklahoma	6,853,237	6,779,019	(74,218)	−1.08
Oregon	8,821,269	8,758,927	(62,342)	−0.71
Pennsylvania	26,526,233	26,310,462	(215,771)	−0.81
Puerto Rico	7,871,512	7,686,516	(184,996)	−2.35
Rhode Island	2,639,094	2,618,648	(20,446)	−0.77
South Carolina	9,864,977	9,785,215	(79,762)	−0.81
South Dakota	4,891,189	4,881,946	(9,243)	−0.19
Tennessee	13,083,238	13,308,517	225,279	1.72
Texas	48,565,592	49,945,739	1,380,147	2.84
Utah	7,284,273	7,113,078	(171,195)	−2.35
Vermont	2,291,311	2,286,981	(4,330)	−0.19
Virginia	15,912,960	15,905,779	(7,181)	−0.05
Washington	14,651,411	14,673,520	22,109	0.15
West Virginia	5,598,448	5,587,868	(10,580)	−0.19
Wisconsin	12,716,632	12,597,349	(119,283)	−0.94
Wyoming	3,794,821	3,787,650	(7,171)	−0.19
State Total	700,457,204	699,133,491	(1,323,713)	−0.19
Guam	328,561	327,940	(621)	−0.19
Virgin Islands	1,383,083	1,380,469	(2,614)	−0.19
Outlying Areas Total	1,711,644	1,708,409	(3,235)	−0.19

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2012 VS PY 2011 ALLOTMENTS

State	PY 2011	PY 2012	Difference	% Difference
Total	$31,936,000	$31,939,520	$3,520	0.01
Alabama	500,647	508,082	7,435	1.49
Alaska	288,982	289,182	200	0.07
Arizona	632,935	634,754	1,819	0.29
Arkansas	411,497	411,636	139	0.03
California	2,483,795	2,471,363	(12,432)	−0.50
Colorado	570,990	574,272	3,282	0.57
Connecticut	476,946	476,928	(18)	0.00
Delaware	296,667	296,619	(48)	−0.02
District of Columbia	285,384	285,345	(39)	−0.01
Florida	1,379,470	1,382,267	2,797	0.20

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2012 VS PY 2011 ALLOTMENTS—Continued

State	PY 2011	PY 2012	Difference	% Difference
Georgia	821,518	822,490	972	0.12
Hawaii	322,344	322,178	(166)	−0.05
Idaho	337,184	338,014	830	0.25
Illinois	1,060,267	1,059,262	(1,005)	−0.09
Indiana	628,290	628,745	455	0.07
Iowa	450,618	450,398	(220)	−0.05
Kansas	429,451	429,282	(169)	−0.04
Kentucky	499,293	503,058	3,765	0.75
Louisiana	500,874	498,490	(2,384)	−0.48
Maine	330,405	330,165	(240)	−0.07
Maryland	607,963	611,479	3,516	0.58
Massachusetts	671,621	674,268	2,647	0.39
Michigan	840,199	826,454	(13,745)	−1.64
Minnesota	609,146	610,066	920	0.15
Mississippi	403,784	409,097	5,313	1.32
Missouri	612,168	616,486	4,318	0.71
Montana	305,461	305,900	439	0.14
Nebraska	364,956	365,623	667	0.18
Nevada	412,224	406,858	(5,366)	−1.30
New Hampshire	335,675	335,775	100	0.03
New Jersey	801,753	797,757	(3,996)	−0.50
New Mexico	362,260	360,655	(1,605)	−0.44
New York	1,431,886	1,421,421	(10,465)	−0.73
North Carolina	800,773	796,599	(4,174)	−0.52
North Dakota	289,407	290,251	844	0.29
Ohio	973,816	968,454	(5,362)	−0.55
Oklahoma	461,908	458,559	(3,349)	−0.73
Oregon	484,674	489,737	5,063	1.04
Pennsylvania	1,032,323	1,024,530	(7,793)	−0.75
Puerto Rico	404,628	401,448	(3,180)	−0.79
Rhode Island	314,871	314,447	(424)	−0.13
South Carolina	510,108	510,204	96	0.02
South Dakota	298,888	299,393	505	0.17
Tennessee	615,549	626,347	10,798	1.75
Texas	1,734,172	1,751,537	17,365	1.00
Utah	410,093	410,985	892	0.22
Vermont	288,413	288,917	504	0.17
Virginia	756,466	761,294	4,828	0.64
Washington	677,933	674,609	(3,324)	−0.49
West Virginia	340,653	340,288	(365)	−0.11
Wisconsin	617,807	620,620	2,813	0.46
Wyoming	280,219	280,277	58	0.02
State Total	31,759,354	31,762,865	3,511	0.01
Guam	92,813	92,818	5	0.01
Virgin Islands	83,833	83,837	4	0.00
Outlying Areas Total	176,646	176,655	9	0.01

Signed: at Washington, DC, on this 13th day of March, 2012.

Jane Oates,

Assistant Secretary.

[FR Doc. 2012–6446 Filed 3–15–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for Indian and Native American Employment and Training Programs; Solicitation for Grant Applications and Announcement of Competition Waivers for Program Years 2012 and 2013

AGENCY: Employment and Training Administration, Department of Labor.

Announcement Type: Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 11–07.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (the Department), announces the availability of $47,561,938 in adult program funding and $12,365,295 in youth program funding to grantees designated to provide employment and training services to Indians, Alaska Natives, and Native Hawaiians under section 166 of the Workforce Investment Act (WIA) for Program Year (PY) 2012 (July 1, 2012 through June 30, 2013). Approximately $1,418,542 of these funds is available for competition for the Comprehensive

Services Program (Adult), and approximately $8,138 of these funds is available for the Supplemental (Youth) Services Program. The SGA contains the procedures by which the Department will select and designate the WIA section 166 grantees for PY 2012 and 2013 (July 1, 2012 through June 30, 2014).

As a general matter, the Department is required to select grantees, on a competitive basis, every two years. However, the Secretary of Labor (the Secretary) has the authority (WIA section 166(c)(2)) to waive the requirement for competition where current grantees are performing satisfactorily. Further, based on our observance of the principles of self-determination embodied in section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450a), as implemented by 20 CFR 668.120, entities that have legal jurisdiction over their requested geographic service areas receive the highest priority for designation (20 CFR 668.210(a)). Such tribal entities will be awarded the grants for their geographic service areas without competition provided that they are found responsible to manage federal funds and meet all other designation requirements.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Baron-Simms, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3309.

Signed March 12, 2012 in Washington, DC.

B. Jai Johnson,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–6287 Filed 3–15–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications for Serving Juvenile Offenders in High-Poverty, High-Crime Communities Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 11–09.

SUMMARY: The U.S. Department of Labor (Department or DOL), Employment and Training Administration (ETA), announces the availability of approximately $20 million in grant funds authorized by the Workforce Investment Act to serve juvenile offenders, ages 14 and above, in high-poverty, high-crime communities. The purpose of these grants is to improve the long-term labor market prospects of these youth. These grants will be awarded through a competitive process open to organizations with the capacity to implement multi-site, multi-state projects. The Department expects to award four grants of $5 million each to cover a 32-month period of performance that includes up to 6 months of planning and a minimum of 26 months of operation. DOL will require grantees to competitively select local sub-grantees to operate the program in a minimum of three high-poverty, high-crime communities in at least two states.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Abdullah, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3346.

Signed March 9, 2012 in Washington, DC

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–6283 Filed 3–15–12; 8:45 am]

BILLING CODE 4510–FT–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0064]

Initial Test Program of Condensate and Feedwater Systems for Light-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–1265, ''Initial Test Program of Condensate and Feedwater Systems for Light-Water Reactors.'' DG–1265 is proposed revision 2 of Regulatory Guide 1.68.1, ''Preoperational and Initial Startup Testing of Feedwater and Condensate Systems for Boiling Water Reactor Power Plants,'' dated January 1977.

This regulatory guide is being revised to: (1) expand the scope of the guide to encompass preoperational, initial plant startup, and power ascension tests for the condensate and feedwater systems in all types of light water reactor facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 50 and 52; and (2) to incorporate lessons learned by the NRC staff since the last revision.

DATES: Submit comments by May 18, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0064.

You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0064. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

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

FOR FURTHER INFORMATION CONTACT: Frank Talbot, Division of Construction Inspection, and Operational Programs, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3146; email: *Frank.Talbot@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0064 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0064.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML112020111. The regulatory analysis may be found in ADAMS under Accession No. ML112020140.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0064 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Initial Test Program of Condensate and Feedwater Systems for Light-Water Reactors'' is temporarily identified by its task number, DG–1265. The DG–1265 is proposed revision 2 of Regulatory Guide 1.68.1, dated January 1977.

This guide describes the methods that the staff of the NRC considers acceptable to implement Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10, of the *Code of Federal Regulations* (CFR), Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50), including, but not limited to, Criterion 4, ''Environmental and Dynamic Effects Design Basis,'' Criterion 11, ''Reactor Inherent Protection,'' Criterion 14, ''Reactor Coolant Pressure Boundary,'' and Criterion 15, ''Reactor Coolant System Design'' regarding the initial test program (ITP) for condensate and feedwater (FW) systems, including condensate storage and supply, for light-water reactors (LWRs) and for startup feedwater (SFW), auxiliary feedwater (AFW) or emergency feedwater (EFW) systems for pressurized-water reactors (PWRs). This guide also describes methods that the NRC staff finds acceptable for testing condensate, FW, SFW/AFW/EFW (PWR only) structures, systems, and components (SSCs) in accordance with Subpart B, ''Standard Design Certifications,'' and Subpart C, ''Combined Licenses,'' of 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of March, 2012.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–6410 Filed 3–15–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0065]

Preoperational Testing of Instrument and Control Air Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–1268, ''Preoperational Testing of Instrument and Control Air Systems.'' This regulatory guide is being revised to address new issues that have been raised since RG 1.68.3 was first issued. These include vibration testing of instrument and control air systems (ICAS) to meet seismic requirement, ICAS air-dryer testing to meet dew point design requirements, ICAS accumulator check valves and solenoid valves operating and testing experience, an update to ISA S7.3 for acceptable industry standards for oil, water and particle matter in ICAS.

DATES: Submit comments by May 18, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0065.

You may submit comments by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0065. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

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

FOR FURTHER INFORMATION CONTACT: Frank Talbot, Division of Construction Inspection, and Operational Programs, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3146; email: *Frank.Talbot@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0065 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0065.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML113180379. The regulatory analysis may be found in ADAMS under Accession No. ML113180380.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0065 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Preoperational Testing of Instrument and Control Air Systems,'' is temporarily identified by its task number, DG–1268. The DG–1268 is proposed revision 2 of Regulatory Guide 1.68.3, dated January 1977.

This guide describes methods and procedures the staff of the NRC considers acceptable to implement preoperational testing of the instrument and control air systems (ICAS) in a commercial nuclear power plant. Successful demonstration of the operability of the ICAS is one of the items required by Appendix A, ''General Design Criteria for Nuclear Power Plants,'' of Title 10 of the *Code of Federal Regulations,* part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR part 50). This guide also describes the methods that the NRC staff finds acceptable for the initial test program for ICAS systems, structures, and components (SSCs) in accordance with the regulations in 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' Subpart B, ''Standard Design Certifications,'' and Subpart C, ''Combined Licenses.''

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of March, 2012.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–6413 Filed 3–15–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–388; NRC–2012–0063]

PPL Susquehanna, LLC; Application and Amendment to Facility Operating License Involving: Proposed No Significant Hazards Consideration Determination

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request, opportunity to comment, request a hearing and petition for leave to intervene.

DATES: Comments must be filed by April 16, 2012. A request for a hearing must be filed by May 15, 2012.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0063.

You may submit comments by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0063. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

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

FOR FURTHER INFORMATION CONTACT:

Bhalchandra K. Vaidya, Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–3308; fax number: 301–415–2102; email: *bhalchandra.vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0063 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0063.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated March 8, 2012, is available electronically under ADAMS Accession No. ML12069A176.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0063 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22, issued to PPL Susquehanna, LLC (the licensee), for operation of the Susquehanna Steam Electric Station, Unit 2 located in Luzerne County, Pennsylvania.

The proposed amendment would allow a temporary extension of 24 hours to the Completion Time for Condition C in the Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specification (TS) 3.8.7, ''Distribution Systems—Operating,'' to allow a Unit 1 4160 V subsystem to be de-energized and removed from service for 96 hours to perform modifications on the bus. It also proposes a temporary extension of 24 hours to the Completion Time for Condition A in SSES Unit 2 TS 3.7.1, ''Plant Systems—RHRSW [residual heat removal service water system] and UHS [ultimate heat sink],'' to allow the UHS spray array and spray array bypass valves associated with applicable division RHRSW, and in Condition B, the applicable division Unit 2 RHRSW subsystem, to be inoperable for 96 hours during the Unit 1 4160 V bus breaker control logic modifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This ''No Significant Hazards Consideration'' evaluates the following changes to the Technical Specifications:

a. The Unit 2 TS 3.8.7, Condition C, Completion Time is revised to extend the Completion Time from 72 hours to 96 hours for a Unit 1 4160 V subsystem that is de-energized and removed from service.

b. The Unit 2 TS 3.7.1, Condition A, Completion Time is revised to extend the Completion Time from 72 hours to 96 hours for a loop of UHS spray array and spray array bypass valves being inoperable due to the Unit 1 4160 V subsystem completion time being extended.

c. The Unit 2 TS 3.7.1, Condition B, Completion Time is revised to extend the Completion Time from 72 hours to 96 hours for one Unit 2 RHRSW subsystem being inoperable due to the Unit 1 4160 V subsystem completion time being extended.

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The temporary changes to the completion times for TS 3.8.7, Condition C and TS 3.7.1, Conditions A and B are necessary to implement plant changes which modify the 4 kV Control Circuits on the 4.16 kV ESS [electronic switching system] Buses in order to mitigate the consequences of multiple fire-induced spurious operations. These modifications decrease the probability that a fire-induced hot short will cause equipment malfunctions. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No SSC [structure, system, and component] failure modes or mechanisms are being introduced, and the likelihood of previously analyzed failures remains unchanged.

The Completion Time to restore the Unit 2 RHRSW subsystem has been extended to 96 hours in order to complete the modifications associated with the Multiple Fire-Induced Spurious Operations issue. This is a temporary extension of the Completion Time. The extended Completion Times for TS 3.7.1 Conditions A and B are only applicable when either the 1A 201 4.16 kV ESS Bus or the 1A 202 4.16 kV ESS Bus is out of service in order to implement modifications associated with the Multiple Fire-Induced Spurious Operations issue. The affected Unit 2 RHRSW subsystem remains functional, while the other subsystem of Unit 2 RHRSW will remain operable.

There are no changes to any accident initiators or to the mitigating capability of safety-related equipment supported by the Class 1E Electrical AC system. The protection provided by these safety-related systems will continue to be provided as assumed by the safety analysis.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed changes to Technical Specification 3.8.7 Condition C, and to Technical Specification 3.7.1 Condition A and Condition B involve the extension of completion time for a Unit 1 4.16 kV Bus to be out of service in order to modify the control circuits to mitigate the consequences of multiple fire-induced spurious operations, the completion time for the UHS spray array and spray array bypass valves to be inoperable and one Unit 2 RHRSW subsystem being inoperable. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. These changes do not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no major changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR [final safety analysis report]. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes are acceptable because the completion time extensions allow modifications to the 4.16 kV control circuits to mitigate the consequences of a fire-induced short damaging equipment. Therefore, the plant response to analyzed events is affected by this modification in that the plant will better cope with the fire-induced shorts and will continue to provide the margin of safety assumed by the safety analysis.

With the RHRSW Spray Pond Return Bypass Valves on the out of service loop electrically de-powered in the open position, a return flow path will be established. Since the RHRSW Pumps on Unit 2 are not impacted by the Unit 1—4.16 kV ESS Bus outages, with this return flow path established, the affected RHRSW Loop on Unit 2 will be functional. Also in this configuration a fire-induced circuit failures will not be able to affect the position of the valves. This configuration will continue to provide the margin of safety assumed by the safety analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing; Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include

copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated March 8, 2012, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of March 2012.

Bhalchandra Vaidya,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6407 Filed 3–15–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0191]

License Renewal Interim Staff Guidance LR–ISG–2011–05: Ongoing Review of Operating Experience

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–05, ''Ongoing Review of Operating Experience.'' This LR–ISG provides guidance and clarification concerning ongoing reviews of plant-specific and industry-wide operating experience as an attribute of aging management programs used at nuclear power plants as described in NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103490041), and NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) (ADAMS Accession No. ML103490036).

ADDRESSES: Please refer to Docket ID NRC–2011–0191 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0191. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documentsz,*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The final LR–ISG–2011–05 is available under ADAMS Accession No. ML12044A215.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Interim Staff Guidance Web Site:* LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1683; email: *Matthew.Homiack@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The NRC issues LR–ISG to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document until it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISG in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff developed LR–ISG–2011–05 to clarify guidance on how the ongoing review of operating experience should be used to ensure the effectiveness of the license renewal aging management programs used at nuclear power plants to meet the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' The final LR–ISG–2011–05 revises the NRC staff's recommended aging management programs in the GALL Report and the NRC staff's aging management review procedures and acceptance criteria in the SRP–LR.

On August 24, 2011 (76 FR 52995), the NRC requested public comments on draft LR–ISG–2011–05. By letter dated August 29, 2011 (ADAMS Accession No. ML11242A114), the Nuclear Energy Institute (NEI) requested a 30-day extension to the comment period and a public meeting to discuss draft comments and questions concerning implementation of the LR–ISG. The NRC staff granted the NEI's requests, as noticed on September 20, 2011 (76 FR 58311). The public meeting was held on October 12, 2011 (ADAMS Accession No. ML11304A259), and the comment period was extended until October 23, 2011.

During this time, the NRC staff identified the need to include additional guidance on areas where license renewal applicants should ensure their programmatic activities for operating experience reviews are appropriate for considering operating experience related to aging management. The NRC staff identified this need through its ongoing reviews of license renewal applications and through insights gained on how nuclear power plant licensees carry out their operating experience review activities. The additional guidance covers areas where enhancements may need to be made for license renewal, such as the specific kind of information that should be considered as operating experience, the training of plant personnel, information to consider in operating experience evaluations, criteria for identifying and

categorizing operating experience as related to aging, and guidelines for reporting operating experience on age-related degradation to the industry. The NRC staff outlined these changes at the October 12, 2011, public meeting and a revised draft LR–ISG was issued for public comment on November 25, 2011 (76 FR 72725).

The NRC received comments from Exelon Generation Company, LLC, by letter dated October 18, 2011 (ADAMS Accession No. ML11298A171), and from the NEI by letters dated October 18, 2011 (ADAMS Accession No. ML11293A041), and December 15, 2011 (ADAMS Accession No. ML11354A228). No other comments were submitted. The NRC considered these comments in developing the final LR–ISG. Detailed responses to the comments can be found in Appendix C of the final LR–ISG.

The final LR–ISG–2011–05 is approved for NRC staff and stakeholder use and will be incorporated into NRC's next formal license renewal guidance document revision.

Backfitting and Issue Finality

Issuance of this final LR–ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' of 10 CFR. As discussed in the ''Backfitting Discussion'' section of final LR–ISG–2011–05, the LR–ISG is directed to holders of operating licenses or combined licenses who are currently in the license renewal process. The LR–ISG is not directed to holders of operating licenses or combined licenses until they apply for license renewal. The LR–ISG is also not directed to licensees who already hold renewed operating or combined licenses.

Dated at Rockville, Maryland, this 9th day of March 2012.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6409 Filed 3–15–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66568; File No. SR–NYSEARCA–2012–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fee Schedule

March 9, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 1, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fee Schedule (''Fee Schedule'') to (i) Increase the fee for Mid-Point Passive Liquidity (''MPL'') orders removing liquidity from the Book, the Tape B Securities fee for orders routed outside the Book to any away market centers, and the fees for Tape A, Tape B, and Tape C Securities that take liquidity from the Book where the per share price is below $1.00, (ii) add three new Step Up Tiers and a new Investor Tier, (iii) revise the requirements and credits for the Tracking Order Tiers, (iv) raise the fee cap for Market and Auction-Only Orders executed in an Opening, Market Order or Trading Halt Auction, and (v) make other technical changes. The amended section of the Fee Schedule is attached as Exhibit 5. [sic] A copy of this filing is available on the Exchange's Web site at *www.nyse.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) Increase the fee for MPL [4] orders removing liquidity from the Book, the Tape B Securities fee for orders routed outside the Book to any away market centers, and the fees for Tape A, Tape B, and Tape C Securities that take liquidity from the Book where the per share price is below $1.00, (ii) add three new Step Up Tiers and a new Investor Tier, (iii) revise the requirements and credits for the Tracking Order [5] Tiers, (iv) raise the fee cap for Market and Auction-Only Orders executed in an Opening, Market Order or Trading Halt Auction, and (v) make other technical changes.

MPL Orders

Currently, MPL orders receive a rebate of $0.0015 for orders that provide liquidity and are charged a fee of $0.0025 for orders that take liquidity in Tape A, Tape B and Tape C Securities. The Exchange proposes to raise the fee to $0.0030 for orders that take liquidity in Tape A, Tape B, and Tape C Securities. The Exchange does not propose to change the rebate for MPL orders. This change will apply to the Tier 1, Tier 2, Tier 3, and Basic Rate pricing levels for securities with a per share price above $1.00.

Tape B Orders

Currently, Tape B orders are charged a fee of $0.0029 for orders that are routed outside the Book to any away market centers for clients at Tier 1, Tier 2, Tier 3, Step Up Tier 1, and Step Up Tier 2. The Exchange proposes to raise the fee to $0.0030 for orders that are routed outside the Book to any away market centers. This change will apply

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An MPL order is a version of the Passive Liquidity order, except it is executable only at the midpoint of the Protected Best Bid and Offer. A Passive Liquidity order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. *See* NYSE Arca Equities Rule 7.31(h)(4)–(5).

[5] A Tracking Order is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of Tracking Order interest available at that price. *See* NYSE Arca Equities Rule 7.31(f).

to the Tier 1, Tier 2, Tier 3, Step Up Tier 1 and Step Up Tier 2 pricing levels. As a result, the routing fee for Tape B orders at this pricing level will be the same as the Tape A and Tape C routing fees to any away market centers other than the New York Stock Exchange (''NYSE'').

Below $1.00 Per Share Price

Currently, the Exchange charges 0.1% (10 basis points) of the total dollar value of the execution for securities with a below $1.00 share price for ETP Holders accessing liquidity. The Exchange proposes to increase the charge to 0.2% (20 basis points) of the total dollar value of the execution for these securities for ETP Holders accessing liquidity. The fee is consistent with the limitations of Regulation NMS Rule 610(c) under the Act of 1934 (''Act'') [6] for securities with a price of less than $1.00.

Step Up Tiers

The Exchange proposes to introduce three new step up pricing tier levels—Tape A Step Up Tier, Tape B Step Up Tier, and Tape C Step Up Tier—for securities with a per share price above $1.00.

The Tape A Step Up Tier will allow ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0029 per share [7] if they directly execute providing volume in Tape A Securities during the billing month (''Tape A Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's January 2012 (''Baseline Month'') Tape A Adding ADV (''Tape A Baseline ADV'') plus 0.075% of US Tape A Consolidated Average Daily Share Volume (''CADV'') for the Baseline Month or (b) the ETP Holder's or Market Maker's Tape A Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.[8]

Additionally, if a firm's ratio of Tape A Baseline ADV to its total Tape A average daily volume (''ADV'') during the Baseline Month is less than 30%, the $0.0029 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 0.75% of the US Tape A CADV during the billing month. The rate of $0.0030 per share would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape A Adding ADV is greater than its Tape A Baseline ADV by at least 0.25% of the US Tape A CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape A Step Up Tier.[9]

The Tape B Step Up Tier will allow ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0026 per share [10] if they directly execute providing volume in Tape B Securities during the billing month (''Tape B Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape B Adding ADV (''Tape B Baseline ADV'') plus 0.25% of US Tape B CADV for the Baseline Month or (b) the ETP Holder's or Market Maker's Tape B Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.[11]

Additionally, if a firm's ratio of Tape B Baseline ADV to its total Tape B ADV during the Baseline Month is less than 30%, the $0.0026 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 1.5% of the US Tape B CADV during the billing month. The rate of $0.0028 or $0.0030 per share, as applicable, would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape B Adding ADV is greater than its Tape B Baseline ADV by at least 0.45% of the US Tape B CADV during the billing month. Investor Tier ETP Holders, Investor Tier Market Makers, and Lead Market Makers (''LMMs'') cannot qualify for the Tape B Step Up Tier. In addition, LMM provide volume cannot apply to the Tape B Step Up Tier volume requirements.[12]

The Tape C Step Up Tier will allow ETP Holders and Market Makers that take liquidity from the Book to pay a

[6] 15 U.S.C. 78a.

[7] Under the Basic Rate, ETP Holders and Market Makers pay a fee of $0.0030 per share for Tape A orders that take liquidity from the Book.

[8] For example, assume that a particular ETP Holder's or Market Maker's Tape A Baseline ADV was five million shares and that US Tape A CADV during the billing month was four billion shares. To qualify for the lower rate, the ETP Holder or Market Maker would need to have a Tape A Adding ADV during the billing month that is at least the greater of (i) eight million shares (i.e., five million Tape A Baseline ADV plus three million step-up (0.075% × four billion US Tape A CADV)) or (ii) six million shares (i.e., five million Tape A Baseline ADV plus one million step-up (120% of Tape A Baseline ADV)). The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a Tape A Baseline ADV of zero. In this regard, a new ETP Holder or Market Maker would need to have a Tape A Adding ADV during the billing month of at least three million shares (i.e., zero Tape A Baseline ADV plus three million step-up (0.075% × four billion US Tape A CADV)) for the $0.0029 rate to apply.

[9] Continuing with the example above, if the ETP Holder or Market Maker maintains a ratio of Tape A Baseline ADV to its total Tape A ADV during the Baseline Month of less than 30%, the $0.0029 rate would apply to the ETP Holder's or Market Maker's first 30 million shares that are executed (i.e., 0.75% × four billion US Tape A CADV) and the rate of $0.0030 would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape A Adding ADV is greater than 15 million shares (i.e., five million Tape A Baseline ADV plus 10 million step-up (0.25% × four billion US Tape A CADV)), in which case the $0.0029 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed. The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a ratio of Tape A Baseline ADV to its Tape A ADV during the Baseline Month that is zero. In this regard, the $0.0029 rate would apply only to the new ETP Holder's or Market Maker's first 30 million shares that are executed, unless the new ETP Holder's or Market Maker's Tape A Adding ADV is greater than 10 million, in which case the $0.0029 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed.

[10] Under the Basic Rate, ETP Holders and Market Makers pay a fee of $0.0030 per share for Tape B orders that take liquidity from the Book.

[11] For example, assume that a particular ETP Holder's or Market Maker's Tape B Baseline ADV was one million shares and that US Tape B CADV during the billing month was 1.2 billion shares. To qualify for the lower rate, the ETP Holder or Market Maker would need to have a Tape B Adding ADV during the billing month that is at least the greater of (i) four million shares (i.e., one million Tape B Baseline ADV plus three million step-up (0.25% × 1.2 billion US Tape B CADV)) or (ii) 1.2 million shares (i.e., one million Tape B Baseline ADV plus 0.2 million step-up (120% of Tape B Baseline ADV)). The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a Tape B Baseline ADV of zero. In this regard, a new ETP Holder or Market Maker would need to have a Tape B Adding ADV during the billing month of at least three million shares (i.e., zero Tape B Baseline ADV plus three million step-up (0.25% × 1.2 billion US Tape B CADV)) for the $0.0026 rate to apply.

[12] Continuing with the example above, if the ETP Holder or Market Maker maintains a ratio of Tape B Baseline ADV to its total Tape B ADV during the Baseline Month of less than 30%, the $0.0026 rate would apply to the ETP Holder's or Market Maker's first 18 million shares that are executed (i.e., 1.5% × 1.2 billion US Tape B CADV) and the rate of $0.0028 or $0.0030, as applicable, would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape B Adding ADV is greater than 6.4 million shares (i.e., one million Tape B Baseline ADV plus 5.4 million step-up (0.45% × 1.2 billion US Tape B CADV)), in which case the $0.0026 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed. The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a ratio of Tape B Baseline ADV to its total Tape B ADV during the Baseline Month that is zero. In this regard, the $0.0026 rate would apply only to the new ETP Holder's or Market Maker's first 18 million shares that are executed, unless the new ETP Holder's or Market Maker's Tape B Adding ADV is greater than 5.4 million, in which case the $0.0026 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed.

reduced fee of $0.0029 per share [13] if they directly execute providing volume in Tape C Securities during the billing month (''Tape C Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape C Adding ADV (''Tape C Baseline ADV'') plus 0.10% of US Tape C CADV for the Baseline Month or (b) the ETP Holder's or Market Maker's Tape C Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.[14]

Additionally, if a firm's ratio of Tape C Baseline ADV to its total Tape C ADV during the Baseline Month is less than 30%, the $0.0029 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 1.1% of the US Tape C CADV during the billing month. The rate of $0.0030 per share would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape C Adding ADV is greater than its Tape C Baseline ADV by at least 0.33% of the US Tape C CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape C Step Up Tier.[15]

Investor Tier

The Exchange proposes to introduce a new Investor Tier 2 and renumber current Investor Tier 2 as Investor Tier 3. New Investor Tier 2 will allow ETP Holders and Market Makers to earn a $0.0032 per share credit in Tape A, Tape B, and Tape C Securities for orders that provide liquidity to the Book that (1) provide liquidity of 0.60% or more of the US CADV, (2) maintain a ratio of canceled orders to total orders of less than 30%, excluding Immediate-or-Cancel orders, and (3) maintain a ratio of executed liquidity adding volume to total volume of greater than 50%. In addition, the Exchange proposes to increase the threshold [sic] provide liquidity for new Investor Tier 3 from 0.20% to 0.30% of US CADV. All other fees and credits will be at the existing Tiered and Basic Rates based on the firm's qualifying levels.

Tracking Order Tiers

Currently, the Tracking Order Tier 1 credit allows each ETP Holder and Market Maker to receive a credit of $0.0015 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month greater than 15 million shares. The Exchange credits ETP Holders $0.0012 per share for Tracking Orders that result in executions up to and including 15 million shares (assuming the 5 million share threshold is met). The Tracking Order Tier 2 credit allows each ETP Holder and Market Maker to receive a credit of $0.001 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month between 2.5 million shares and 4,999,999 shares. The Tracking Order Tier 3 credit allows each ETP Holder and Market Maker to receive a credit of $0.0005 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month between 1 million shares and 2.5 million shares.

The Exchange proposes to replace the current Tracking Order Tier structure with the three tiers described below. Tracking Order Tier 1 will allow each ETP Holder and Market Maker to receive a credit of $0.0015 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month greater than or equal to 10 million shares. Tracking Order Tier 2 will allow each ETP Holder and Market Maker to receive a credit of $0.0012 per share for Tracking Orders that result in executions on the Exchange with an ADV per month between 5 million shares and 9,999,999 shares. Tracking Order Tier 3 will allow each ETP Holder and Market Maker to receive a credit of $0.001 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month between 1 million shares and 4,999,999 shares.

Fee Cap

The Exchange proposes to raise the monthly fee cap for Market and Auction-Only Orders executed in an Opening, Market Order or Trading Halt Auction. Currently, the fees are capped at $10,000. The Exchange proposes to raise the fee cap to $15,000.

Technical Changes

The Exchange proposes to revise footnote 3 of the Fee Schedule (currently reserved) to add a definition of US CADV and explain that volume on days when the market closes early is excluded from the calculation of US CADV, which will simplify the Fee Schedule. The Exchange also proposes to add a new footnote 4 to define ADV. The Exchange also proposes to include a reference within the Fee Schedule to the last date on which the Fee Schedule was amended.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and Section 6(b)(4) of the Act,[17] 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 proposed change is equitably allocated and not unfairly discriminatory because it applies uniformly to all similarly situated ETP Holders and Market Makers that send orders to the Exchange.

The Exchange believes that the proposed fee and fee cap increases are reasonable and equitably allocated because they apply to ETP Holders and Market Makers that remove liquidity from the Exchange and are designed to offset the increased credits to liquidity providers. The Exchange believes that the new Step Up Tiers, the new Investor Tier 2, and the revised Investor Tier 3

[13] Under the Basic Rate, ETP Holders and Market Makers pay a fee of $0.0030 per share for Tape C orders that take liquidity from the Book.

[14] For example, assume that a particular ETP Holder's or Market Maker's Tape C Baseline ADV was three million shares and that US Tape C CADV during the billing month was 1.8 billion shares. To qualify for the lower rate, the ETP Holder or Market Maker would need to have a Tape C Adding ADV during the billing month that is at least the greater of (i) 4.8 million shares (i.e., three million Tape C Baseline ADV plus 1.8 million step-up (0.10% × 1.8 billion US Tape C CADV)) or (ii) 3.6 million shares (i.e., three million Tape C Baseline ADV plus 0.6 million step-up (120% of Tape C Baseline ADV)). The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a Tape C Baseline ADV of zero. In this regard, a new ETP Holder or Market Maker would need to have a Tape C Adding ADV during the billing month of at least 1.8 million shares (i.e., zero Tape C Baseline ADV plus 1.8 million step-up (0.10% × 1.8 billion US Tape C CADV)) for the $0.0029 rate to apply.

[15] Continuing with the example above, if the ETP Holder or Market Maker maintains a ratio of Tape C Baseline ADV to its total Tape C ADV during the Baseline Month of less than 30%, the $0.0029 rate would apply to the ETP Holder's or Market Maker's first 19.8 million shares that are executed (i.e., 1.1% × 1.8 billion US Tape C CADV) and the rate of $0.0030 would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape C Adding ADV is greater than 8.94 million shares (i.e., three million Tape C Baseline ADV plus 5.94 million step-up (0.33% × 1.8 billion US Tape C CADV)), in which case the $0.0029 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed. The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a ratio of Tape C Baseline ADV to its total Tape C ADV during the Baseline Month that is zero. In this regard, the $0.0029 rate would apply only to the new ETP Holder's or Market Maker's first 19.8 million shares that are executed, unless the new ETP Holder's or Market Maker's Tape C Adding ADV is greater than 5.94 million, in which case the $0.0029 rate would apply to all of the ETP Holder's or Market Maker's shares that are executed.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

are equitable because they are open to all similarly situated ETP Holders on an equal basis and provide credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. For example, the proposed increase to $0.0030 for orders in Tape B Securities routed outside the Book to any away market centers will align such fee to Tape A and Tape C routing fees to any away market center other than NYSE. The Exchange further believes that the proposed Tape A, Tape B, and Tape C Step Up Tiers are reasonable, equitable and not unfairly discriminatory because the Exchange has previously implemented two step up tiers: Step Up Tier 1 and Step Up Tier 2. With respect to shares priced under $1.00, the Exchange notes that the proposal to increase the charge to 0.2% of the total dollar value of the execution for these securities for ETP Holders accessing liquidity is consistent with the limitations of Rule 610(c) of Regulation NMS under the Act.

As stated above, the Exchange believes that the new Step Up Tiers, the new Investor Tier 2, and the revised Investor Tier 3 may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. For example, the increased fee with respect to MPL orders that take liquidity in Tape A, Tape B, and Tape C Securities will provide an added incentive to ETP Holders and Market Makers to provide displayed liquidity on the Exchange for such orders.

In addition to the new Tiers, the Exchange believes that the amendments to the Tracking Order Tiers would benefit ETP Holders whose increased order flow provides meaningful added levels of liquidity, but may not be eligible for the current Tracking Order Tier thresholds, thereby contributing to the depth and market quality of the Book.

The Exchange believes that by recalibrating the fees for routing and taking liquidity and credits for providing liquidity it will attract additional order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange also believes that the technical amendments proposed herein would better assist member organizations and others that view the Fee Schedule in determining the fees and credits that are applicable on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and subparagraph (f)(2) of Rule 19b–4 thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2012–17 and should be submitted on or before April 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6383 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66574; File No. SR–FICC–2012–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Remove Functionality in the Government Securities Division's Rules That Is No Longer Utilized by Participants

March 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] notice is hereby given that on February 29, 2012, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed change as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to certain rules of the Government Securities Division (''GSD'') of the Fixed Income Clearing Corporation (''FICC'') that refer to functions or classifications that are either technologically obsolete or no longer used by participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to revise the GSD rules to eliminate references to functions or classifications that are either technologically obsolete or no longer utilized by GSD's participants. Reflected below are descriptions of the proposed changes to the rules.

1. ''Non-Conversion Participants''/ ''Conversion Participants''

When first implemented, the DVP System required all participants that submitted when issued trades to resubmit those trades with final money calculations on the night of Auction Date, after the Treasury Auction results were announced. Subsequent to the initial implementation, enhancements were incorporated such that the DVP System recalculated trades (repriced) based on auction results. FICC also incorporated an option whereby participants could decide if they wanted to resubmit their trades (participants who elected this option were known as ''Non-Conversion Participants'') or take FICC's repricing notification (participants who elected this option were known as ''Conversion Participants''). With the implementation of Interactive Messaging in 2000, the few remaining Non-Conversion Participants agreed to take FICC's calculations, rather than resubmit their trades to FICC. As such, FICC proposes to remove references in the rules to Non-Conversion Participants. Given that all participants who submit when-issued transactions for matching/netting are subject to accepting FICC's calculations for their trades based on Treasury Auction Results, the proposed rule changes replace references to ''Conversion Participants'' with ''Participants.''

2. Auction Priority Delivery Requests and Customer Delivery Requests (CDRs)

Auction Priority Delivery Requests, also known as Customer Delivery Requests (CDRs), were originally built for FICC's batch file transfer, which was the initial proprietary method that participants used to submit trade activity to FICC. This functionality allowed the dealer to instruct FICC to withhold certain auction trades from the net to ensure that a priority client received their auction allotment so the trade could not be netted out during FICC's end of day netting process. However, when Interactive Messaging was implemented in 2000, this instruction type was not supported as it was no longer used. As a result, FICC proposes to remove references in the rules to Auction Priority Delivery Requests and Customer Delivery Requests (CDRs).

3. Repo Substitution Criteria

GSD initially provided optional fields for Repo Substitution Criteria for trade submissions. However, over the years, participants generally have not used these fields. Because the fields were provided as an informational courtesy that has not been used by participants, the new system will not contain them. From a rules perspective this entails the deletion of references to those fields in related schedule.

In addition to the above-referenced changes which relate to the DVP System, FICC proposes to make the following additional technical corrections to the GSD rules:

—Terminal interfaces and video display terminals are currently referenced in the rules. The terminals became obsolete when FICC replaced them with a web browser interface. Because the terminals are no longer in existence, FICC proposes to remove references to these methods from the GSD rules.

—Currently, the ''Schedule of Required and Other Data Submission Items from GCF Repo Transactions'' refers to ''Reverse dealer Exec. Id'' and a ''Repo dealer Exec Id.'' When FICC began using the GSD RTTM web format, these fields were eliminated because they did not have any significance for GCF repo trades. As a result, FICC proposes to remove these references from the rules.

FICC believes the proposed change is consistent with Section 17A of the Act and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities by ensuring that FICC's rules are accurate.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FICC–2012–02 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.

[3] The Commission has modified the text of the summaries prepared by FICC.

All submissions should refer to File Number SR–FICC–2012–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR_FICC_2012_02.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2012–02 and should be submitted on or before April 6, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6384 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66575; File No. SR–FINRA–2011–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending FINRA Rules 13201 (Statutory Employment Discrimination Claims) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) Relating to Whistleblower Disputes in Arbitration

March 12, 2012.

I. Introduction

On November 21, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to align the rule with statutes that invalidate predispute arbitration agreements for whistleblower disputes. Specifically, the proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The proposed rule change would also make a conforming amendment to FINRA Rule 2263. The proposed rule change was published for comment in the **Federal Register** on December 12, 2011.[3] The Commission received one comment letter, from the Securities Industry and Financial Markets Association (''SIFMA''), on the proposed rule change,[4] and a response to SIFMA's comments from FINRA.[5] The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Purpose

The proposed rule change would amend FINRA Rule 13201 (Statutory Employment Discrimination Claims) of the Industry Code, and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4), to align the rules with statutes that invalidate predispute arbitration agreements for whistleblower disputes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[6] amended the Sarbanes-Oxley Act of 2002 (''SOX'')[7] by adding a new paragraph (e) to 18 U.S.C. 1514A (Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes)[8] to provide that:

(1) *Waiver of Rights and Remedies*—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(2) *Predispute Arbitration Agreements*—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

Prior to the Dodd-Frank Act, it was FINRA staff's articulated position that parties were required to arbitrate SOX whistleblower claims under the Industry Code.[9]

In light of the changes set forth in the Dodd-Frank Act that invalidate predispute arbitration agreements in the case of SOX whistleblower disputes, the proposed rule change would amend FINRA Rule 13201 of the Industry Code to make clear that parties are not required to arbitrate SOX whistleblower disputes, superseding any existing guidance to the contrary. While FINRA's main impetus for the proposed rule change was the need to update its staff's stated position on SOX whistleblower claims, FINRA proposed to make the rule text broad enough to cover any statutes that prohibit predispute arbitration agreements for whistleblower disputes.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 65896 (Dec. 6, 2011) (''Notice'').

[4] *See* letter from Kevin M. Carroll, Managing Director and Associate General Counsel, SIFMA, dated January 3, 2012 (''SIFMA Letter'').

[5] *See* letter from Margo A. Hassan, Assistant Chief Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated March 5, 2012 (''Response Letter'').

[6] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (2010).

[7] Sarbanes-Oxley Act of 2002, Public Law 107–204 (2002).

[8] *See* Dodd-Frank Act Section 922(c)(2).

[9] *See Arbitrability of Sarbanes-Oxley Whistleblower Claims* by Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein, *The Neutral Corner* (Volume 1—2008).

[10] The Dodd-Frank Act also invalidated predispute arbitration agreements in other whistleblower statutes, including, for example, 7

Rule 13201 of the Industry Code currently provides that a claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Industry Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The rule would state that such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

FINRA also would amend the title of Rule 13201 to reflect the addition of the new provision relating to whistleblower disputes. FINRA structured the proposed rule change to separate the provision relating to statutory employment discrimination claims from the provision relating to whistleblower disputes.

The proposed rule change also would make a conforming amendment to FINRA Rule 2263, which requires firms to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms), to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. The proposed rule change would amend FINRA Rule 2263 to add a disclosure provision stating that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules, and that such a dispute may be arbitrated at FINRA only if the parties have agreed to arbitrate it after the dispute arose.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed amendments are consistent with the provisions of the Act noted above because they serve to align FINRA rules with those provisions in the Dodd-Frank Act that invalidate predispute arbitration agreements in the context of certain whistleblower disputes.

USCA § 26(n) relating to Commodity Exchange Whistleblower Incentives and Protections.

[11] 15 U.S.C. 78o–3(b)(6).

III. Discussion of Comment Letters

In the SIFMA Letter, the commenter raised three distinct concerns about the proposal. First, the commenter questioned FINRA's use of the word ''dispute'' in its proposed rule change. Specifically, the commenter believed that using the word ''dispute'' would allow a claimant in an arbitration to assert a whistleblower claim under a whistleblower statute in an effort to improperly remove the entire case (*i.e.,* ''dispute'') from arbitration. The commenter suggested that FINRA replace ''dispute'' with ''claim'' because it would allow a claim asserted under a whistleblower statute to be severed and removed from the arbitration case but would not allow parties ''to avoid arbitrating other claims in the case that are properly subject to securities arbitration.''

In the Response Letter, FINRA stated that it purposefully used the word ''dispute'' in the proposed rule to track the language used in the Dodd-Frank Act. However, FINRA also stated that it would administer the proposed rule in a manner that would permit an associated person of a member to bring a whistleblower claim in court while claims that are part of the same case that are properly subject to arbitration could remain in arbitration. FINRA also stated, however, that it would comply with any court order responding to an associated person's request to consolidate such claims. Therefore, FINRA declined to make the requested change.

Second, the commenter suggested that the proposed rule should apply only to claims under applicable Federal whistleblower statutes instead of both Federal and state statutes. Specifically, the commenter believed that because the Federal Arbitration Act (''FAA'') ''generally preempts state statutes that invalidate arbitration agreements,'' it also generally preempts any state statutes that remove whistleblower claims from arbitration. Accordingly, the proposal should only apply to Federal whistleblower statutes.

In its Response Letter, FINRA stated that it did not believe that it would be appropriate to compel a registered person to arbitrate a whistleblower dispute when there is a statute precluding enforcement of a predispute arbitration agreement, regardless of whether the statute is promulgated under federal or state law. FINRA further stated that it would continue to accept whistleblower claims under a state statute if the parties agreed to arbitrate the claim, or if a court ordered the claim to be arbitrated at the forum. Therefore, FINRA declined to make the requested change.

Third, the commenter recommended that FINRA include an effective date in its proposal so that the rule would only be applied prospectively.

In its Response Letter, FINRA stated that since Section 922 of the Dodd-Frank Act invalidates all predispute arbitration agreements relating to whistleblower disputes, FINRA believed it was inappropriate to establish a new effective date. Therefore, FINRA declined to make the requested change.

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, in particular FINRA's representation that it would comply with a court's ruling to consolidate all claims (including whistleblower claims) associated with a particular case. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that that the proposed rule change to align FINRA Rule 13201 with statutes that invalidate predispute arbitration agreements for whistleblower disputes would ensure that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements would not be required to be arbitrated.

While the Commission appreciates the commenter's concern about FINRA's choice of language, the proposed rule purposefully tracks the language used in the Dodd-Frank Act.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

[12] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3(b)(6).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2011–067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–6386 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66576; File No. SR–NYSE–2012–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Establish an NYBX Immediate-or-Cancel Order

March 12, 2012.

I. Introduction

On January 11, 2012, the New York Stock Exchange LLC (''NYSE'' 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 amend NYSE Rule 1600 to establish a new order type known as an ''NYBX IOC order.'' A NYBX IOC order would execute exclusively against contra-side liquidity in the Exchange's Display Book (''DBK'') and/or in the New York Block Exchange (''NYBX'' or ''Facility''). The proposed rule change was published for comment in the **Federal Register** on January 30, 2012.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NYBX is a facility of the Exchange and provides for electronic matching and execution of non-displayed orders with the aggregate of all displayed and non-displayed orders residing within NYBX and the DBK.[4] Only securities listed on NYSE are eligible to trade on NYBX.[5]

NYSE proposes to establish a new order type, the NYBX IOC order, which is a limit order to buy or sell that is designated as immediate or cancel and would be cancelled if the order is not immediately able to execute, in whole or in part, exclusively against contra-side liquidity in the DBK and/or NYBX at a price that is at or within the national best bid or offer (''NBBO'').[6] Any unexecuted portion of an NYBX IOC order would be immediately cancelled. No portion of an NYBX IOC order would be routed elsewhere, placed on the DBK, or remain in the NYBX Facility. Instead the order would be cancelled back to the User.[7] Unlike other NYBX order types, the NYBX IOC order will not allow a minimum triggering volume quantity (''MTV'') designation.[8]

A NYBX IOC order would be entered in the same manner as other NYBX orders, as provided under NYSE Rule 1600(c)(1), and, except for the optional time in force order parameters of NYSE Rule 1600(c)(3)(B)(i), would be required to contain the order parameters listed in NYSE Rule 1600(c)(3)(A). A NYBX IOC order would be subject to order processing set forth in NYSE Rule 1600(d)(1).[9] In a situation in which the size of the NYBX IOC order is less than the total available contra side liquidity that is potentially executable within the limit price in the NYBX and the DBK, the existing ''tie breaker'' rules set forth in NYSE Rule 1600(d)(1)(C)(i) for routing decision purposes will provide that an execution in the DBK has priority over an execution at the same price in the NYBX.[10]

Since NYBX IOC order would not be routed elsewhere, if another automated trading center is displaying a better price than either the NYBX or the DBK, and an execution in the NYBX Facility or DBK would result in a trade through in violation of Regulation NMS, the NYBX IOC order would be cancelled. Likewise, if another automated trading center is displaying prices that are the same or inferior to prices in the NYBX or the DBK, and routing is not required by Regulation NMS, the NYBX IOC order would execute within the DBK and/or the NYBX without routing to such automated trading center.

NYSE also proposes certain technical changes to NYSE Rule 1600. First, the Exchange proposes to amend NYSE Rule 1600(g) to add references to trading pauses in individual securities, as provided for under NYSE Rule 80C. Second, because the Exchange has eliminated the class of market participants formerly known as Registered Competitive Market Makers, the Exchange proposes to delete NYSE Rule 1600(h)(3), which is no longer applicable.[11] Third, the Exchange proposes to clarify NYSE Rule 1600(b)(2)(D) that NYBX orders are defined within NYSE Rule 1600(c)(2), not only within NYSE Rule 1600(c)(2)(A) as is currently reflected.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, remove

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66218 (January 24, 2012), 77 FR 4604 (''Notice'').

[4] *See* NYSE Rule 1600(a).

[5] *See* NYSE Rule 1600(b)(2)(C).

[6] *See* proposed NYSE Rule 1600(c)(2)(D).

[7] *See id.*

[8] *See id. See also* NYSE Rule 1600(b)(2)(E).

[9] Accordingly, as set forth in the Notice, the NYBX Facility would apply the order execution process that is set forth in Rule 1600(d)(1)(C)(i) to NYBX IOC orders, including that an NYBX IOC order may execute at multiple price points that may be available in the DBK and NYBX Facility that are within the limit price of the NYBX IOC order. Because by its terms, an NYBX IOC order does not route to other markets, have an MTV, or leave a residual in the NYBX, certain aspects of the order execution processing rules are inapplicable, specifically NYSE Rules 1600(d)(1)(C)(ii)–(vi) and 1600(d)(1)(D).

[10] In the Notice, the Exchange provided the following example: If a buy NYBX IOC order for 1,000 shares arrives at the Facility with a limit price of $10.05, the Facility would review the available contra-side liquidity in the DBK (both displayed and undisplayed) and the NYBX. Assuming the contra-side liquidity in the DBK is 300 shares at $10.04 (undisplayed), 200 shares at $10.05 (NBO displayed), and 200 shares at $10.05 (undisplayed), and in the NYBX is 200 shares at $10.05, the NYBX IOC buy order would simultaneously be routed to DBK as 300 shares at $10.04 and 400 shares at $10.05, and 200 shares would execute in the Facility at $10.05, for a total execution of 900 shares. The remaining 100 shares of the buy NYBX IOC order would be cancelled. Assuming the buy NYBX IOC order is instead for 700 shares, pursuant to the tie-breaker rule in NYSE Rule 1600(d)(1)(C)(i), the full volume of the order would route to the DBK, executing 300 shares at $10.04 and 400 shares at $10.05, and the Facility's 200 share contra-side order at $10.05 would not be filled.

[11] *See* Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR–NYSE–2009–08) (Rescinding Rules 110 and 107A, which established the roles of Competitive Traders and Registered Competitive Market Makers).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system. The proposal appears reasonably designed to provide NYBX users flexibility and greater control over how their orders interact with available liquidity. The Commission notes that the proposal is consistent with the order protection rule of Regulation NMS, because an NYBX IOC order would not be permitted to trade through a protected quotation of another automated trading center.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2012–01) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6387 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66577; File No. SR–FINRA–2012–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

March 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 1, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the FINRA Rule 6700 Series and Trade Reporting and Compliance Engine (''TRACE'') dissemination protocols regarding the reporting and dissemination of transactions in TRACE–Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded to be announced (''TBA'') (''TBA transactions''); to amend FINRA Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data; and to amend the FINRA Rule 6700 Series and FINRA Rule 7730 to delete references to a pilot program that expired on November 18, 2011, and to incorporate other minor administrative, technical or clarifying changes.[3]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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*

FINRA proposes amendments to the TRACE rules and dissemination protocols to provide greater transparency in TBA transactions. First, FINRA proposes to amend Rule 6730, to establish distinct requirements for reporting TBA transactions for which good delivery may be made (''TBA transactions GD'') and for reporting TBA transactions in products that are not traded for good delivery (''TBA transactions NGD''), and, in two stages, to reduce the time frames to report each type of TBA transaction and to make a related amendment to Rule 6710(u), the definition of ''TBA,'' to incorporate the concepts ''for good delivery'' and ''not for good delivery.'' Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of TBA transactions and to establish, as part of TRACE dissemination protocols, a $25 million dissemination cap for TBA transactions GD and a $10 million dissemination cap for TBA transactions NGD. Third, FINRA proposes to amend Rule 7730 to establish fees for current market data for TBA transactions and aged TBA transaction data.[4] Finally, FINRA proposes to amend Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes as described in greater detail below.

TBA Transactions

As provided in Rule 6710(u), TBA means

> ''to be announced'' and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security * * * where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).[5]

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (''Trade Date''). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of settlement.

TBA transactions are ''for good delivery'' (''GD'') or ''not for good delivery'' (''NGD''). The GD and NGD distinctions and classifications are based on market standards and conventions that identify which mortgage pools (or combinations of mortgage pools) satisfy ''good delivery'' requirements, which were developed to facilitate the securitization of common

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The terms TRACE–Eligible Security, Agency Pass-Through Mortgage-Backed Security and TBA are defined in, respectively, Rule 6710(a), Rule 6710(v) and Rule 6710(u).

[4] The term Historic TRACE Data is defined in Rule 7730(f)(4) and refers to aged TRACE transaction data, which will include TBA transaction data.

[5] As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means:

> A mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to ''pass through'' the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

The terms Agency and Government-Sponsored Enterprise (''GSE'') are defined in, respectively, Rule 6710(k) and Rule 6710(n).

mortgage products, and to enhance and maintain the liquidity in the TBA market for such mortgage-backed securities. The conventions and standards for TBA transactions GD are set forth in the ''Uniform Practices for the Clearance and Settlement of Mortgage-Related Securities and Other Related Securities'', and particularly in Chapter 8 (''Standard Requirements for Delivery on Settlements of Fannie Mae, Freddie Mac and Ginnie Mae Securities'') (''Good Delivery Guidelines'')).[6] For a TBA transaction to be GD, it must conform to certain GSE or Ginnie Mae program requirements regarding the mortgage loans and also meet certain other requirements, such as those regarding variance in the actual principal amount delivered compared to the principal amount of the trade, the number of pools that may be delivered at settlement, minimum original face amount of a pool, and final maturity guidelines regarding the maturity of the mortgage loans underlying the security, among others.[7] Products traded TBA but that are not eligible according to the Good Delivery Guidelines are considered ''not for good delivery.''

The vast majority of loans eligible for inclusion in TBA-delivered pools traded GD are known as standard loans. They are 15- and 30-year fixed-rate single-family loans with certain general characteristics set forth in the Good Delivery Guidelines.[8] Other loans that are eligible for good delivery upon meeting specific criteria set forth in the Good Delivery Guidelines include Fannie Mae 11th District Cost of Funds Index (''COFI'') adjusted rate mortgages (''ARMs'') and Ginnie Mae ARMs. Also, TBA identification numbers assigned by the CUSIP Service Bureau distinguish the issuers and the various pool types, among other things, providing another means of identifying a transaction as a TBA transaction GD or a TBA transaction NGD.[9]

Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible—and therefore liquid—fixed-income instruments.[10]

Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (''CMOs'') and real estate mortgage investment conduits (''REMICs'')) that are executed on a business day through 5:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).[11] In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.[12] With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.[13]

In connection with proposing that TBA transactions be disseminated, FINRA proposes to reduce the reporting time frames for TBA transactions GD to provide market participants meaningful and timely price information about the more liquid and active TBA market segment. The proposed rule change also will reduce the reporting period for the less liquid and active TBA transactions NGD, but to a lesser extent, as discussed in greater detail below. In addition, FINRA proposes to reduce the reporting time frames proposed for TBA transactions GD and TBA transactions NGD in two stages to permit industry participants to adjust policies and procedures and to make required technological changes.

TBA Transactions For Good Delivery. Proposed Rule 6730(a)(3)(D) sets forth the requirements to report TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions GD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (''TBA GD Pilot Program''), as set forth in proposed Rule 6730(a)(3)(D)(i).[14] Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.[15]

[6] ''Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities'' (''Uniform Practices Guidelines'') is published by the Securities Industry and Financial Markets Association (''SIFMA'').

[7] Pooled mortgage loans that are traded GD include, but are not limited to, those conforming to the Fannie Mae and Freddie Mac ''Single Family'' programs (*i.e.,* single family mortgages identified by coupon ranges and maturities), and certain other products conforming to Fannie Mae, Freddie Mac or GNMA programs (*e.g.,* the Gold Single Family, Balloon, Gold Balloon and Jumbo programs). Most newly issued Agency Pass-Through Mortgage-Backed Securities are eligible to be sold as TBA transactions GD. Examples of mortgage products not eligible for good delivery to settle a TBA transaction include, but are not limited to, interest only mortgages, project/construction loans, and certain non-conforming mortgages on single family residences.

[8] *See* Good Delivery Guidelines, Section 11 (''General Characteristics of Standard Loans for 15 and 30yr Fixed-Rate Single-Family TBA-eligible Pools,'' listing 14 general characteristics of standard 15-year or 30-year loans (*e.g.,* fixed rate, first lien, and level payment).)

[9] CUSIP means Committee on Uniform Security Identification Procedures. A CUSIP consists of nine characters. Positions 1 and 2 denote the product type (for example, 01 refers to single family loans, 06 refers to balloon loans, and 16 refers to ARMs), and Position 3 identifies the Agency or GSE (F denotes Fannie Mae, R denotes Freddie Mac, N denotes GNMA I and H denotes GNMA II). Positions 4 through 8 are used to identify coupon, maturity in years and settlement month, and Position 9 is a check digit (*i.e.,* a mathematical formula that checks the accuracy of the previous 8 digits).

[10] James Vichery and Joshua Wright, *TBA Trading and Liquidity in the Agency MBS Market,* Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at *http://www.newyorkfed.org/research/staff_reports/sr468.pdf.*

[11] In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5:00 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day. However, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply. The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t).

[12] The term Time of Execution is defined in Rule 6710(d).

[13] Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is (1) effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1); (2) a transfer of proprietary securities positions where the transfer (A) is effected in connection with a merger or direct or indirect acquisition and (B) is not in furtherance of a trading or investment strategy under Rule 6750(b)(2); or (3) a List or Fixed Offering Price Transaction or a Takedown Transaction under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

[14] To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the proposed TBA GD Pilot Program and a similar pilot program for TBA transactions NGD will expire on a Friday (*i.e.,* on the 180th day, if a Friday, or, if the 180th day is not a Friday, on the Friday next occurring that the TRACE system is open).

[15] Minor exceptions to the general requirement to report TBA transactions GD no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next

Second, after approximately 180 days, the TBA GD Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to no later than 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, FINRA proposes to include certain limited exceptions to the reporting time frames for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.[16]

TBA Transactions Not For Good Delivery. The proposed reporting requirements that would apply to TBA transactions NGD are set forth in proposed Rule 6730(a)(3)(E). FINRA has been informed that TBA transactions NGD are in certain cases less automated and more operationally challenging, wherefore FINRA proposes a longer reporting time frame than for TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions NGD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 120 minutes from the Time of Execution (''TBA NGD Pilot Program''), as set forth in proposed Rule 6730(a)(3)(E)(i). Minor exceptions to the general requirements would be set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d.[17] Second, after approximately 180 days, the TBA NGD Pilot Program would expire and the reporting period would be reduced from no later than 120 minutes from the Time of Execution to no later than 60 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(E)(ii). The provision also would include certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.[18] After the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of TBA transactions NGD and may recommend further reductions in the reporting period.

TBA Definition. In connection with establishing separate reporting requirements, and as discussed *infra,* separate dissemination caps for TBA transactions GD and TBA transactions NGD, FINRA proposes to amend the definition of ''TBA'' in Rule 6710(u) to incorporate the concepts that TBA transactions may be traded GD or NGD. FINRA also incorporates minor, technical changes to the defined term. As amended, Rule 6710(u) would provide as follows:

''To Be Announced'' (''TBA'') means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), and includes TBA transactions ''for good delivery'' (''GD'') and TBA transactions ''not for good delivery'' (''NGD'').

Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission's order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA's intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.[19]

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions

business day (T + 1), and if reported on T + 1, designated ''as/of'' and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., transactions executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 45 minutes after the TRACE system opens, designated ''as/of'' and include the date of execution.

[16] After the TBA GD Pilot Program expires, proposed Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. *See, e.g.,* Rule 6730(a)(1)(C) and Rule 6730(a)(1)(D). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE.

[17] Minor exceptions to the general requirement to report TBA transactions NGD no later than 120 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d. Under proposed Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated ''as/of'' and include the date of execution. Under proposed Rule 6730(a)(3)(E)(i)d., transactions executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated ''as/of'' and include the date of execution.

[18] After the TBA NGD Pilot Program expires, there are minor exceptions to the 60-minute reporting time frame set forth in proposed Rule 6730(a)(3)(E)(ii) for TBA transactions NGD executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. *See* proposed Rule 6730(a)(3)(E)(ii)a., c. and d. The exceptions are structured similarly to the exceptions to 15-minute reporting that FINRA proposes to apply to TBA transactions GD.

Guidance previously published regarding reporting transactions in Asset-Backed Securities as soon as practicable, rather than queuing such reports until the end of the reporting time period, applies to members' reporting obligations under the time frames proposed herein. *See Trade Reporting Notice,* dated May 10, 2011.

[19] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR–FINRA–2009–065).

trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions GD and TBA transactions NGD to increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, ''CUSIP'' means the specific security identified by the unique CUSIP number). The TBA market has an average daily volume of $248 billion traded in close to 8,000 average daily trades,[20] and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.[21] The vast majority of TBA transactions occur in TBA GD, accounting for 99.36 percent of all TBA transactions (correspondingly, TBA transactions NGD account for 0.64 percent of all TBA transactions). The correlation among the prices of various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.[22]

FINRA Rule 6750

Rule 6750(b)(4) currently provides that transactions in Asset-Backed Securities are not subject to dissemination. FINRA proposes to amend the rule to disseminate information on TBA transactions GD and TBA transactions NGD, which would occur immediately upon receipt of a transaction report.[23] Thus, information would be disseminated on TBA transactions GD within 45 minutes, or, after the expiration of the TBA GD Pilot Program, within 15 minutes of the Time of Execution, and, on TBA transactions NGD, within 120 minutes, or, after the expiration of the TBA NGD Pilot Program, within 60 minutes of the Time of Execution.[24]

Dissemination Caps

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is $5 million (''$5MM''), and the size of transactions in excess of $5MM is displayed as ''$5MM+.'' For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is $1 million (''$1MM''), and the size of a transaction in excess of $1MM is displayed as ''$1MM+.''[25]

FINRA has analyzed the distribution of TBA transactions GD and TBA transactions NGD to determine an appropriate cap for these transactions. FINRA proposes to set a dissemination cap for a TBA transaction GD initially at $25 million. Accordingly, the size of a TBA transaction GD greater than $25 million would be displayed in disseminated data as ''$ 25MM+.'' At this level, approximately 20 percent of trades in TBA transactions NG [sic] representing approximately 84 percent of total volume traded would be disseminated subject to the cap.[26] For a TBA transaction NGD, FINRA proposes to set a $10 million dissemination cap initially, with size displayed in disseminated data as ''$10MM+,'' if the size of the TBA transaction NGD exceeded $10 million. At this level, approximately 42 percent of TBA transactions NGD representing approximately 85 percent of total volume traded would be disseminated subject to the cap.

The $25 million dissemination cap for TBA transactions GD and the $10 million dissemination cap for multiple types of less liquid and active TBA transactions are more conservative than the $50 million dissemination cap FINRA initially considered.[27] FINRA believes that the more conservative caps will allow the marketplace time to adjust to the new levels of transparency. In setting these dissemination caps, FINRA took into account the liquidity and trading activity differences within each segments [sic] of TBA GD and TBA NGD. FINRA notes that most TBA transactions are for good delivery, and even with setting a dissemination cap at $25 million for such transactions, and a $10 million cap for a smaller and generally somewhat less liquid segment of the TBA market, price transparency in the TBA market will improve significantly.

As dissemination of TBA transactions GD and TBA transactions NGD is implemented, FINRA will continue to review the volume of and liquidity in TBA transactions GD and TBA transactions NGD, and may recommend that the dissemination caps be set at higher levels to provide additional transparency to market participants.

Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the Historic TRACE Data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (''ABS Data Set'') as the third Real-Time TRACE market data set. The ABS Data Set will be limited to information disseminated immediately upon receipt of a transaction report for either a TBA transaction GD or a TBA transaction NGD. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (*i.e.,* for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic

[20] The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

[21] The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

[22] From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

[23] Rule 6750(b) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is

(4) An Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced (''TBA'') (''TBA transaction'').

[24] FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

[25] The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

[26] In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately six percent of trades representing approximately 74 percent of total par value traded. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through January 4, 2012. The term Agency Debt Security is defined in Rule 6710(l).

[27] *See* Item II.C. for a discussion of SR–FINRA–2011–069.

data product for TBA transactions (''Historic ABS Data Set'') similar to the data sets for corporate bonds (''Historic Corporate Bond Data Set'') and Agency Debt Securities (''Historic Agency Data Set'') referenced in the rule. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.[28]

Other Rule Changes

FINRA proposes to delete references to a pilot program that expired on November 18, 2011 in Rule 6730, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730, as discussed below.

FINRA Rule 6730. FINRA proposes to add the sentence ''Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).'' as the introductory sentence to Rule 6730(a)(3), and ''General Reporting Requirements'' as the caption for Rule 6730(a)(3)(A). FINRA also proposes to add the phrase, ''Except as provided in paragraphs (a)(3)(C), (a)(3)(D) and (a)(3)(E),'' as introductory text to Rule 6730(a)(3)(A), to indicate that Asset-Backed Securities must be reported as provided in subparagraph (A) of Rule 6730(a)(3), with the exceptions to the general requirements set forth in subparagraphs (C), (D) and (E) of Rule 6730(a)(3).

FINRA proposes to consolidate and otherwise amend Rule 6730(a)(3)(A) and (B) as follows: (a) To delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (''ABS Pilot Program''); (b) to delete a clause referencing the ABS Pilot Program and Rule 6730(a)(3)(C), and to delete ''(ii)'' and renumber the retained text as Rule 6730(a)(3)(A)(i); and (c) to delete the text in Rule 6730(a)(3)(B), except subparagraphs (i) and (ii) of Rule 6730(a)(3)(B), and renumber Rule 6730(a)(3)(B)(i) and (ii) as Rule 6730(a)(3)(A)(ii) and (iii).

FINRA proposes to amend Rule 6730(a)(3)(C) as follows: (a) To add a caption, ''Collateralized Mortgage Obligation and Real Estate Mortgage Investment Conduit Transactions;'' (b) to delete the provisions relating to the ABS Pilot Program (*i.e.,* Rule 6730(a)(3)(C)(i), including subparagraphs a. and b.); (c) to add an introductory clause providing: ''Transactions in Asset-Backed Securities that are collateralized mortgage obligations (''CMOs'') or real estate mortgage investment conduits (''REMICS'') that are executed before the issuance of the security must be reported the earlier of:''; (d) to retain in Rule 6730(a)(3)(C)(ii) subparagraphs a. and b. and the final sentence of Rule 6730(a)(3)(C)(ii), and renumber subparagraphs a. and b. as subparagraphs (i) and (ii) of Rule 6730(a)(3)(C); and (e) to delete, in Rule 6730(a)(3)(C)(ii), ''(ii)'' and the phrase ''After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:.''

FINRA Rule 7730. In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS Data Set.[29] FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[31] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities, and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On November 22, 2011, FINRA filed with the SEC SR–FINRA–2011–069 (''November 2011 Filing''), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of TBA transactions. Specifically, FINRA proposed to disseminate TBA transactions immediately upon FINRA's receipt of a TBA transaction report, and to establish a $50 million dissemination cap such that when transactions over $50 million were disseminated, the size displayed for such transactions would be capped at $50 million and displayed as ''$50MM+.'' In connection with proposing to disseminate TBA transactions, FINRA proposed to reduce the period to report TBA transactions to 15 minutes, in two stages. First, for a

[28] Reporting of Asset-Backed Securities transactions began on May 16, 2011. Given the 18-month delayed release of Historic TRACE Data, Historic ABS Data would become available for the first time in early 2013.

[29] FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement—''The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.''—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete ''BTDS'' in two sections of the fee chart in Rule 7730 summarizing market data fees.

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] 15 U.S.C. 78*o*–3(b)(5).

pilot period of approximately 180 days, FINRA proposed to require members to report TBA transactions no later than 45 minutes from the Time of Execution, and after the pilot period expired, to report no later than 15 minutes from the Time of Execution. FINRA proposed to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date would be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.[32] A copy of the Form 19b–4 and original Exhibit 5 of the November 2011 Filing is attached as Exhibit 2a.

On December 8, 2011, the November 2011 Filing was published for comment in the **Federal Register**.[33] A copy of the **Federal Register** release is attached as Exhibit 2b. The SEC received one comment letter in response,[34] a copy of which is attached as Exhibit 2c. The commenter raised concerns regarding: (1) The proposed $50 million dissemination cap and its potential impact on various segments of the TBA market; (2) the proposed reporting time frames; and (3) the implementation time frame for the proposed rule change.

FINRA withdrew the November 2011 Filing on March 1, 2012, prior to filing a response to comments. Accordingly, the comments to the November 2011 Filing and FINRA's responses are discussed below.

Dissemination Cap

The commenter states that the TBA market is a collection of distinct trading markets for distinct trading products, with material differences in liquidity. For example, the commenter stated that in products such as ARMs, mortgages with 40-year maturities, and project loans, the volume issued is very low in comparison to standard 30-year fixed rate mortgages that trade for good delivery, and consequently, liquidity in TBA transactions backed by such products is lower. In addition, the commenter states that a volume cap of $50 million is generally too high for even the most liquid segments of the TBA market, and recommends that FINRA adopt a $25 million dissemination cap (or a lesser cap) for the most liquid TBA products (pools to be comprised of standard, 30-year, fixed rate mortgages for good delivery), a $10 million dissemination cap for pools of 15-year mortgages, and a $1 million to $5 million cap for other products traded TBA (*e.g.,* pools of high coupon fixed rate mortgages, ARMs, project loans, jumbo loans and reverse mortgages). The commenter notes that, in making its recommendations, it does not have access to the transaction data cited by FINRA regarding trading volume.

After careful consideration of the commenter's concerns, FINRA proposes two lower dissemination caps herein. Based on FINRA's review of the TBA trading data, discussions with member firms, and the commenter's concern that liquidity may be adversely affected if the originally proposed dissemination cap is adopted, FINRA has proposed to lower the dissemination cap to $25 million for all TBA transactions GD and to $10 million for all TBA transactions NGD. Although the commenter recommends multiple dissemination caps based upon factors such as mortgage maturity and coupon, FINRA believes that the commenter's approach would result in investor confusion and operational complexities that are unnecessary to address the issues raised by the commenter. FINRA's proposal to adopt a two-pronged approach to the dissemination caps for products traded TBA is much less complex and, at the same time, allows FINRA to address most of the commenter's concerns regarding liquidity, providing a lower dissemination cap for those products that generally are the least liquid, without establishing multiple caps and standards. The reduction of the dissemination cap to $25 million for TBA transactions GD, and for multiple types of less liquid TBA transactions NGD to $10 million is a more conservative metric than initially proposed, which FINRA believes is appropriate at the onset. In setting these dissemination caps, FINRA took into account the liquidity and activity differences in coupons and maturities within each segments [sic] of TBA transactions GD and TBA transactions NGD.[35] FINRA notes that even with the reduction of the dissemination cap for TBA transactions GD from $50 million to $25 million for such transactions, and a $10 million cap for a small and generally somewhat less liquid segment, price transparency in the TBA market will improve significantly.

Reporting Time Frames

The commenter states that the proposed time frames for reporting certain less liquid products, such as ARMs, project loans and reverse mortgages, within the proposed accelerated time frames will not be possible absent a cumbersome and potentially risky manual trade reporting process. The commenter notes that manual processing raises compliance, audit and workflow related concerns, and may result in additional TRACE reporting errors. For these reasons, the commenter recommends that the reporting deadline for these products remain at the close of business on the date of execution.

In response to the commenter's concerns regarding reporting transactions in instruments such as certain ARMS, project loans and reverse mortgages, FINRA proposes to modify the reporting requirements herein. Specifically, for TBA transactions NGD, FINRA proposes to extend the previously proposed time frames to report (*i.e.,* 45 minutes from the Time of Execution, then after expiration of a pilot program, 15 minutes from the Time of Execution). In this proposed rule change, FINRA proposes to require members to report such transactions initially no later than two hours from the Time of Execution, then, after expiration of the proposed TBA NGD Pilot Program, no later than one hour from the Time of Execution. FINRA retains the reporting time frame initially proposed for TBA transactions GD. FINRA believes that proposing the longer reporting time frames for TBA transactions NGD will facilitate timely trade reporting, and accommodate current differences in members' systems, trade processing and other work flows. However, given that more than half of TBA transactions NGD currently are reported within one hour from the time of execution, FINRA believes that in the long term members will be able to report all TBA transactions within 15 minutes from the Time of Execution.

[32] FINRA also proposed to amend Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data, Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes.

[33] *See* Securities Exchange Act Release No. 65877 (December 2, 2011), 76 FR 76777 (December 8, 2011) (Notice of Filing of File No. SR–FINRA–2011–069). The comment period closed on December 29, 2011.

[34] *See* Letter from Chris Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011.

[35] For example, at the proposed cap of $25 million, approximately 21 percent of trades and approximately 85 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 30-year mortgage loans, approximately 15 percent of trades and approximately 78 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 15-year mortgage loans, and approximately 20 percent of trades and approximately 67 percent of volume would be capped for transactions in TBA transactions GD backed by other types of eligible loans having other maturities.

Implementation

The commenter requested that the effective date of the November 2011 Filing be no earlier than August 1, 2012, to allow members to make necessary changes to internal systems, policies and procedures. FINRA intends to take into account the operational challenges associated with the proposal in establishing the effective date of this proposed rule change and will work with members to minimize the operational burdens of implementation. FINRA also has amended the stated implementation period to provide that FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–020 and should be submitted on or before April 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6444 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66564; File No. SR–OPRA–2012–02]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend OPRA's Fee Schedule

March 9, 2012.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on March 8, 2012, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed amendment would revise OPRA's Nonprofessional Subscriber Fee and Usage-based Vendor Fee and adopt a new Enterprise Rate Nonprofessional Subscriber Fee. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

The purpose of the amendment is to make a set of changes in OPRA's Fee Schedule as follows: OPRA's Nonprofessional Subscriber Fee would be increased from $1.00 per Nonprofessional Subscriber [4] per month to $1.25 per Nonprofessional Subscriber per month. The cap on OPRA's Usage-based Vendor Fees for receipt of OPRA data by Nonprofessional Subscribers would be increased commensurately to $1.25 per Nonprofessional Subscriber per month.[5] OPRA would also establish

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SE.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The nine participants to the OPRA Plan are BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

[4] OPRA defines a ''Subscriber,'' in general, as an entity or person that receives OPRA data but does not redistribute it to third parties, and defines a ''Nonprofessional Subscriber'' as a Subscriber who is a ''Nonprofessional.'' OPRA's definition of the term ''Nonprofessional'' is stated in its forms of ''Electronic Subscriber Agreement'' and ''Hardcopy Subscriber Agreement.'' These forms are available on OPRA's Web site, *www.opradata.com.*

[5] OPRA's Fee Schedule provides that a Vendor may determine the fee that it pays with respect to its distribution of current OPRA data to a Nonprofessional Subscriber in one of two ways: either the Vendor may pay OPRA's flat monthly Nonprofessional Subscriber Fee (currently $1.00/month, proposed in this filing to be increased to $1.25/month), or the Vendor may count the Nonprofessional Subscriber's queries for OPRA data and pay Usage-based Vendor Fees based on the actual usage of OPRA data by the Nonprofessional Subscriber, subject to a cap that OPRA has always set at the amount of the Nonprofessional Subscriber Fee. Many Vendors prefer to pay the flat Nonprofessional Subscriber Fee, even though their aggregate fees on the basis of Usage-based Vendor

Continued

a new monthly ''Enterprise Rate Nonprofessional Subscriber Fee'' that would cap each Vendor's combined obligation for Nonprofessional Subscriber Fees and Usage-based Vendor Fees for Nonprofessional Subscribers at $375,000 per month.

OPRA's Nonprofessional Subscriber Fee and Usage-based Vendor Fees were established at their current levels effective on January 1, 2000.[6] OPRA has not increased these fees since then in large part because of the simplicity of having the Nonprofessional Subscriber Fee and the cap on Usage-based Vendor Fees for receipt of OPRA data by a Nonprofessional Subscriber each set at $1.00. However, the effect over a period of twelve years has been to increase the ratio of OPRA's Professional Device Fee as compared to the Nonprofessional Subscriber Fee. (For the year 2000, OPRA's weighted average Professional Device Fee was approximately $12.55 per device; it is now $25.00/device.[7]) OPRA believes that increasing its Nonprofessional Subscriber Fee will restore an appropriate balance between its revenues derived from Professional Subscriber Device-based Fees on the one hand and Nonprofessional Subscriber Fees and Usage-based Vendor Fees for Nonprofessional Subscribers on the other hand.

In response to input from the Vendor community, OPRA is proposing to introduce an ''Enterprise Rate Nonprofessional Subscriber Fee.'' The Enterprise Rate Nonprofessional Subscriber Fee would limit the maximum aggregate amount of Nonprofessional Subscriber Fees and Usage-based Vendor Fees with respect to Nonprofessional Subscribers that any Vendor would be required to pay with respect to its Nonprofessional Subscribers. The proposed Enterprise Rate Nonprofessional Subscriber Fee is $375,000 per month.

OPRA anticipates that these proposed changes in its fees will result in an increase in its revenues of approximately $1,700,000 on an annual basis at current usage rates.[8] OPRA believes that this increase will restore the relationship of its fees for Nonprofessional Subscribers to its fees for Professional Subscribers and represent an appropriate contribution to covering the overall costs of OPRA and its member exchanges to which these fees may properly be applied.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, *http://opradata.com,* and on the Commission's Web site at *www.sec.gov.*

II. Implementation of the OPRA Plan Amendment

OPRA designated this amendment as qualified to be put into effect upon filing with the Commission in accordance with clause (i) of paragraph (b)(3) of Rule 608 under the Act.[9] OPRA intends to implement the amendment on May 1, 2012.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act [10] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–OPRA–2012–02 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–OPRA–2012–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2012–02 and should be submitted on or before April 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6388 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

Fees might be lower and could not be greater, due to the administrative simplicity of doing so and the fact that the cost on a per Subscriber basis of doing so is very small.

[6] *See* File No. SR–OPRA–99–02; Release No. 34–42152 (November 17, 1999). In File No. SR–OPRA–99–02, OPRA reduced the Nonprofessional Subscriber Fee from $2.50 per Nonprofessional Subscriber to the current $1.00 per Nonprofessional Subscriber.

[7] In the year 2000, OPRA had a sliding scale for its Professional Subscriber Fees, with different rates based on whether a Professional Subscriber was a Member of one or more of the Exchanges that were parties to the OPRA Plan and on the Professional Subscriber's number of devices; OPRA's Professional Subscriber Fees ranged from $10.50/device for an Exchange Member with 750 or more devices to $27.00/device for a non-Member with nine or fewer devices. Over the course of several years, OPRA made incremental changes in its Professional Subscriber Fees to eliminate all distinctions in these fees based on a Professional Subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan or on the Subscriber's total number of OPRA-enabled devices. See File No. SR–OPRA–2004–01; Release No. 34–49382 (February 25, 2004).

[8] This projection is approximate for several reasons, among them that the fee increase may cause some Vendors to review their lists of Nonprofessional Subscribers for inactive accounts and may cause some Vendors to begin paying Usage-based Vendor fees rather than Nonprofessional Subscriber Fees.

[9] 17 CFR 242.608(b)(3)(i).

[10] 17 CFR 242.608(b)(2).

[11] 17 CFR 200.30–3(a)(29).

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that LongueVue Capital Partners II, L.P. (''Applicant''), 111 Veterans Blvd., Suite

1020, Metairie, LA 70005, an SBIC Applicant under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730). LongueVue Capital Partners II, LP proposes to provide debt financing to Blue Dot Energy Services, LLC (''Blue Dot'' or the ''company''). Blue Dot is located at Route 76 East, Bridgeport, WV 26330.

A conflict of interest exemption is required because the Blue Dot investment is considered financing of an Associate under 13 CFR 107.730(a). Blue Dot is an Associate of the Applicant because Associate of Applicant, LongueVue Capital I (''LVCI''), has a greater than 10 percent fully diluted investment in Blue Dot prior to Applicant's initial investment.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: March 12, 2012.

Sean Greene,

Associate Administrator for Investment.

[FR Doc. 2012–6464 Filed 3–15–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974: Revision of Privacy Act System of Records

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Revision of Privacy Act Systems of Records.

SUMMARY: SBA is revising the Privacy Act Systems of Records for the Loan System, SBA 21 (''SOR 21'') and the Suspension and Debarment Files, SBA 36 (''SOR 36''), to add new and revised routine uses, to expand the categories of covered individuals and categories of records, and to update the systems' managers and the systems' locations. SBA is also updating Appendix A to the Agency's Systems of Records to reflect recent office relocations. This notice is in accordance with the Privacy Act requirement that agencies publish their amended Systems of Records in the **Federal Register** when there is a revision, change or addition to the systems.

DATES: Written comments on the revisions to the SBA's SOR 21 and SOR 36 Systems of Records are due April 16, 2012. The changes to these Systems of Records are effective without further notice on April 30, 2012 unless comments are received that result in further revision. Based on SBA's review of comments received, if any, SBA will publish a notice if it determines to make changes to the system notices.

ADDRESSES: Written comments on the revisions to the SBA's SOR 21 and SOR 36 Systems of Records should be directed to Ingrid Ripley, Program Analyst U. S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. When submitting comments please identify whether comments are related to SOR 21 or SOR 36.

FOR FURTHER INFORMATION CONTACT: Ingrid Ripley, Program Analyst, (202) 205–7538.

SUPPLEMENTARY INFORMATION: SBA is amending its Privacy Act System of Records Notice, which was previously published at 74 FR 14890 (April 1, 2009), to amend System 21 (Loan System), System 36 (Suspension and Debarment Files), and Appendix A.

System 21—Loan System.

SBA is revising the routine uses provisions of its Privacy Act Systems of Records, Loan System, SBA 21 (''SOR 21'') to add three new uses, designated as paragraphs l, m, and n, to include Loan Agent review processes and additional regulatory processes. The processes include, but are not limited to, the Agency's new processes for: (i) Compiling and reviewing loan agent data, (ii) disclosing to GSA loan agent enforcement actions and exclusions under 13 CFR part 103 for purposes of publication in GSA's Excluded Parties List System, and (iii) disclosing to others (*e.g.,* regulators) SBA supervisory information for regulatory purposes. In addition, SBA is amending SOR 21 to update the SOR 21 System Location and Managers, and Categories of Individuals and Records, to provide a definition for loan agents, and amending routine use lettered ''d'' regarding disclosure to law enforcement, professional and procurement organizations.

SBA System 36—Suspension and Debarment Files.

SBA is amending the System of Records for Suspension and Debarment Files, SBA 36, (''SOR 36''), to add a new routine use and to update the System Location, System Manager, Categories of Individuals and Categories of Records provisions.

SBA is also amending the routine uses provisions in SOR 36 in order to meet the requirements of Executive Order 12549 and other applicable law. This amendment will allow SBA to transfer certain parties' identifying information to GSA for publication on the Excluded Parties List System (the ''EPLS''). The parties whose identifying information will be subject to disclosure to the EPLS are those that have been suspended or debarred from participating in SBA programs, that have agreed to exclusion from participation, or that have been declared ineligible, under 2 CFR Parts 180 and 2700 or other applicable law, or that have been the subject of enforcement actions under Part 103 (other than Loan Agents in SBA Business Loan Programs, which are covered by SOR 21).

SOR 36 currently consists of materials compiled from investigations and/or audits which identify violations which may be cause for suspension or debarment pursuant to the Federal Acquisition Regulations or the government-wide non-procurement suspension and debarment regulations. These materials include indictments, information, plea agreements, judgments, loan agreements, contract documents, etc., that pertain to a party's participation in government contracts, SBA loan programs, and other SBA assistance. Through the EPLS, government agencies and the public can search and ascertain the SBA enforcement or exclusion status of those parties. These searches may be performed, for example, for purposes of determining government contract eligibility. Finally, SBA is amending SOR 36 to expand the System Location to include all of SBA Headquarters, and the System Manager section to include Headquarters Suspension and Debarment officials, is revising the Categories of Records and Categories of Individuals sections, and is amending routine use lettered ''a'' regarding disclosure to law enforcement, professional and procurement organizations.

Appendix A

Finally, SBA is amending Appendix A to update the addresses of various offices that have been relocated or to remove addresses for those offices that have closed since the list was last published.

Appendix A

Headquarters

409 Third St., SW., Washington, DC 20416.

Boston Regional Office

10 Causeway St., Suite 265, Boston, MA 02222–1093.

New York Regional Office

26 Federal Plaza, Suite 3108, New York, NY 10278.

Philadelphia Regional Office

1150 First Ave., Suite 1001, King of Prussia, PA 19406.

Atlanta Regional Office

233 Peachtree St., NE., Suite 1800, Atlanta, GA 30303.

Chicago Regional Office

500 West Madison St., Suite 1150, Chicago, IL 60661–2511.

Dallas Regional Office

4300 Amon Carter Blvd., Suite 108, Fort Worth, TX 76155.

Kansas City Regional Office

1000 Walnut, Suite 530, Kansas City, MO 64106.

Denver Regional Office

721 19th St., Suite 400, Denver, CO 80202.

San Francisco Regional Office

455 Market St., Suite 600, San Francisco, CA 94105.

Seattle Regional Office

2401 Fourth Ave., Suite 400, Seattle, WA 98121.

SBA District Offices and Branch Offices

Region I

Maine District Office

68 Sewall St., Room 512, Augusta, ME 04330.

Massachusetts District Office

10 Causeway St., Suite 265, Boston, MA 02222–1093.

New Hampshire District Office

55 Pleasant St., Suite 3101, Concord, NH 03301.

Connecticut District Office

330 Main St., 2nd Floor, Hartford, CT 06106.

Vermont District Office

87 State St., Suite 205, Montpelier, VT 05602.

Rhode Island District Office

380 Westminster Mall, Rm. 511, Providence, RI 02903.

Springfield Branch Office

One Federal Street Building 101R, Springfield, MA 01105.

Region II

Buffalo District Office

130 S. Elmwood Ave., Suite 540, Buffalo, NY 14202.

Elmira Branch Office

333 E. Water St., 4th Floor, Elmira, NY 14901.

Long Island Branch Office

350 Motor Parkway, Suite 109, Hauppauge, NY 11788.

New Jersey District Office

Two Gateway Center, Suite 1501, Newark, NJ 07102.

New York District Office

26 Federal Plaza, Rm. 3100, New York, NY 10278.

Puerto Rico & Virgin Islands District Office

273 Ponce De Leon Avenue., Scotiabank Plaza Suite 510, San Juan, Puerto Rico 00917.

Rochester Branch Office

100 State Street, Suite 410, Rochester, NY 14614.

Syracuse District Office

224 Harrison St., Suite 506, Syracuse, NY 13202.

St. Croix Post of Duty

3013 Estate Golden Rock, Rm. 167, Christiansted, VI 00820.

Region III

Maryland District Office

10 S. Howard St., Suite 6220, Baltimore, MD 21201–2525.

Charleston Branch Office

405 Capitol St., Suite 412, Charleston, WV 25301.

West Virginia District Office

320 West Pike St. Suite 330, Clarksburg, WV 26301.

Philadelphia District Office

Parkview Tower, 1150 First Ave., Suite 1001, King of Prussia, PA 19406.

Pittsburgh District Office

411 Seventh Ave., Suite 1450, Pittsburgh, PA 15219–1905.

Richmond District Office

400 North 8th St., Suite 1150, Richmond, VA 23219.

Washington DC District Office

740 15th St., NW., Suite 300, Washington, DC 20005.

Delaware District Office

1007 N. Orange St., Suite 1120, Wilmington, DE 19801–3011.

Region IV

Georgia District Office

233 Peachtree Rd., NE., Suite 1900, Atlanta, GA 30303.

Alabama District Office

801 Tom Martin Dr., Suite 201, Birmingham, AL 35211.

North Carolina District Office

6302 Fairview Rd., Suite 300, Charlotte, NC 28210–2234.

South Carolina District Office

1835 Assembly St., Suite 1425, Columbia, SC 29201.

Gulfport Branch Office

2510 14th St., Suite 103, Gulfport, MS 39501–1949.

Mississippi District Office

Region Plaza, 210 E. Capitol St., Suite 900, Jackson, MS 39201.

North Florida District Office

7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504.

Kentucky District Office

600 Dr. M.L. King Jr. Place, Rm. 188, Louisville, KY 40202.

South Florida District Office

100 S. Biscayne Blvd., 7th Floor, Miami, FL 33131.

Tennessee District Office

50 Vantage Way, Suite 201, Nashville, TN 37228–1500.

Region V

Illinois District Office

500 West Madison St., Suite 1150, Chicago, IL 60661–2511.

Cincinnati Branch Office

525 Vine St., Suite 1030, Cincinnati, OH 45202.

Cleveland District Office

1350 Euclid Ave., Suite 211, Cleveland, OH 44115.

Columbus District Office

401 N. Front St, Suite 200, Columbus, OH 43215–2542.

Michigan District Office

477 Michigan Ave., Suite 515, Detroit, MI 48226.

Indiana District Office

8500 Keystone Crossing, Suite 400, Indianapolis, IN 46204–1873.

Wisconsin (Milwaukee) District Office

310 West Wisconsin Ave., Room 400, Milwaukee, WI 53203.

Minnesota District Office

100 North 6th St., 210–C, Minneapolis, MI 55403.

Wisconsin (Madison) District Office

740 Regent St., Suite 100, Madison, WI 53715.

Springfield Branch Office

330 Ginger Creek Road, Suite B, Springfield, IL 62711.

Region VI

New Mexico District Office

625 Silver Ave. SW., Suite 320, Albuquerque, NM 87102.

Corpus Christi Branch Office

3649 Leopard St., Suite 411, Corpus Christi, TX 78408.

Dallas/Ft. Worth District Office

4300 Amon Carter Blvd., Suite 114, Ft Worth, TX 76155.

El Paso District Office

211 North Florence St., 2nd Floor Suite 201, El Paso, TX 79901.

Houston District Office

8701 S. Gessner Dr., Suite 1200, Houston, TX 77074.

Arkansas District Office

2120 Riverfront Dr., Suite 250, Little Rock, AR 72202.

Lower Rio Grande Valley District Office

222 E. Van Buren St., Rm. 500, Harlingen, TX 78550–6855.

Lubbock District Office

1205 Texas Ave., Room 408, Lubbock, TX 79401–2693.

Louisana District Office

365 Canal St., Suite 2820, New Orleans, LA 70130.

Oklahoma District Office

301 Northwest 6th St., Suite 116, Oklahoma City, OK 73102.

San Antonio District Office

17319 San Pedro, Bldg #2, Suite 200, San Antonio, TX 78232.

Region VII

Cedar Rapids Branch Office

2750 1st Ave. NE., Suite 350, Cedar Rapids, IA 52402.

Des Moines District Office

210 Walnut St., Room 749, Des Moines, IA 50309–2186.

Kansas City District Office

1000 Walnut Street, Suite 500, Kansas City, MO 64106.

Nebraska District Office

10675 Bedford Ave., Suite 100, Omaha, NB 68134.

Springfield Branch Office

830 East Primrose, Suite 101, Springfield, MO 65807–5254.

St. Louis District Office

1222 Spruce Street, Suite 10.103, St. Louis, MO 63103.

Wichita District Office

271 West Third St. North, Suite 2500, Wichita, KS 67202–1212.

Region VIII

Wyoming District Office

100 East B Street, Rm. 4001, P.O. Box 44001, Casper, WY 82602.

Colorado District Office

721 19th St., Suite 426, Denver, CO 80202.

North Dakota District Office

657 Second Ave. North, Room 218, Fargo, ND 58108.

Montana District Office

10 West 15th St., Suite 1100, Helena, MT 59626.

Utah District Office

125 South State St., Room 2227, Salt Lake City, UT 84138.

South Dakota District Office

2329 North Career Ave., Suite 105, Sioux Falls, SD 57107.

Region IX

Guam District Office

400 Route 8, Suite 302, Hagatna, GU 96910–2003.

Fresno District Office

801 R St., Suite 201, Fresno, CA 93721.

Hawaii District Office

500 Ala Moana Blvd., Suite 1–306, Honolulu, HI 96813.

Nevada District Office

400 South 4th St., Suite 250, Las Vegas, NV 89101.

Los Angeles District Office

330 North Brand Blvd., Suite 1200, Glendale, CA 91203–2304.

Arizona District Office

2828 North Central Ave., Suite 800, Phoenix, AZ 85004–1025.

Sacramento District Office

6501 Sylvan Rd., Suite 100, Citrus Heights, CA 95610–5017.

San Diego District Office

550 West C St., Suite 550, San Diego, CA 92101–3500.

San Francisco District Office

455 Market St., Suite 600, San Francisco, CA 94105–2445.

Santa Ana District Office

200 West Santa Ana Blvd., Suite 700, Santa Ana, CA 92701.

Region X

Alaska District Office

420 L St., Suite 300, Anchorage, AK 99501.

Boise District Office

380 East Parkcenter Blvd., Suite 330, Boise, ID 83706.

Oregon District Office

601 SW Second Ave., Suite 950, Portland, OR 97204.

Seattle District Office

2401 Fourth Ave., Suite 450, Seattle, WA 98121.

Spokane Branch Office

801 West Riverside, Suite 444, Spokane, WA 99201.

Spokane District Office

801 West Riverside Ave., Suite 200, Spokane, WA 99201–0901.

SBA Disaster Loan Making Centers

DCMS Operations Center

13221 Woodland Park Rd., Herndon, VA 20174.

Disaster Assistance Customer Service Center

130 South Elmwood Avenue Suite 516, Buffalo, NY 14202.

Disaster Field Operations Center—East

101 Marietta Street, Suite 700, Atlanta, GA 30303.

Disaster Loan Processing and Disbursement Center

14925 Kingsport Rd., Fort Worth, TX 76155–2243.

Disaster Field Operations Center—West

P.O. Box 419004, Sacramento, CA 95841–9004.

SBA Disaster Loan Servicing Centers

Birmingham Home Loan Servicing Center

801 Tom Martin Drive, Suite #120, Birmingham, AL 35211.

El Paso Loan Servicing Center

10737 Gateway West, Suite 300, El Paso, TX 79935.

National Disaster Home Resolution Center

200 W. Santa Ana Blvd., Santa Ana, CA 92701.

Commercial Loan Servicing Centers

Fresno Commercial Loan Servicing Center

801 R St., Suite 101, Fresno, CA 93721.

National Disaster Loan Resolution Center

200 West Santa Ana Boulevard, Santa Ana, CA 92701.

Little Rock Commercial Loan Servicing Center

2120 Riverfront Dr., Suite 100, Little Rock, AR 72202.

Office of the Inspector General

Office of Inspector General

409 Third Street SW., Washington, DC 20416.

Office of Inspector General Investigation Division

409 Third Street SW., Washington, DC 20416.

Office of Inspector General Auditing Division

409 Third Street SW., Washington, DC 20416.

Office of Inspector General Counsel Division

409 Third Street SW., Washington, DC 20416.

Office of Inspector General Management & Policy Division

409 Third Street SW., Washington, DC 20416.

Dallas/Fort Worth Inspector General Auditing

4300 Amon Carter Blvd., Suite 116, Fort Worth, TX 76155.

Chicago Inspector General Investigations Division

801 Warrenville Road, Suite 230, Lisle Chicago, IL 60532.

Dallas/Fort Worth Inspector General Investigations Division

4300 Amon Carter Blvd., Suite 116, Fort Worth, TX 76155–2653.

Detroit Inspector General Investigations Division

477 Michigan Avenue, Suite 515, Detroit, MI 48266.

Houston Inspector General Investigations Division

8701 South Gessnar Drive, Suite 1200, Houston, TX 77074.

Kansas City Inspector General Investigations Division

1000 Walnut Street, Suite 510, Kansas City, MO 64106.

Miami Inspector General Investigations Division

Claude Pepper Federal Building, 51 SW 1st Avenue, Suite 1325, Miami, FL 33130.

New Orleans Inspector General Auditing Division and Investigations Divisions

365 Canal Street, Suite 2420, New Orleans, LA 70130.

New York Inspector General Investigations Division

26 Federal Plaza, Rm. 41–100, New York, NY 10278.

Philadelphia Inspector General Investigations Division

Curtis Center Room 860W, 601 Walnut Street, Philadelphia, PA 19106.

Tacoma Inspector General Investigations Division

33400 9th Avenue, Federal Way, WA 98003.

SYSTEM NAME:

Loan System—SBA 21.

SYSTEM LOCATION:

Headquarters, Regional Offices, District Offices, Branch Offices, Processing Centers, Purchase Centers, and Servicing Centers. *See* Appendix A.

SYSTEM MANAGER AND ADDRESS:

Associate Administrator for Capital Access; Director, Office of Credit Risk Management; Director, Office of Financial Assistance; Regional Administrators; District Directors; Branch Managers; Commercial Loan Service Center Directors; National Guaranty Purchase Center Director; Sacramento Loan Processing Center Director; Standard 7(a) Loan Guaranty Processing Center Directors. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:

Individuals (*i.e.,* borrowers, guarantors, principals of businesses named in loan records, loan agents), throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs. For purposes of this Systems of Records Notice, ''loan agents'' means all ''Agents'' as defined in 13 CFR 103.1(a) that are involved in the business loan process (*e.g.,* loan packagers, brokers, and referral agents).

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDE:

Personal and commercial information (*i.e.,* credit history, financial information, identifying number or other personal identifier, Form 159 information, compliance and enforcement information, and other exclusions) on individuals named in business loan files, including but not limited to Loan Agents, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used, disclosed, or referred:

''d—To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations of statutes, rules, regulations or orders, or which undertakes procurement of goods or services, when SBA determines that disclosure will promote programmatic integrity or protect the public interest.''

* * *

''l—To SBA employees, contractors, interns, volunteers, and other regulators or legal authorities for the review of Loan Agent fees and activities and for the review of loans generated by Loan Agents (*e.g.* for performance and other trends).''

''m—To GSA for publication of Loan Agent suspensions, revocations and exclusions under 13 CFR Part 103 in the Excluded Parties List System consistent with Executive Order 12549 and other applicable law.''

''n—To SBA employees, contractors, interns, volunteers and other regulators for regulatory purposes.''

SYSTEM NAME:

—SUSPENSION AND DEBARMENT FILES—SBA 36

SYSTEM LOCATION:

Headquarters. *See* Appendix A.

SYSTEM MANAGER AND ADDRESS:

Counsel to the Inspector General or designee; SBA Suspension and Debarment officials. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:

Individuals covered by the system include the parties who have been considered for, recommended for, or subject to (i) suspension and/or

debarment under government-wide regulations or (ii) SBA Part 103 enforcement action (other than Loan Agents in SBA Business Loan Programs), and persons providing information relevant to these actions.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDE:

Records consist of materials compiled from investigations, audits, or other agency activities which identify violations which may be cause for suspension or debarment pursuant to the Federal Acquisition Regulations or the government-wide non-procurement suspension and debarment regulations or enforcement actions under Part 103 suspension or revocation actions. These materials include indictments, information, plea agreements, judgments, contract documents, program or loan applications, agency generated documents, etc., that pertain to a party's participation in SBA government contract programs, SBA loan programs, and other SBA assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used, disclosed or referred:

''a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations of statutes, rules, regulations or orders, or which undertakes procurement of goods or services, when the SBA determines that disclosure will promote programmatic integrity or protect the public interest.'' * * *

''o. To GSA for publication of suspensions, debarments, other enforcement actions, and exclusions by SBA in the Excluded Parties List System pursuant to Executive Order 12549 and other applicable law.''

Grady Hedgespeth,

Director, Office Financial Assistance.

[FR Doc. 2012–6467 Filed 3–15–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7826]

Culturally Significant Objects Imported for Exhibition Determinations: ''Making a Presence: F. Holland Day in Artistic Photography''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Making a Presence: F. Holland Day in Artistic Photography,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Addison Gallery of American Art, Phillips Academy, Andover, Massachusetts from on or about March 27, 2012, until on or about July 31, 2012; the Bowdoin College Museum of Art, Brunswick, Maine from on or about September 6, 2012 until on or about December 23, 2012; and the Sheldon Memorial Art Gallery at the University of Nebraska-Lincoln from February 4, 2012 until on or about April 28, 2013; and at possible additional exhibitions or venues yet to be determined; is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 12, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–6457 Filed 3–15–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7827]

Culturally Significant Objects Imported for Exhibition Determinations: ''Joan Miró: the Ladder of Escape''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Joan Miró: the Ladder of Escape,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about May 6, 2012, until on or about August 12, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 12, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–6460 Filed 3–15–12; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2011 Generalized System of Preferences (GSP) Product Review: Inviting Public Comments on Possible Actions Related to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of comments.

SUMMARY: The Office of the United States Trade Representative (USTR) will accept public comments submitted by April 6, 2012, regarding: (1) Potential revocation of competitive need limitations (CNL) waivers; (2) possible *de minimis* CNL waivers; and (3) possible redesignations of articles currently not eligible for GSP benefits because they previously exceeded the CNL thresholds. Full 2011 calendar year

import statistics relating to CNLs under the Generalized System of Preferences (GSP) program are now available.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Room 422, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov.*

DATES: Public comments are due by 5 p.m., Friday, April 6, 2012.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations, De Minimis Waivers, and Redesignations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. If the President determines that a BDC exported to the United States during a calendar year either: (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($150 million for 2011), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent'' CNL), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year.

De minimis waivers: Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC, if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($20.5 million for 2011).

Redesignations: Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations set forth in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports of that article from that country did not exceed the CNLs in the most recently completed calendar year.

CNL waiver revocation: Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432, also provides that, ''[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year ($225 million in 2011); or exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.''

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2012, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and redesignations will be based on full 2011 calendar year import data.

II. 2011 Import Statistics

In order to provide notice of articles that have exceeded the CNLs for 2011 and to afford an opportunity for comment regarding: (1) The potential revocation of waivers subject to the CNL waiver thresholds for 2011, (2) potential *de minimis* waivers, and (3) redesignations. Lists of relevant products are posted on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-4* under the title ''2011 GSP Annual Product Review: Import Statistics Relating to Competitive Need Limitations, Potential Revocations, *De Minimis* Waivers, and Product Redesignations.'' These lists can also be found at *www.regulations.gov* in Docket Number USTR–2011–0015. Full 2011 calendar year data for individual tariff subheadings may also be viewed on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov.*

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC country of origin, the value of imports of the article for the 2011 calendar year, and the percentage of total imports of that article from all countries accounted for by imports from the relevant BDC.

The computer-generated lists published on the USTR Web site are for informational purposes only. They may not include all articles to which the GSP CNLs may apply. Each interested party is advised to conduct its own review of 2011 import data with respect to the possible application of the GSP CNL provisions.

List I on the USTR Web site shows GSP-eligible articles from BDCs that exceeded a CNL by having been exported in excess of $150 million, or in a quantity equal to or greater than 50 percent of the total U.S. import value, in 2011. These products will be removed from eligibility for GSP for the subject countries on July 1, 2012, unless the President grants a waiver for the product for the subject country in response to a petition filed by an interested party. Such petitions for CNL waivers must have been submitted earlier in the 2011 GSP Annual Review. (See 76 FR 67531 and 77 FR 10034.) The last column in List I shows those products for which petitions have been accepted and are now under review.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without the filing of a petition. List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment, but that may be considered for GSP redesignation based on 2011 trade data and consideration of certain statutory factors, as described above. List IV shows articles subject to CNL waiver revocation based on the provisions of Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432.

Recommendations to the President on *de minimis* waivers, redesignations, and revocation of waivers will be made as part of the 2011 GSP annual review process, and public comments (including comments in support of or in opposition to granting de minimis waivers, redesignations, and revocation of CNL waivers) are invited in accordance with the Requirements for Submissions below.

III. Public Comments

Requirements for Submissions

Written comments submitted in response to this notice must be submitted electronically by 5 p.m., Friday, April 6, 2012 using *www.regulations.gov,* docket number

USTR–2011–0015. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Submissions must be submitted in English to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the deadline set forth in this notice.

All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.* Any person or party making a submission is strongly advised to review the GSP regulations as well as the GSP Guidebook, which is available at the same link.

To make a submission using *www.regulations.gov,* enter docket number USTR–2011–0015 in the ''Search'' field on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notice'' under ''Document Type'' in the section on the left hand side of the search-results page, and click on the link entitled ''Submit a Comment'' on the right-hand side of the page under the heading ''Actions.'' The *www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that submissions be provided in an attached document. When attaching a document, type (1) 2011 GSP Annual Product Review; (2) the product description and related HTS tariff number; (3) ''See attached'' in the ''Type Comment'' field on the online submission form, and indicate on the attachment that the document is, ''Written Comments''

Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

A person seeking to request that information contained in a submission from that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field.

A person submitting public and business confidential submissions must submit each of them separately in the appropriate docket at *www.regulations.gov*: One submission containing the clearly-marked business confidential information, and a separate submission containing the public version of the submission, indicating where confidential information has been redacted.

Public versions of all documents relating to the 2011 Annual Review will be made available for public viewing in docket USTR–2011–0015 at *www.regulations.gov* upon completion of processing and no later than one week after the due date.

William Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2012–6349 Filed 3–15–12; 8:45 am]

BILLING CODE 3190–W2–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Change in Hearing Date for the 2011 Annual GSP Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of change to hearing date and due date for post-hearing comments.

SUMMARY: The date of the hearing for the 2011 Annual GSP Product Review is changed to Thursday, March 29, 2012. Post-hearing comments are due Monday, April 16, 2012.

SUPPLEMENTARY INFORMATION: On February 21, 2012, a notice was published in the **Federal Register** (77 FR 10034) announcing, *inter alia,* that the hearing for the 2011 Annual GSP Product Review was scheduled for March 20, 2012 and post-hearing comments were due April 10, 2012. This notice changes the time and date of that hearing to 1 p.m., Thursday, March 29, 2012 and the due date for post-hearing comments to 5 p.m., Monday, April 16, 2012. The hearing will cover only the petitions for new products and CNL waivers that have been previously submitted and accepted for review in the 2011 GSP Annual Review. (See 76 FR 67531 and 77 FR 10034.)

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971; the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov.*

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2012–6454 Filed 3–15–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29. In February 2012,there were six applications approved. Additionally, 11 approved amendments to previously approved applications are listed.

PFC Applications Approved

Public Agency: County and City of Yakima, Washington.

Application Number: 12–14–C–00–YKM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $703,801.

Earliest Charge Effective Date: August 1, 2012.

Estimated Charge Expiration Date: February 1, 2014.

Class of Air Carriers Not Required To Collect PFCs:

Air taxi/commercial operators—nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal—McAllister Field Airport.

Brief Description of Projects Approved for Collection and Use

Snow removal equipment purchase—design.

Terminal apron rehabilitation—design.

Taxiway Alpha and connectors rehabilitation—design.

Snow removal equipment purchase.

Terminal apron rehabilitation.

Taxiway Alpha and connectors rehabilitation.

Acquire runway friction tester (decelerometer).

Acquire miscellaneous equipment.

Environmental mitigation.

Security enhancement.

Decision Date: February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: City of Modesto, California.

Application Number: 12–08–C–00–MOD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $111,806.

Earliest Charge Effective Date: April 1, 2012.

Estimated Charge Expiration Date: December 1, 2012.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use

Conduct miscellaneous studies.

Procure Americans with Disabilities Act lift.

Reconstruct northwest apron.

Construct new windsocks.

Construct new perimeter security fence.

Environmental study.

PFC administration costs.

Brief Description of Withdrawn Projects

Apron rehabilitation.

Enhance runway safety area.

Date of Withdrawal: February 9, 2012.

Decision Date: February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Arlene Draper, San Francisco Airports District Office, (650) 827–7602.

Public Agency: City of Columbia, Missouri.

Application Number: 12–03–C–00–COU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,140,461.

Earliest Charge Effective Date: February 1, 2013.

Estimated Charge Expiration Date: December 1, 2026.

Class of Air Carriers Not Required To Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use

Airport master plan update.

Wildlife management assessment of hazards.

Environmental assessment.

Terminal restroom renovation.

Taxiway A reconstruction.

Snow removal equipment.

Update airport exhibit A property map.

Aircraft rescue and firefighting truck.

PFC audit fees.

Brief Description of Projects Approved for Collection

Expand air carrier auto parking lot.

Wildlife deterrent fence.

Airport land acquisition.

Rehabilitate runway 13/31 and taxiway B.

Extend runway 13/31 and taxiway B.

Re-align Route H and Rangeline Road.

Extend runway 2/20 and navigational aids.

Aircraft rescue and firefighting building expansion.

Decision Date: February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Todd Madison, Central Region Airports Division, (816) 329–2640.

Public Agency: City of Midland, Texas.

Application Number: 12–06–C–00–MAF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,319,287.

Earliest Charge Effective Date: August 1, 2015.

Estimated Charge Expiration Date: May 1, 2016.

Classes of Air Carriers Not Required to Collect PFCs:

(1) Part 135 air taxi/commercial operators filing FAA Form 1800–31; (2) commuter and small certificated air carriers filing Department of Transportation Form T–100 for nonscheduled operations; and (3) large certificated route air carriers filing Department of Transportation Form T–100 for non-scheduled operations.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Midland International Airport.

Brief Description of Projects Approved for Collection and Use

Terminal building rehabilitation.

Executive apron reconstruction.

Northwest taxilane and emergency perimeter roadway extension.

Wildlife hazard assessment.

Runways 4/22 and 16U34R rehabilitation design.

Emergency perimeter roadway and gates rehabilitation.

Airport drainage improvements—phase 1.

Entrance road guidance signage rehabilitation.

Airport radio communication system upgrade.

Airfield lighting cable replacement.

Taxiway V apron expansion.

Decision Date: February 13, 2012.

FOR FURTHER INFORMATION CONTACT: Marcelino Sanchez, Texas Airports Development Office, (817) 222–5652.

Public Agency: County of Pitkin, Aspen, Colorado.

Application Number: 12–08–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $3,211,592.

Earliest Charge Effective Date: August 1, 2012.

Estimated Charge Expiration Date: February 1, 2016.

Class of Air Carriers Not Required to Collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the

total annual enplanements at Aspen/Pitkin County Airport.

Brief Description of Projects Approved for Collection and Use

Acquire snow removal equipment (plow).
Extend runway 15/33.
Construct connector taxiway.
Construct south deice pad apron.
Improve runway safety area.
PFC application and administration fees.

Decision Date: February 17, 2012.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: City of Klamath Falls, Oregon.

Application Number: 12–03–C–00–LMT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $987,785.

Earliest Charge Effective Date: April 1, 2012.

Estimated Charge Expiration Date: October 1, 2023.

Class of Air Carriers Not Required To Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use

Terminal enhancements.
Security enhancements.
Construct north end perimeter road.
Conduct miscellaneous studies.
Rehabilitate runway 14/32.
Rehabilitate runway 7/25.
Environmental mitigation.
Acquire snow removal equipment.
PFC administration costs.

Decision Date: February 27, 2012.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
03–06–C–01–ACV; Arcata, CA.	2/01/12	$578,450	$523,597	03/01/05	03/01/05
05–07–C–01–ACV; Arcata, CA.	2/02/12	392,265	336,981	10/01/05	10/01/05
09–03–C–02–PGV; Greenville, NC.	2/03/12	596,985	396,985	10/01/11	10/01/11
03–02–C–01–MCW; Mason City, IA.	2/08/12	379,500	303,061	02/01/12	02/01/12
08–07–C–01–MOD; Modesto, CA.	2/10/12	395,134	337,634	12/01/15	04/01/12
99–02–C–07–MCI; Kansas City, MO.	2/14/12	7,375,439	6,741,254	05/01/11	04/01/11
09–09–C–02–BUR; Burbank, CA.	2/16/12	21,965,000	24,965,000	05/01/15	09/01/15
09–06–C–01–PUW; Pullman, WA.	2/17/12	255,998	271,077	05/01/11	12/01/10
10–11–C–02–ATL; Atlanta, GA.	2/21/12	422,480,178	347,373,302	01/01/23	07/01/22
94–01–C–04–RIC; Richmond, VA.	2/23/12	11,847,867	11,846,842	05/01/98	05/01/98
01–04–C–04–RIC; Richmond, VA.	2/23/12	3,401,433	2,647,868	11/01/16	114/01/16

Issued in Washington, DC on March 8, 2012.

Joe Hebert,

Manager, Financial Analysis and Passenger Faculty Charge Branch.

[FR Doc. 2012–6315 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full Nissan North America, Inc.'s (Nissan) petition for exemption of the Juke vehicle line in accordance with 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted, because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). Nissan requested confidential treatment of specific information in its petition by letter dated November 29, 2011. The agency addressed Nissan's request for confidential treatment by letter dated December 29, 2011.

DATES: The exemption granted by this notice is effective beginning with the 2013 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 29, 2011, Nissan requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2013 Nissan Juke vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Nissan provided a detailed description and diagram of the identity, design and location of the components of the antitheft device for the Juke vehicle line. Nissan will install a passive transponder-based, electronic immobilizer, antitheft device as standard equipment on its Juke vehicle line beginning with MY 2013. Major components of the antitheft device will include an engine control module, immobilizer/body control module (BCM), immobilizer antenna and a security indicator light. Nissan will also install an audible and visible alarm system on the Juke as standard equipment. Nissan stated that activation of the immobilization device occurs automatically when the ignition key is turned to the ''OFF'' position and all the doors are closed and locked through the use of the key or the remote control mechanism. Deactivation occurs when all the doors are unlocked with the key or remote control mechanism. Nissan's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements

contained in § 543.5 and the specific content requirements of § 543.6.

Nissan stated that the immobilizer device prevents normal operation of the vehicle without the use of a special key. Nissan further stated that installation of the theft alarm system in the device has been designed to protect the belongings within the vehicle and the vehicle itself from being stolen when the back door and all of the side doors are closed and locked. The alarm system is activated when any attempt is made to open any of the vehicle doors without the use of the key or remote control mechanism. Nissan stated that when the alarm is activated, the head lamps will flash and the horn will sound. Nissan stated that deactivation of the alarm can only occur when the driver's side door is unlocked with the key or the remote control device.

In addressing the specific content requirements of 543.6, Nissan provided information on the reliability and durability of the device. Nissan stated that its antitheft device is tested for specific parameters to ensure its reliability and durability. Additionally, Nissan stated that the immobilizer device satisfies the requirements of European Directive ECE R116, including tamper resistance. Nissan provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Nissan provided data on the effectiveness of the antitheft device installed on its Juke vehicle line in support of the belief that its antitheft device will be highly effective in reducing and deterring theft. Nissan referenced the National Insurance Crime Bureau's data which it stated showed a 70 percent reduction in theft when comparing MY 1997 Ford Mustangs (with a standard immobilizer) to MY 1995 Ford Mustangs (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data which reported that BMW vehicles experienced theft loss reductions resulting in a 73 percent decrease in relative claim frequency and a 78 percent lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated that theft rates for its Pathfinder vehicle experienced reductions from model year (MY) 2000 to 2001 with implementation of the engine immobilizer device as standard equipment and further significant reductions subsequent to MY 2001. Specifically, Nissan noted that the agency's theft rate data for MY's 2001 through 2006 reported theft rates of 1.9146, 1.8011, 1.1482, 0.8102, 1.7298 and 1.3474 respectively for the Nissan Pathfinder after installation of an immobilizer device.

In support of its belief that its antitheft device will be as effective as compliance with the parts-marking requirements in reducing and deterring vehicle theft, Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of a full exemption to General Motors Corporation for the Buick Riviera and Oldsmobile Aurora (58 FR 44872, August 25, 1993), and Cadillac Seville vehicle lines (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated that it believes that since its device is functionally equivalent to other comparable manufacturers' devices that have already been granted parts-marking exemptions by the agency such as the ''PASS–Key III'' device used on the 1997 Buick Park Avenue, the 1998 Cadillac Seville and the 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora lines, the Nissan immobilizer device has the potential to achieve the level of effectiveness equivalent to the ''PASS–Key III'' device.

Based on the supporting evidence submitted by Nissan on the device, the agency believes that the antitheft device for the Juke vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation, attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Nissan has provided adequate reasons for its belief that the antitheft device for the Juke vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Nissan provided about its device.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the Juke vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2013 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempt from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Nissan decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 9, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–6411 Filed 3–15–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 13, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 16, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Alcohol and Tabacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0002.

Type of Review: Revision of a currently approved collection.

Title: Personnel Questionnaire—Alcohol and Tobacco Products.

Form: TTB F 5000.9.

Abstract: The information listed on TTB F 5000.9, Personnel Questionnaire—Alcohol and Tobacco Products, enables TTB to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business and criminal record.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 9,950.

OMB Number: 1513–0026.

Type of Review: Extension without change of a currently approved collection.

Title: Claim for Drawback of Tax on Tobacco Products, Cigarette Papers, and Cigarette Tubes.

Form: TTB F 5620.7.

Abstract: TTB F 5620.7 documents taxpaid tobacco products, cigarette papers, and cigarette tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayers to claim drawback for tax paid on exported products.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 144.

OMB Number: 1513–0042.

Type of Review: Extension without change of a currently approved collection.

Title: Drawback on Distilled Spirits Exported.

Form: TTB F 5110.30.

Abstract: TTB F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (U.S.). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000.

OMB Number: 1513–0112.

Type of Review: Extension without change of a currently approved collection.

Title: Special (occupational) Tax Registration and Return.

Form: TTB F 5630.5a, 5630.5d, 5630.5t.

Abstract: On August 10, 2005, President Bush signed into law the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' Public Law 109–59. Section 11125 of that Act permanently repealed, effective July 1, 2008, the special (occupational) taxes on all taxpayers except for Tobacco Products Manufacturers (TPM), Cigarette Papers and Tubes Manufacturers (CPTM), and TP Export Warehouse Proprietors (TPEWP). TTB F 5630.5t is used for registration and tax payment for the TPM, CPTM, and TPEWP; TTB F 5630.5a is a tax return/registration for persons already in business who failed to register or pay on or before 6/30/2008; and TTB F 5630.5d is used to register Alcohol Dealers on and after 7/1/08.

Affected Public: Individuals and households; Private Sector: Businesses or other for-profits and not-for-profit institutions.

Estimated Total Burden Hours: 14,583.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–6396 Filed 3–15–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

State Small Business Credit Initiative (SSBCI) National Standards For Compliance

AGENCY: Department of the Treasury.

ACTION: Notice of Document Availability.

SUMMARY: This Notice announces the availability of ''SSBCI National Standards: Compliance and Oversight for Participating States''.

DATES: *Effective Date:* May 15, 2012

ADDRESSES: Copies of the document are available at the SSBCI Web site at *www.treasury.gov/ssbci.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Deputy Director, SSBCI, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The ''SSBCI National Standards: Compliance and Oversight for Participating States'' are applicable to all states, territories, the District of Columbia, and municipalities that were approved by Treasury to participate in the SSBCI (''Participating States''). The list of Participating States is available here on the SSBCI Web site at *www.treasury.gov/ssbci.* These national standards provide Participating States with a recommended framework for identifying, monitoring, and managing SSBCI compliance and oversight risks. These national standards for compliance also provide guidance on mitigating specific risks that SSBCI believes are high-potential for all approved state programs. For each risk, SSBCI recommends specific best practices and mitigation techniques for Participating States that will supplement and inform the oversight duties imposed on Participating States by the Small Business Jobs Act of 2010 (Pub. L. 111–240) (the ''Act''), the Allocation Agreement, and the SSBCI Policy Guidelines. This document is published under the authority in Section 3009(a)(2) of the Act, which requires the Secretary of the Treasury to establish

minimum national standards for state programs approved under the Act.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–6412 Filed 3–15–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held on April 23–26, 2012, at the below times and locations. The sessions will be open to the public on April 23 (9 a.m. to 11 a.m. and 1 p.m. to 5:30 p.m., April 24–25, and April 26 (3 p.m. to 4:30 p.m.).

April 23, from 8:30 a.m. to 5:30 p.m., Audie L. Murphy VA Medical Center, 7400 Merton Minter Boulevard, San Antonio, TX; April 24, from 9 a.m. to 3:30 p.m., Fort Sam Houston National Cemetery, 1520 Harry Wurzbach Road, San Antonio, TX; and VA South Bexar County Community Outpatient Center, 4610 South Cross, San Antonio, TX; April 25, from 8:30 a.m. to 5:30 p.m.; Audie L. Murphy VA Medical Center; April 26, from 1:30 p.m. to 4:30 p.m.; VA Health Care Center at Harlingen, 2701 South 77 Sunshine Strip, Harlingen, TX; and University of Texas Health Center, Regional Academic Health Center, 2102 Treasure Hills Boulevard, Harlingen, TX.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans, to assess the needs of minority Veterans and to evaluate whether VA compensation and pension, medical and rehabilitation services, memorial services outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities subsequent to the meeting.

In the morning of April 23, the Committee will meet with key staff at the VA Medical Center to discuss services, benefits, delivery challenges, and successes. The Committee will convene a closed session in order to protect patient privacy as the Committee tours the VA Medical Center (VAMC) and Polytrauma Center. In the afternoon, the Committee will reconvene in open session to receive a briefing by Veterans Benefits Administration (VBA) staff; and meet with a panel of local Veteran Service Organizations to discuss San Antonio area Veterans' issues.

In the morning of April 24, the Committee will meet with key staff at the Fort Sam Houston National Cemetery (FSHNC) to discuss services, benefits, delivery challenges and successes. In the afternoon, the Committee will meet with key staff at the VA South Bexar County Community Outpatient Center. At 6:30 p.m., the Committee will hold a Veterans Town Hall meeting at the Veterans of Foreign Wars, Harlandale Memorial Post 4815, 3111 Commercial Avenue, San Antonio, TX.

In the morning of April 25, the Committee will conduct an exit briefing with leadership from the VAMC, VBA, and FSHNC. In the afternoon, the Committee will work on their report to the Secretary.

In the morning of April 26, select Committee members will convene in a closed session to protect patient privacy as they tour the VA Health Care Center at Harlingen (VAHCCH). They will reconvene in an open session to meet with key staff to discuss services, benefits, delivery challenges, and successes. In the afternoon, the Committee members will meet with a panel of local Veteran Service Organizations to discuss Harlingen area Veterans' issues; and will conduct an exit briefing with VAHCCH key staff. Closing portions of these sessions is in accordance with 5 U.S.C. 552b(c)(6).

Time will be allocated for receiving public comments on April 23, at 3 p.m. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Mr. Ronald Sagudan, Program Analyst, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at *Ronald.sagudan@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Sagudan or Mr. Dwayne E. Campbell at (202) 461–6191.

Dated: March 13, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–6469 Filed 3–15–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Friday,

No. 52 March 16, 2012

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93 *et al.*

Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. APHIS–2008–0010]

RIN 0579–AC68

Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern the importation of animals and animal products to revise the conditions for the importation of live bovines and products derived from bovines with regard to bovine spongiform encephalopathy (BSE). We are proposing to base importation conditions on the inherent risk of BSE infectivity in specified commodities, as well as on the BSE risk status of the region from which the commodities originate. We are proposing to establish a system for classifying regions as to BSE risk that is consistent with the system employed by the World Organization for Animal Health (OIE), the international standard-setting organization for guidelines related to animal health. The conditions we are proposing for the importation of specified commodities are based on internationally accepted scientific literature and, except in a few instances, are consistent with guidelines set out in the OIE's Terrestrial Animal Health Code. We are also proposing to classify certain specified countries as to BSE risk and are proposing to remove BSE restrictions on the importation of cervids and camelids and products derived from such animals. We are proposing to make these amendments after conducting a thorough review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the proposed changes to the regulations would continue to guard against the introduction of BSE into the United States, while allowing the importation of additional animals and animal products into this country. In this document we are also affirming the position we took in removing the delay of applicability of certain provisions of the rule entitled ''Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities,'' published in the **Federal Register** on January 4, 2005 (70 FR 460–553). The delay of applicability was removed in a final rule entitled ''Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines,'' published in the **Federal Register** on September 18, 2007 (72 FR 53314–53379).

DATES: We will consider all comments that we receive on or before May 15, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0010-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0010, 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-2008-0010* 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: For information concerning live ruminants, contact Dr. Betzaida Lopez, Import Animal Staff Veterinarian, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–3364.

For information regarding ruminant products and for other information regarding this proposed rule, contact Dr. Christopher Robinson, Assistant Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

I. Overview

Background

In order to guard against the introduction of animal diseases, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or Department) regulates the importation of animals and animal products into the United States. The regulations in parts 92, 93, 94, 95, 96, and 98 of the U.S. Code of Federal Regulations (CFR) (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease that affects the central nervous system of cattle. In this document we are proposing to amend the import regulations related to BSE.

Nature of BSE

BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. However, the distribution of infectivity in the body of the animal and mode of transmission differ according to the species and the TSE agent. In addition to BSE, TSEs include, among other diseases, scrapie in sheep and goats, chronic wasting disease in deer and elk, and Creutzfeldt-Jakob disease in humans.

The agent that causes BSE has yet to be fully characterized. The theory that is most accepted in the international scientific community is that the agent is an abnormal form of a normal protein known as cellular prion protein. The BSE agent does not evoke a traditional immune response or inflammatory reaction in host animals. BSE is confirmed by post-mortem examination of an animal's brain tissue, which may include detection of the abnormal form of the prion protein in the brain tissues. The pathogenic form of the protein is both less soluble and more resistant to degradation than the normal form. The BSE agent is resistant to heat and to normal sterilization processes.

BSE is not a contagious disease, and therefore is not spread through casual contact between animals. Scientists believe that transmission is through ingestion of feed that has been contaminated with a sufficient amount of tissues or organs containing the BSE agent from an infected animal. This route of transmission can be prevented by excluding from ruminant feed tissues or organs that could potentially carry the BSE agent.

Other characteristics of the BSE agent, as evidenced by epidemiology, transmission studies, and pathogenesis are discussed in detail in a final rule APHIS published in the **Federal Register** on September 18, 2007 (72 FR 53314–53379, Docket No. APHIS–2006–0041) and in the supporting scientific

documentation that was prepared for this proposed rule. (The supporting scientific documentation can be accessed at the APHIS Web site at *http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/RiskAssessment06–041–1%20.pdf).*

Roles of Different Agencies

APHIS, an animal health agency within USDA, promulgates its regulations regarding BSE under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), which gives the Secretary broad discretion to regulate the importation of animals and animal products if necessary to protect the health of U.S. livestock.

Because variant Creutzfeldt-Jakob Disease (vCJD) in humans has been linked to exposure to the BSE agent, APHIS collaborates with other Federal agencies with regulatory responsibility for assuring food safety and the protection of human health to implement a comprehensive coordinated U.S. response to BSE. Within USDA, protecting human health from the risks of BSE is carried out by the Food Safety and Inspection Service (FSIS), the agency charged with responsibility for administering the Federal Meat Inspection Act, which was enacted to ensure that meat and meat food products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The USDA agencies carry out their programs in close coordination with the following Centers of the Food and Drug Administration (FDA) of the U.S. Department of Health and Human Services: The Center for Veterinary Medicine regarding animal feed and veterinary pharmaceuticals; the Center for Food Safety and Applied Nutrition regarding foods other than meat, poultry, and egg products; and other Centers regarding drugs, biologics, and devices containing bovine material. These agencies collaborate, issuing regulations under their respective authorities. Imported products must meet all relevant agency requirements. Each agency has the capability to deny imports based on their individual authorities and concerns.

Rulemaking Regarding BSE

The protective measures the Federal Government has taken have evolved over the years, as scientific understanding of the disease has increased. In 1989, APHIS prohibited the importation of live cattle and other ruminants and certain ruminant products, including most rendered protein products, into the United States from countries where BSE is known to exist, and codified this prohibition in the CFR on April 30, 1991 (56 FR 19794–19796, Docket No. 90–252). The list of regions in which BSE is known to exist is set out in the current regulations in § 94.18(a)(1).

In June 1997, FDA prohibited the use of all mammalian protein—with the exception of pure pork and pure equine protein from single species processing plants and certain other materials—in animal feeds given to cattle and other ruminants, and established measures to protect against the contamination of ''allowable'' feed material with materials that could contain the BSE agent. We discuss this and other FDA actions regarding BSE in this document under the heading ''Evolution of U.S. Regulatory Response to BSE.''

In rulemaking made effective December 12, 1997, and published in the **Federal Register** on January 6, 1998, APHIS added to the regulations a category of regions that pose an undue risk of introducing BSE into the United States. In the rulemaking document establishing that category (63 FR 406–408, Docket No. 97–127–1), we explained that our decision to add the category was based on developments that led us to believe that, at the time, the BSE agent might have been present but as yet undetected throughout Europe. We noted that the Netherlands, Belgium, and Luxembourg had recently reported their first case of BSE in native-born cattle. Additionally, we noted that Belgium and Luxembourg had reported that cattle diagnosed with BSE had inadvertently been processed into the animal food chain. We concluded that, because of the movement of ruminants and ruminant products within Europe, the possibility existed that this potentially contaminated animal feed might have been moved to other European countries.

In our 1997 rulemaking, we applied the same import prohibitions and restrictions to regions of undue risk for BSE that were being applied to regions listed as those in which BSE is known to exist. The list of regions of undue risk for BSE is set out in the current regulations in § 94.18(a)(2). Imports from any region not listed in either of those two categories were not subject to any BSE prohibitions or restrictions.

In December 2000, APHIS expanded its prohibitions on imports of rendered ruminant protein products from BSE-restricted regions to include rendered protein products of any animal species because of concern that cattle feed supposedly free of ruminant protein may have been cross-contaminated with the BSE agent (66 FR 42595–42601, Docket No. 00–121–1). FDA also issued import alerts on animal feed ingredients for APHIS-listed countries.

On November 4, 2003, APHIS published a proposed rule in the **Federal Register** (68 FR 62386–62405, Docket No. 03–080–1) in which we proposed to establish a category of regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts, and to add Canada to this category. The proposal also set forth conditions for the importation of certain live ruminants and ruminant products and byproducts from BSE minimal-risk regions.

In the November 2003 proposal, we set forth factors that would be taken into account in determining whether a country qualified as a BSE minimal-risk region. According to our proposed definition of a BSE minimal-risk region, such measures would include importation restrictions, surveillance, and a feed ban. With regard to a feed ban, we proposed that, to be recognized as a BSE minimal-risk region, a country must have in place a ban on the feeding of ruminant protein to ruminants that appears to be an effective barrier to the dissemination of the BSE infectious agent, with no evidence of significant noncompliance with the ban.

On December 25, 2003, less than 2 weeks before the close of the comment period for the proposed rule, a case of BSE in a dairy cow of Canadian origin in Washington State was verified by an international reference laboratory. Subsequently, both FSIS and FDA implemented significant additional measures in the United States to protect human health. In addition, APHIS commenced an enhanced BSE surveillance program to determine the incidence of the disease in the United States.

The measures taken by Federal agencies in January 2004 led to a change in APHIS' November 2003 proposed rule. Among the actions taken by FSIS to supplement its measures to prevent the BSE agent from entering the human food supply was to designate as specified risk materials (SRMs) certain tissues from cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle, and to prohibit their use as human food. FSIS also required all slaughtering and processing establishments to develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs. FSIS did not restrict the age of cattle eligible for slaughter, because the removal of SRMs effectively mitigates the BSE risk to humans associated with cattle that pass

both ante-mortem and post-mortem inspections (i.e., apparently healthy cattle). (We discuss below additional BSE-related regulatory actions taken by FSIS and FDA under the heading ''Evolution of U.S. Regulatory Response to BSE.'')

The risk mitigation measures that FSIS implemented regarding slaughtered cattle had ramifications for the importation of bovine-derived meat from other countries. Pursuant to the Federal Meat Inspection Act, countries that export meat to the United States must implement food safety requirements that are equivalent to those in place in the United States. To be eligible to export beef to the United States, a country must have in place a system to effectively keep SRMs out of the production chain and to prevent cross-contamination of beef with SRMs. FSIS determined the SRM requirements implemented by Canada in July 2003 to be equivalent to FSIS' requirements. Additionally, FDA's feed ban prohibits most mammalian protein, including ruminant protein, from entering the ruminant feed chain in the United States.

On March 8, 2004, APHIS published a document in the **Federal Register** (69 FR 10633–10636, Docket No. 03–080–2) explaining the effects on our proposed rule of the detection of BSE in the State of Washington in a cow imported from Canada and of the additional measures taken by FSIS, APHIS, and FDA. That document explained why the detection of an imported BSE-infected cow did not alter the conclusions we had reached in our original risk assessment. It explained further that, in fact, the resulting additional measures put in place by FSIS provided a basis for removing from the proposed provisions an age restriction on cattle from which meat would be derived for export to the United States. Accordingly, we proposed to allow the importation of beef derived from cattle of any age. To give the public additional time to comment on the proposal in light of these developments, we reopened and extended the comment period for an additional 30 days.

On January 4, 2005, APHIS published in the **Federal Register** (70 FR 460–553, Docket No. 03–080–3) a final rule that established the criteria for BSE minimal-risk regions, listed Canada as a BSE minimal-risk region, and specified importation requirements for live animals, and meat products and byproducts. The final rule allowed the importation of meat from bovines of any age, as we had proposed on March 8, 2004. The final rule was scheduled to become effective on March 7, 2005.[1]

In January 2005, BSE was confirmed in two cows in Canada.

On March 11, 2005, APHIS published a document in the **Federal Register** (70 FR 12112–12113, Docket No. 03–080–6) that, pursuant to an announcement by the Secretary of Agriculture on February 9, 2005, delayed the applicability of the provisions of the January 2005 final rule as they applied to the importation from Canada of certain commodities, including meat, meat food products, and meat byproducts other than liver when derived from bovines 30 months of age or older when slaughtered. We discuss the delay of applicability in more detail, below.

On August 18, 2005, APHIS published in the **Federal Register** (70 FR 48494–48500, Docket No. 05–004–1) a proposed rule to amend the regulations by allowing, under certain conditions, the importation of whole cuts of boneless beef from Japan.

On November 28, 2005, APHIS published in the **Federal Register** an interim rule (70 FR 71213–71218, Docket No. 03–080–8) that amended certain provisions established by the January 2005 final rule. The interim rule broadened the list of who is authorized to break seals on conveyances and allows transloading under supervision of products transiting the United States.

On December 14, 2005, APHIS published a final rule in the **Federal Register** (70 FR 73905–73919, Docket No. 05–004–2) that made final its August 2005 proposed rule regarding certain cuts of boneless beef from Japan. The risk assessment conducted for that rulemaking examined the evidence supporting the safety of this commodity. This evidence and APHIS' conclusions were consistent with those of the World Organization for Animal Health (OIE) for trade in meat derived from cattle from regions of controlled risk for BSE. (The risk document, ''Analysis of Bovine Spongiform Encephalopathy (BSE) Risk to the U.S. Cattle Population from Importation of Whole Cuts of Boneless Beef from Japan,'' can be accessed at *http://www.regulations.gov/#!documentDetail;D=APHIS-2005-0073-0002).* The OIE is the international standard-setting organization for guidelines related to animal health.

On March 14, 2006, APHIS published in the **Federal Register** a technical amendment (71 FR 12994–12998, Docket No. 03–080–9) that clarified our intent with regard to certain provisions in the January 2005 final rule and corrected several inconsistencies within the rule.

On August 9, 2006, APHIS published in the **Federal Register** a proposed rule (71 FR 45439–45444, Docket No. APHIS–2006–0026) that proposed to amend the provisions established by the January 2005 final rule by removing several restrictions regarding the identification of animals and the processing of ruminant materials from BSE minimal-risk regions, and by relieving BSE-based restrictions on hide-derived gelatin from BSE minimal-risk regions. We solicited comments concerning our proposal for 60 days ending October 10, 2006. On November 9, 2006, we published a document in the **Federal Register** (71 FR 65758–65759, Docket No. APHIS–2006–0026) reopening and extended the comment period until November 24, 2006.

On January 9, 2007, APHIS published a proposed rule in the **Federal Register** (72 FR 1101–1129, Docket No. APHIS–2006–0041) that proposed to establish conditions for the importation of the following commodities from BSE minimal-risk regions: Live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export;[2] blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines.

On September 18, 2007, APHIS published in the **Federal Register** (72 FR 53314–53379, Docket No. APHIS–2006–0041) a final rule that adopted the

[1] On March 2, 2005, Judge Richard F. Cebull of the U.S. District Court for the District of Montana ordered that the implementation of APHIS' January 4, 2005, final rule be preliminarily enjoined. On July 14, 2005, the U.S. States Court of Appeals for the Ninth Circuit ordered that the preliminary injunction order be vacated and the case remanded to the District Court.

[2] Requiring that live bovines exported to the United States from BSE minimal-risk regions be born after the date of effective enforcement of a ruminant-to-ruminant feed ban is consistent with the OIE standards for the exportation of live bovines from countries classified by the OIE as having either a negligible or a controlled BSE risk. We consider effective enforcement to have been achieved after completion of the initial (or practical) period of implementation of a feed ban and after sufficient time has elapsed to allow most feed products to cycle through the system. The practical implementation period, which begins when the regulations are initially put in place, can be determined by evaluating implementation guidance and policies, such as allowing grace periods for certain aspects of the industry. In addition, the time necessary for initial education of industry and training of inspectors must be considered. After the practical implementation period is defined, we then consider the time necessary subsequent to practical implementation to allow most feed products to cycle through the system, given the management practices in the country. Effective enforcement does not necessarily mean that 100 percent compliance with the feed ban requirements will be achieved.

changes to the regulations we had proposed in January 2007. Additionally, the September 2007 final rule removed the partial delay of applicability of the January 2005 final rule with respect to meat and certain meat products and byproducts derived from cattle over 30 months of age.

On January 18, 2008, APHIS published in the **Federal Register** a final rule (73 FR 3379–3385, Docket No. APHIS–2006–0026) that made final the provisions of our August 9, 2006, proposed rule, with some changes.

On July 3, 2008, Judge Lawrence L. Piersol of the U.S. District Court for the District of South Dakota, in response to a motion filed in that Court, ordered USDA to provide the public with notice and a further opportunity to comment on the provisions of our January 2005 final rule regarding the importation of beef from bovines 30 months of age or older when slaughtered, to consider comments made by interested parties, and to revise the rule as USDA deems necessary.

On September 18, 2008, APHIS published a request for comments in the **Federal Register** (73 FR 54083–54089), in which we provided the public with such notice and further opportunity to comment. We solicited comments for 60 days ending November 17, 2008.

In this document, we discuss the issues raised by commenters in response to our September 2008 request for comments and provide our responses to those comments. Following that discussion, we describe and discuss changes we are proposing to make to the APHIS BSE regulations. However, in order to present our responses to the comments and the changes we are proposing in the context of the available scientific research and empirical data regarding the transmission of BSE, we consider it necessary to first discuss what is known regarding SRMs and the role of feed bans in reducing BSE risk.

Tissue Localization

Some bovine tissues have demonstrated infectivity, whereas others have not. Most of the information on the development and distribution of tissue infectivity in BSE-infected cattle has been derived from experimental pathogenesis studies conducted in the United Kingdom and Germany (Wells, *et al.,* 1994; 1996; 1998; 1999; 2005; EFSA 2007; Hoffman 2007; Hoffman 2011). In these studies, cattle were deliberately infected with BSE through oral exposure to the brain tissue of cattle with confirmed BSE. Subsets of the experimentally infected cattle were killed at regular intervals as the disease progressed. At each interval, the tissues of the infected cattle were examined for histopathological changes consistent with BSE and for abnormal prion proteins. Also, at each interval, a mouse assay was done—i.e., tissues of the BSE-infected cattle were injected intracerebrally and intraperitoneally into different types of mice (e.g., wild mice and mice genetically altered to be highly susceptible to BSE) to identify those tissues of cattle containing infectivity.

The first United Kingdom pathogenesis studies involved 30 animals, each of which received a single dose of 100g of infected brain at 4 months of age (Wells, *et al.,* 1994; 1996; 1998; 1999; 2005). This dose is probably 10–100 times greater than that associated with field exposure via feed (DEFRA, 2006). The studies demonstrate that in cattle infected with BSE, the total amount of infectivity in the animal, as well as the distribution of infectivity in the animal's body, changes over time (Wells, *et al.,* 1994; 1996; 1998; 1999; 2005). The highest levels of infectivity were detected in the brain and spinal cord at the end stages of disease. Some cattle exhibited clinical signs of BSE as early as 35 months after oral exposure to the BSE agent. By 37 months after oral exposure, all five animals that were still alive demonstrated clinical evidence of BSE. Infectivity was found in cattle with clinical signs of BSE in the brain, spinal cord, DRG,[3] trigeminal ganglia, and the distal ileum of the small intestine.

BSE infectivity was demonstrated in the brain, spinal cord, and DRG as early as 32 months after oral exposure to the BSE agent in some cattle (Wells, *et al.,* 1994; 1996; 1998; 1999; 2005). Infectivity was demonstrated in these tissues 3 months before animals began to develop clinical signs of the disease. Infectivity was demonstrated in the distal ileum of cattle 6 to 18 months after oral exposure to the BSE agent and again at 38 months and 40 months after oral exposure. A similar study (Espinosa, *et al.,* 2007) examined the infectivity of tissues from these same animals by intracerebral inoculation of highly sensitive transgenic mice overexpressing bovine PrP (prion protein). This study's findings were similar to those of Wells, *et al.,* described above. In addition, infectivity in the sciatic nerve was found at low levels only after 30 months from exposure. No detectable infectivity was found in the spleen, skeletal muscle, blood, or urine of asymptomatic cattle.

As explained by the United Kingdom's Department for Environment, Food and Rural Affairs (DEFRA) and by the European Commission's Scientific Steering Committee, a second phase of the pathogenesis studies, which used a cattle bioassay as an endpoint, was conducted to ensure that low levels of infectivity that may not have been detected in the first phase using the mouse bioassay were not missed (DEFRA, 2006; EC SSC 2002). This second phase of the study was completed in March 2007 (Gerald Wells, personal communication, 2008).

In the cattle bioassay, tissues from the same cattle orally exposed to BSE in the earlier pathogenesis studies were injected directly into the brain of BSE-free cattle (DEFRA, 2006). This method is considered to be several hundred-fold more sensitive in detecting BSE infectivity than the mouse bioassay (DEFRA, 2006). Preliminary results from the cattle bioassay study demonstrate that, in addition to the materials that were found to contain infectivity when the mouse bioassay was used, the tonsils of calves 10 months after oral exposure to the BSE agent also contain infectivity. However, because only one of five animals injected with tonsil material from infected animals developed clinical BSE at 45 months post-inoculation, the level of infectivity in the tonsils appears to be very low.

BSE infectivity has not been demonstrated in the muscle tissue of BSE-infected cattle examined in these studies through either the mouse bioassay or the cattle assays (Wells 1996; 2005; personal communication 2008). All assays of the skeletal muscle pools were completed in March 2007 (Wells, personal communication 2008).

A larger pathogenesis study conducted in Germany involved calves that were orally challenged with macerated brainstems from BSE-positive cattle (EFSA 2007; Hoffman 2007). Every 4 months, randomly selected animals are euthanized and necropsied, and more than 150 tissue and bodily fluid samples are collected from each animal and analyzed by immunohistochemistry, pure-tone average Western blot, and transgenic mouse bioassay (TgbovXV). The initial results from the German BSE pathogenesis study demonstrate that BSE prions can reach the brain as soon as 24 months after a massive oral challenge (Hoffman 2007).

In addition to these studies on experimentally infected cattle,

[3] DRG are clusters of nerve cells attached to the spinal cord that are contained within the bones of the vertebral column. ''DRG'' as used in this document has the same meaning as the term ''dorsal spinal nerve root ganglia.'' Trigeminal ganglia are clusters of nerve cells connected to the brain that lie close to the exterior of the skull.

distribution of tissue infectivity has also been studied in cattle exposed to BSE under field conditions. In these animals, at the end stages of the incubation period with demonstrated clinical signs, BSE infectivity has been confirmed by mouse bioassay only in the brain, spinal cord, and retina of the eye (EC SSC 2001).

In a 2005 study, mice genetically engineered to be highly susceptible to BSE and to overexpress the bovine prion protein were inoculated with tissues from an end-stage clinically affected BSE-infected cow (Buschmann and Groschup, 2005). The sensitivity of these mice to infection is significantly greater than other mice panels used in bio-assays, and the sensitivity is even greater than that of cattle by approximately tenfold. Using these highly sensitive mice, this study demonstrated low levels of infectivity in the facial and sciatic nerves of the peripheral nervous system of the cow. While this study, and the 2007 study by Espinosa, *et al.,* produced interesting findings that can help further characterize the pathogenesis of BSE, they cannot be extrapolated into the context of the risk presented by natural (i.e., field) exposure pathways. The findings may be influenced by the overexpression of prion proteins in these genetically engineered mice. Any apparent levels of infectivity are low in these extremely sensitive mice and would be even lower in other species such as cattle. Moreover, the route of administration to the mice was both intraperitoneal and intracerebral, both of which are very efficient routes of infection as compared to oral consumption.

Tissues that have demonstrated infectivity, and thus are likely to contain the infectious BSE agent in infected cattle, are brain, tonsil, spinal cord, eyes, trigeminal ganglia, DRG, and distal ileum. Approximately 90 percent of the infectivity is associated with the brain, spinal column, DRG, and trigeminal ganglia. The remaining 10 percent is associated with the infectivity in the distal ileum. In BSE, as with other TSEs, the total amount of infectivity in an animal increases throughout the incubation period, reaching the highest load at the end of that period, very close to the death of the animal. Infectivity is considered to increase exponentially, reaching 4.5 logs less than a clinical case at 50 percent of the incubation period and 3 logs less than a clinical case by 70 percent of the incubation period (Comer and Huntly, 2003).

All of this research has contributed to the definition of which tissues should be considered SRMs. Both the types of tissues and the understanding of the progression of the infectivity throughout the incubation period contribute to the definition of SRMs. Affiliated tissues or structures such as skull or vertebral column are also considered risk materials because of the difficulty in separating out small tissues such as DRG from the vertebral column. The risks associated with tissue localization can be mitigated by excluding SRMs from the food or feed chain or by excluding them completely from importation. FSIS and FDA regulations regarding SRMs, which we discuss below under the heading ''Evolution of U.S. Regulatory Response to BSE,'' are based on this scientific knowledge and an understanding of the mitigative effects of exclusion of SRMs (FSIS, 2004; 2004a; 2004b; 2005; 2007; FDA, 2004; 2005; 2007; 2008).

The measures taken by FSIS included declaring SRMs to be inedible and requiring their removal from cattle at slaughter. As noted above, even if a BSE-infected cow 30 months or older that was presented for slaughter were not exhibiting clinical signs of the disease and passed ante-mortem and post-mortem inspections, the removal of SRMs from the cow would effectively mitigate the BSE risk to humans.

Within USDA, APHIS and FSIS review and consider carefully, on an ongoing basis, all BSE research regarding the definition of SRMs, as do other countries that participate in the OIE. U.S. regulations regarding SRM removal are consistent with international guidelines.

Feed Bans

As noted, scientists believe that the route of field transmission in animals is through ingestion of feed that has been contaminated with tissues or organs containing the BSE agent from an infected animal. This route of transmission can be prevented by excluding potentially contaminated materials from ruminant feed.

Experience internationally in countries with BSE has demonstrated that feed bans are effective control measures and that the incidence of BSE worldwide continues to decline because of these measures (OIE, 2010). In the United States, prohibitions on the use of ruminant protein in ruminant feed are imposed by FDA to mitigate the risk of BSE transmission.

Because of the demonstrated efficacy of an effectively enforced feed ban in reducing the possibility of exposure of cattle to the BSE agent, the OIE provides guidelines for trade in live cattle from regions that have reported BSE if such regions have an effective feed ban in place, provided the cattle were born after the date when the feed ban was effectively enforced.

By eliminating transmission, an effective feed ban reduces the possibility of the existence of infected animals in a given cattle population, which in turn reduces further the chances of healthy animals being exposed to the BSE agent via subsequent recycling of infectivity.

September 2008 Request for Comments

As we discussed earlier in this document, the final rule that APHIS published in January 2005 to establish criteria for BSE minimal-risk regions, list Canada as a BSE minimal-risk region, and specify importation requirements for live animals, and meat products and byproducts was the outcome of a rulemaking process that APHIS initiated in 2003 to update its BSE regulations to reflect the latest scientific data and knowledge of the disease.

As discussed above, in our November 2003 proposal, we set forth factors that would be taken into account in determining whether a country qualified as a BSE minimal-risk region. According to our proposed definition of a BSE minimal-risk region, such measures would include importation restrictions, surveillance, and a feed ban. With regard to a feed ban, we proposed that, to be recognized as a BSE minimal-risk region, a country must have in place a ban on the feeding of ruminant protein to ruminants that appears to be an effective barrier to the dissemination of the BSE infectious agent, with no evidence of significant noncompliance with the ban.

We explained the role a feed ban plays in reducing BSE risk, stating that the primary source of BSE infection is feed contaminated with the infectious agent, that scientific evidence shows that feed contamination results from the incorporation of ingredients that contain abnormal ruminant protein derived from specific tissues from infected animals, and that bans prohibiting incorporation of ruminant protein into ruminant feed are imposed to mitigate risk (Wilesmith, *et al.,* 1988; 1991; 1992).

In subsequent rulemaking documents, we elaborated further on the role and effect of a feed ban. In our January 2007 proposed rule, which we described earlier in this document, we discussed data associated with a ruminant-to-ruminant feed ban in the United Kingdom and indicated that experience in the United Kingdom demonstrates that implementation of a ruminant-to-ruminant feed ban causes BSE

prevalence to decrease. We noted that as a result of reducing the recycling of infectivity in the United Kingdom, the annual incidence of BSE fell by 99.4 percent, from 36,680 animals in 1992 to 203 in 2005 (DEFRA 2006a) and concluded that there is every reason to expect downward pressure on the prevalence of BSE in any country that implements a feed ban.

The conditions for the importation of ruminant products and byproducts from BSE minimal-risk regions that we proposed in November 2003 were proposed as changes to parts 94 and 95 of the regulations. The commodities addressed by the proposed changes to part 94 included meat and other edible products derived from ruminants. Part 95 addressed the importation of byproducts derived from ruminants.

Changes Regarding the Importation of Meat From Bovines Proposed in November 2003

As set forth in our November 2003 proposed rule, the provisions in part 94 for the importation of meat derived from bovines from BSE minimal-risk regions required that the following conditions be met:

- The meat is derived from bovines that were less than 30 months of age when slaughtered and that are not known to have been fed ruminant protein, other than milk protein, during their lifetime;
- The bovines from which the meat is derived were slaughtered at a facility that either slaughters only bovines less than 30 months of age or complies with a segregation process approved by the national veterinary authority of the region of origin and the APHIS Administrator as adequate to prevent contamination or commingling of the meat with products not eligible for importation into the United States;
- The intestines of the bovines were removed at slaughter; and
- The product qualifies as meat under the definition of *meat* in the FSIS regulations at 9 CFR 301.2.

As noted, one of the conditions for the importation of bovine-derived meat from BSE minimal-risk regions was that the bovines from which the meat is derived be less than 30 months of age when slaughtered. The relevance of the age of the animal to the risk of BSE, which we explained earlier in this document under the heading ''Tissue Localization,'' pertains to which tissues in a BSE-infected bovine have been demonstrated to contain BSE infectivity and the age at which a BSE-infected animal has been found to show infectivity in those tissues. In essence, as we stated in our November 2003 proposed rule, the proposed restriction on the age of the animals from which the commodity was derived was a measure to guard against the importation of, or contamination of meat through contact with, SRMs.

As noted above, after a BSE-infected cow of Canadian origin was discovered in Washington State in December 2003, both FSIS and FDA implemented significant additional measures in the United States to protect human health. Among the measures taken by FSIS and FDA was to declare SRMs to be inedible and require their removal from cattle at slaughter. FSIS designated as SRMs the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age or older, and the tonsils and distal ileum of the small intestine of all cattle. To ensure effective removal of the distal ileum, FSIS also required all slaughtering and processing establishments to develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs. Establishments were specifically required to implement procedures to address the potential contamination of edible materials with SRMs before, during, and after entry into the establishment. As noted above, FSIS did not restrict the age of cattle eligible for slaughter. Even if a BSE-infected cow 30 months or older that was presented for slaughter were not exhibiting clinical signs of the disease and passed ante-mortem and post-mortem inspections, the removal of SRMs from the cow would effectively mitigate the BSE risk to humans.

As discussed above, pursuant to the Federal Meat Inspection Act, implementation in the United States of those mitigation measures by FSIS meant that any country seeking to export beef to the United States would have to have equivalent mitigation measures in place. FSIS determined the SRM requirements implemented by Canada in July 2003 to be equivalent to FSIS' requirements.

As noted above, in March 2004, APHIS published a proposed rule and reopening of comment period in the **Federal Register** in which we explained why the detection of an imported BSE-infected cow did not alter the conclusions we had reached in the assessment of risk on which our November 2003 proposed rule was based. We explained further that, in fact, the resulting additional measures put in place by FSIS (i.e., declaring SRMs to be inedible and requiring their removal from cattle at slaughter) provided a basis for our removing from the provisions we had proposed in November 2003 the age restriction on cattle from which meat could be derived for export to the United States. In the March 2004 proposed rule and reopening of comment period, we stated that we did not believe it was necessary to require that beef imported from BSE minimal-risk regions be derived only from cattle less than 30 months of age, provided measures equivalent to those established by FSIS in the United States to ensure that SRMs are removed when the animals are slaughtered are in place in the exporting country and that such other measures as are necessary are in place.

As noted above, in January 2005 we published in the **Federal Register** a final rule that established the criteria for BSE minimal-risk regions, listed Canada as a BSE minimal-risk region, and specified conditions for the importation from BSE minimal-risk regions for live animals and meat, meat byproducts, and meat food products. For the reasons we discussed in our March 8, 2004, **Federal Register** document, the final rule did not limit the importation of bovine-derived meat from Canada to that derived from cattle younger than 30 months of age. In the final rule, we set forth in part 94 the following conditions for the importation from BSE minimal-risk regions of meat, meat byproducts, and meat food products derived from bovines:

- The bovines from which the meat, meat byproduct, or meat food product is derived have been subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000;
- The meat, meat byproduct, or meat food product is derived from bovines for which an air-injected stunning process was not used at slaughter; and
- The SRMs and small intestine of the bovines were removed at slaughter.

As noted above, in March 2005, APHIS published a document in the **Federal Register** that, pursuant to an announcement by the Secretary of Agriculture on February 9, 2005, delayed the applicability of the provisions of the January 2005 final rule as they applied to the importation from Canada of the following commodities when derived from bovines 30 months of age or older when slaughtered: (1) Meat, meat food products, and meat byproducts other than liver; (2) whole or half carcasses; (3) offal; (4) tallow composed of less than 0.15 percent insoluble impurities that is not otherwise eligible for importation under 9 CFR 95.4(a)(1)(i); and (5) gelatin

derived from bones of bovines that is not otherwise eligible for importation under 9 CFR 94.18(c).

In his February 9, 2005, announcement, the Secretary stated that, because ongoing investigations into the January 2005 finds of BSE in Canada in animals over 30 months of age were not complete, he felt it prudent to delay the effective date for allowing imports of meat from bovines 30 months of age and over. He also indicated that the delay of applicability would address concerns that the January 2005 final rule allowed the importation of meat from bovines 30 months of age or older while continuing to prohibit the importation of live cattle 30 months of age or older for processing in the United States. The Secretary stated that the Department would consider and develop a plan—based on the latest scientific information and with the protection of public and animal health as the highest priority—to allow imports of live bovines 30 months of age or older.

As discussed earlier in this document, in January 2007 we published a proposed rule in the **Federal Register** to, among other things, establish conditions for the importation from BSE minimal-risk regions of live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export.

As noted above, in September 2007, we published a final rule in the **Federal Register** that adopted the changes to the regulations we had proposed in January 2007. Additionally, the September 2007 final rule removed the partial delay of applicability of the January 2005 final rule with respect to meat and certain meat products and byproducts derived from cattle over 30 months of age that we addressed in our March 2005 notice. In our September 2007 final rule, we stated that, subsequent to implementation of the partial delay of applicability, ''we [had] obtained additional information regarding all aspects of the issues that prompted the delay of applicability and [had] conducted additional analyses'' as indicated by the Secretary in February 2005 to allow imports of live bovines 30 months of age or older (72 FR 53316).

As we concluded in our September 2007 final rule, the risk assessment for that final rule demonstrates the negligible BSE risk from the importation of additional classes of live bovines, including those 30 months of age or older.

II. Issues Raised in Response to Request for Comments

The September 2007 final rule, which included the removal of the partial delay of applicability of the provisions of the January 2005 rule relating to meat derived from cattle 30 months of age or older, became effective on November 19, 2007.

As noted above, on September 18, 2008, we published in the **Federal Register** a document that provided the public with notice and further opportunity to comment on the provisions of our January 2005 final rule regarding the importation from BSE minimal-risk regions of beef from bovines 30 months of age or older when slaughtered, for which the delay of applicability was removed in our September 2007 final rule. We solicited comments for 60 days ending November 17, 2008.

We received 12 comments by that date, including one submission that included a compilation of comments from a large number of individuals. The comments were from individual private citizens; associations of producers of livestock and other agricultural commodities, both in the United States and Canada; associations of meat processors; a consumer organization; and the Government of Canada. We carefully considered all comments received and we discuss in the following section the issues raised by the commenters and our response to those issues.

Comments in Support of the Removal of the Delay of Applicability

Five of the comments expressed support for the removal of the delay of applicability of provisions of our January 2005 final rule.

The remainder of the commenters opposed the removal of delay of applicability. Of those commenters, several provided no information to support their opposition. Others expressed general concern that allowing the importation of bovines and commodities derived from bovines from BSE minimal-risk regions would create an unacceptable disease risk. We discuss in the following section specific issues raised by commenters who opposed the removal of delay of applicability.

Meat Derived From Bovines Less Than 30 Months of Age

As noted above, one of the import conditions in the November 2003 proposed rule was that meat imported from bovines slaughtered in BSE minimal-risk regions be derived from bovines less than 30 months of age when slaughtered. Also as noted, in March 2004 we published a proposed rule and a reopening of the comment period for the November 2003 proposed rule. We explained in that document that we believed BSE risk mitigation measures implemented by FSIS subsequent to our November 2003 proposed rule provided a basis for removing from the proposed provisions the requirement that beef imported from BSE minimal-risk regions be derived only from cattle less than 30 months of age, with the provision that equivalent measures are in place to ensure that SRMs are removed when the animals are slaughtered and that such other measures as are necessary are in place.

Issue: In our September 2008 request for comments, we included a chronology of the relevant rulemaking documents that had preceded the request for comments and referenced our March 2004 proposed rule and reopening of the comment period for the November 2003 proposed rule. One commenter stated that, in our September 2008 document, we mischaracterized our March 2004 proposed rule and reopening of the comment period as proposing to allow the importation from BSE minimal-risk regions of beef derived from cattle of any age. The commenter stated that the March 2004 proposed rule and reopening of the comment period contained no reference to the importation of beef from cattle of any age and instead continued to propose a restriction on the age of cattle by retaining the requirement contained in the November 2003 proposed rule that the beef be derived from animals that are not known to have been fed ruminant protein, other than milk protein, during their lifetime.

Response: When we stated in our September 2008 request for comments that our March 2004 proposed rule and reopening of the comment period proposed to allow the importation of beef derived from cattle of any age, our intent was to explain that, under the provisions of the March 2004 proposed rule and reopening of the comment period, the fact that bovines from which meat and meat products intended for importation into the United States from a BSE minimal-risk region were 30 months of age or older when slaughtered would not in itself preclude the commodities from being imported. We were not referring to any effect the feed ban requirement might have on the import eligibility of the commodities. The terminology regarding ''cattle of any age'' that we used in our September 2008 request for comments was

consistent with that which we used in the risk analysis for our January 2005 final rule (APHIS, 2004).

Issue: One commenter noted that the risk assessment APHIS conducted for its January 2005 final rule identified as a requirement for the importation of bovine-derived meat and meat products from a BSE minimal-risk country that veterinary officials in the exporting country certify that the animals from which the meat and meat products were derived were subject to a feed ban considered equivalent to that in place in the United States. The commenter also noted that APHIS' November 2003 proposed rule included a requirement that bovine-derived meat imported from a BSE minimal-risk region be derived from bovines that were not known to have been fed ruminant protein, other than milk protein, during their lifetime.

The commenter noted, further, that, in APHIS' September 2008 request for comments, we stated that, with respect to the importation of meat, the 30-month age restriction contained in our November 2003 proposed rule was a measure to guard against the importation of, or contamination of meat through contact with, tissues other than meat that have the potential of containing high levels of BSE infectivity. According to the commenter, that wording mischaracterized APHIS' rationale in the November 2003 proposed rule regarding the 30-month age restriction on bovines from which meat and meat products were derived. The commenter stated that APHIS' true intention regarding the 30-month age restriction was to prevent the importation of products derived from Canadian cattle that had been exposed to BSE infectivity.

The commenter cited text from the risk assessment conducted for APHIS' 2005 final rule that stated that the risk of introducing BSE infectivity can be reduced by requiring that animals presented for export and animals from which meat or meat products intended for export were derived were subject to a ruminant feed ban. Additionally, the commenter cited text from (1) APHIS' November 2003 proposed rule that stated that animals, and the products derived from those animals, will present a lower risk if the animals were born after the implementation of an effective feed ban and (2) from the risk assessment APHIS conducted for its January 2005 final rule that stated that, in addition, Canadian cattle less than 30 months of age would have been born and raised during a time when the Canadian feed ban had been in place for more than 5 years, and, based on evidence of a high level of compliance with the feed ban, are unlikely to have been exposed to the BSE agent.

The commenter discussed APHIS' provisions regarding two specific products derived from bovines—tongues and liver—to support the commenter's contention that APHIS' true intent regarding the 30-month age restriction on bovines from which meat and meat products are derived was to prevent the importation of products derived from Canadian cattle that had been exposed to BSE infectivity, rather than to guard against the importation of, or contamination of meat through contact with, tissues other than meat that have the potential of containing high levels of BSE infectivity.

With regard to tongues, the commenter stated that APHIS' November 2003 proposed rule would have allowed the importation of bovine tongues, even tongues derived from cattle 30 months of age or older, despite the fact that APHIS acknowledged that tongues are connected to and bear the risk of contamination by tonsils, which the commenter stated have the potential of containing high levels of BSE infectivity. The commenter stated that, to mitigate this risk, APHIS proposed to require that tongues be derived from cattle from which the tonsils were removed at slaughter and that were born after the implementation of an effective feed ban and were not known to have been fed ruminant protein, other than milk protein, during their lifetime.

The commenter pointed to a similar situation regarding bovine-derived liver from BSE minimal-risk regions. The commenter stated that APHIS' November 2003 proposed rule would have allowed the importation of liver that was not subject to the 30-month age restriction, even though, according to APHIS, it was susceptible to contamination by brain emboli, tissues that have the potential of containing high levels of BSE infectivity. The commenter noted that, in APHIS' November 2003 proposed rule, the only mitigation of the potential for the contamination of liver by the BSE agent was the requirement that the liver not be derived from cattle for which an air-injected stunning process was used at slaughter. The commenter noted that in APHIS' January 2005 final rule, however, the importation of liver from BSE minimal-risk regions was governed by the same conditions as those set forth for other types of meat from bovines, including the requirement that liver be derived from bovines that were subject to a ruminant feed ban.

Response: We consider the commenter's assertion to be inconsistent with APHIS' stated intent in its rulemaking documents and supporting risk analyses, with the regulatory provisions of previous rulemaking documents, and with internationally accepted scientific literature.

In presenting the issues noted above, the commenter seems to be incorrectly concluding that two separate risk mitigation measures we included in our November 2003 proposed rule—(1) a prohibition on the importation from BSE minimal-risk regions of bovine-derived meat and meat products from animals that were 30 months of age or older when slaughtered, and (2) a requirement that the animals from which the commodities were derived were subject to a ruminant feed ban—were intended to mitigate BSE risk in the same way, i.e., by preventing the importation of products derived from Canadian cattle that had been exposed to BSE infectivity.

The commenter's characterization of APHIS' rationale for the 30-month age restriction is inconsistent with the explanation we provided in our November 2003 proposed rule. In the November 2003 proposed rule, we explained in detail the likelihood that specific tissues in a BSE-infected bovine of a certain age will contain the disease agent and how that likelihood influences the risk of BSE transmission from an infected animal. We stated in the proposed rule that ''levels of infectious agent in certain tissues vary with the age of an animal, so the age of the animal influences risk'' (68 FR 62390), then discussed in detail the research findings supporting that statement. We concluded our discussion of the influence of the age of the animal on BSE risk by stating that ''because BSE infectivity has not been found in most bovine tissues until at least 32 months post-exposure, we believe that by requiring that bovines imported into the United States from BSE minimal-risk regions be less than 30 months of age, the risk of the BSE agent being present at infectious levels in most tissues in the animal is minimized.'' (62 FR 62391)

As we discuss earlier in this document, in our March 2004 proposed rule and reopening of the comment period, we explained that, in light of the SRM removal requirements implemented in the United States by FSIS following the diagnosis of BSE in Washington State in December 2003 in a cow imported from Canada, we did not believe it would be necessary to require that beef imported from BSE minimal-risk regions be derived only from cattle less than 30 months of age, provided equivalent measures are in place to ensure that SRMs are removed

when the animals are slaughtered, and that such other measures as are necessary are in place. In our September 2007 final rule, we emphasized that the removal and disposal of SRMs is the key factor in the food safety of products from bovines used for human consumption.

The ''other measures'' regarding the importation of bovine-derived meat, meat byproducts, and meat food products and meat products from BSE minimal-risk regions set forth in our January 2005 final rule were that (1) the commodity be derived from bovines that have been subject to a ruminant feed ban equivalent to the requirements established by FDA in the United States and (2) the commodity be derived from bovines for which an air-injected stunning process was not used at slaughter.

As the commenter noted, effective enforcement of a ruminant-to-ruminant feed ban reduces the risk that an animal will be exposed to the BSE agent. However, the removal of SRMs from bovines is an effective means of mitigating the risk of BSE transmission to humans from meat, meat products, and meat byproducts derived even from an exposed animal. In comparison, the BSE regulations for live bovines imported from a BSE minimal-risk region require that the animals were born after the date of effective enforcement of a ruminant-to-ruminant feed ban to reduce the likelihood that a BSE-infected live animal is imported into the United States.

Requiring that SRMs be removed from bovines from which meat and meat products are derived, as is required in both the United States and Canada, ensures that tissues containing BSE infectivity are removed even from a BSE-infected animal that might be presented for slaughter showing no visible signs of BSE. We note that the OIE Code for trade in fresh meat and meat products from cattle from countries of controlled BSE risk (both Canada and the United States are classified as countries of controlled BSE risk by the OIE) recognizes the negligible risk presented by such products as long as SRMs are removed. Therefore, the Code does not recommend that the date of birth of the animal from which the commodity was derived be a condition for such trade, or that the commodity be accompanied by certification that the animal was subject to a feed ban.

APHIS' confidence in the effectiveness of SRM removal in reducing BSE risk was demonstrated in a final rule that APHIS published in December 2005 to allow the importation, under certain conditions, of boneless beef from Japan. Although that rulemaking differs from the rulemaking APHIS conducted regarding BSE minimal-risk regions in the sense that the only commodity addressed in the Japan rulemaking was boneless beef—whereas a more extensive list of commodities was made eligible for importation into the United States from BSE minimal-risk regions—it is significant to note that the conditions in § 94.27 of the regulations for the importation of boneless beef from Japan do not include the requirement that the bovines from which the beef was derived were subject to a feed ban. The requirements for the importation of boneless beef from Japan are that it be prepared in an establishment eligible to have its products imported into the United States under the Federal Meat Inspection Act and the FSIS regulations in 9 CFR 327.2, that it meet all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR chapter III), including the requirements for the removal of SRMs and the prohibition on the use of air-injection stunning devices prior to slaughter on cattle from which the beef is derived, and that it be derived from cattle that were not subjected to a pithing process at slaughter.

Although a ruminant-to-ruminant feed ban reduces the possibility of exposure of bovines to the BSE agent and is an important measure in mitigating the risk that BSE will be transmitted in a region, it serves a different role in BSE mitigation than does SRM removal.

Issue: One commenter stated that APHIS, in its September 2008 request for comments, explained that the conclusion reached in the risk assessment for the September 2007 final rule regarding the negligible BSE risk from the importation of cattle from Canada, even those 30 months of age older, gave further support to the conclusion of the risk analysis conducted for APHIS' 2005 final rule that the importation of meat and meat products derived from bovines from BSE minimal-risk regions posed a low BSE risk, provided certain conditions were met.

The commenter stated that both the risk assessment for APHIS' 2007 final rule regarding the importation of live older bovines and the risk assessment for APHIS' 2005 final rule were predicated on a bovine's being subject to a feed ban during its entire lifetime and that neither the January 2005 final rule nor the risk analysis that accompanied that rule addressed the risk of BSE contamination in meat or meat products derived from cattle that were born prior to the date of effective enforcement of Canada's feed ban. Therefore, stated the commenter, APHIS had no basis to lift its restriction on the importation of beef from Canadian cattle that were over 30 months of age when slaughtered.

The commenter stated further that APHIS, in its September 2007 final rule, deleted from the regulations without explanation the requirement that bovine-derived meat and meat products imported from a BSE minimal-risk region be derived from an animal that had been subject to a feed ban.

Response: The commenter is incorrect in stating that the September 2007 final rule removed the requirement that bovine-derived meat and meat products, and certain byproducts, imported from a BSE minimal-risk region be derived from animals that had been subject to a feed ban.

With regard to the commenter's discussion of the wording we used in our September 2008 request for comments in referring to our risk assessments, although we acknowledge that the wording we used in that document could be interpreted in several ways, our intent was to compare the likelihood of BSE introduction into the United States through the importation of live bovines from Canada with the likelihood of BSE introduction through the importation of bovine-derived meat and meat products from Canada. In making such a comparison, we referred to the risk assessments for our January 2005 and September 2007 final rules, in which we explained in detail the role of SRMs in BSE transmission and the effectiveness of reducing the likelihood of BSE transmission through the removal of SRMs at slaughter. Our point was that, if, as we concluded in our September 2007 final rule, the risk of BSE exposure in the United States from the importation of live bovines—with SRMs intact—from Canada is negligible, then the importation of bovine-derived meat and meat products from Canada would present even less of a risk, because the SRMs from the bovines from which the meat and meat products were derived would have been left behind in Canada.

Effectiveness of Canadian Inspection System

As discussed above, one of the required risk mitigation measures for bovine-derived meat and meat products imported from Canada is that the SRMs of the bovines from which the commodities are derived were removed at slaughter.

Issue: Several commenters expressed concern about the ability of Canadian food inspectors to ensure that meat products are free from SRMs. One commenter stated that, in a 2007 audit of Canadian food establishments eligible to export to the United States, FSIS reported the following: ''Inspection system controls at all levels were not fully developed and implemented. There were many instances of deficiencies both in the documentation reviews and in the operations audits that should have been addressed prior to the FSIS audit. Some inspection personnel were not well-trained in the performance of their inspection tasks.'' (The commenter cited ''Food Safety and Inspection Service, United States Department of Agriculture, ''Final Report of an Audit Carried Out in Canada Covering Canada's Meat, Poultry, and Egg Products Inspection System, May 1 through June 6, 2007'', *http://www.fsis.usda.gov/OPPDE/FAR/Canada/Canada2007.pdf.''*)

Response: In addressing this issue, FSIS has stated that, with respect to the FSIS audit of Canada in 2007, FSIS specifically assessed controls for SRM removal in Canada and identified no related deficiencies. With regard to the other deficiencies identified in the 2007 audit, FSIS stated that none caused FSIS to question whether the Canadian inspection system was adequate with regard to SRM control. FSIS has included a review of controls for SRM removal in its audits since 2005. In each review—including audits conducted in February 2005, April-May 2006, May-June 2007, and May-June 2008—no deficiencies were noted in relation to SRM removal and other BSE-related requirements.

Issue: One commenter stated that the Canadian Food Inspection Agency (CFIA) is considering weakening government food inspection and turning the inspection process over to industry and that further deregulation of meat inspection in Canada would endanger U.S. public health.

Response: In addressing this issue, FSIS has informed APHIS that FSIS has been in contact with CFIA, including follow-up discussions about possible changes to the inspection system in Canada. FSIS is not aware of any substantive planned changes at this time. Any changes affecting meat, poultry, or processed egg product destined for the United States would require discussion related to equivalency to the U.S. inspection system.

Issue: One commenter stated that, although APHIS' September 2008 request for comments indicated that FSIS has determined that Canada has implemented food safety requirements that are equivalent to those in the United States, including Canada's July 2003 requirements regarding SRMs, there is a disparity between what FSIS is supposed to require of foreign plants that ship products to the United States and what is actually practiced.

Response: In 2005, FSIS conducted an enforcement audit to evaluate Canada's implementation of SRM controls for products destined for the United States. FSIS concluded that SRM controls had been effectively implemented, in accordance with FSIS regulatory requirements, in Canadian establishments certified to export beef to the United States. The audit led to no delistments of eligible establishments, nor to any notices of intent to delist eligible establishments.[4]

Issue: One commenter cited a December 2005 report by the USDA's Office of Inspector General (OIG) that stated, in part:

> In July 2003, FSIS found that Canadian inspection officials were not enforcing pathogen reduction and HACCP system regulations. These same types of concerns were identified again in June 2005, almost 2 years later. However, as of September 2005, FSIS has not made a determination whether the identified concerns are serious enough to limit the import of Canadian products. As a result, FSIS has allowed the importation of almost 700 million pounds of meat and poultry from plants that did not receive daily inspection, a requirement for all U.S. meat and poultry plants. Additionally, FSIS allowed the import of over 261 million pounds of ready-to-eat meat and poultry that had not been subjected to finished product testing for *Listeria monocytogenes,* as is required of U.S. plants. (The commenter cited ''Audit Report Food Safety and Inspection Service Assessment of the Equivalence of the Canadian Inspection System, U.S. Department of Agriculture, Office of Inspector General, Northeast Region, Report No. 24601–05–Hy, December 2005, at 4.'')

The commenter stated that, according to the OIG, FSIS does not have protocols or guidelines for evaluating deficiencies in a country's inspection system that could jeopardize a country's overall equivalence determination and that FSIS did not institute compensating controls to ensure that public health was not compromised while deficiencies were present.

Response: As noted in the OIG report, FSIS addressed audit deficiencies with CFIA officials during and immediately following the 2003 and 2005 audits. For those deficiencies that had potential impact on public health, FSIS auditors required the establishments to take immediate corrective actions. In some instances, FSIS also required enforcement action to be taken by Canadian authorities. These enforcement actions included immediate delistment of the establishment or the issuance of a warning letter requiring specific corrective actions within 30 days. FSIS' analysis of the audit reviews have identified and resolved all potential public health concerns.

Issue: One commenter stated that, in a follow-up report issued by the OIG in August 2008, the OIG reported that FSIS could not demonstrate that the number of intensified inspections for physical and laboratory failures provided the appropriate level of protection to ensure the safety and wholesomeness of imported products.

Response: In response to Recommendation #8 of OIG audit 24601–08–Hy, FSIS agreed with OIG's findings and stated that FSIS would determine the appropriate number of intensified inspections needed following physical and laboratory failures to ensure the safety and wholesomeness of imported products.[5] After further analysis of available data, FSIS determined that the current number of intensified inspections for laboratory and physical failures is sufficient and appropriately established. Thus, according to FSIS, further revisions to the FSIS procedures for intensified inspections are unnecessary.

Issue: One commenter stated that the OIG found that FSIS could not demonstrate that it performed an adequate sampling of foreign establishments to validate that the country's inspection system is equivalent to that in the United States. The commenter stated, further, that the OIG found that FSIS did not visit the minimum number of establishments necessary to validate that inspection systems were equivalent to that in the United States in three of the four countries it reviewed and questioned whether FSIS had sufficient data to conclude that these countries' inspection systems were equivalent to the U.S. system.

[4] Delistment of an establishment removes it from the list of establishments authorized to export meat and meat products to the United States. A notice of intent to delist is issued to an establishment that conducts marginally acceptable practices, and puts it on notice that it will be delisted unless specified improvements are made.

[5] Intensified inspections are triggered after a product fails to pass reinspections for physical and laboratory testing. If the level of inspection is increased, FSIS management officials have decided to perform reinspection activities above the normal level of inspection for a lot, based on problems associated with the specific product, foreign establishment, or country.

Response: In response to Recommendation #2 of OIG audit 24601–08–Hy, FSIS has developed and implemented a process to document the reasons for the number of establishments selected for an on-site country audit as part of the agenda for the pre-audit conference between FSIS and the foreign country. In addition, FSIS has implemented a statistically based sampling plan using a country's recent history of overall compliance with FSIS requirements, as well as information provided by the country on a continuous basis, in determining that the foreign country's inspection system is performing adequately.

Efficacy of SRM Removal in Mitigating the Risk of BSE

Issue: One commenter stated that the risk modeling the commenter said APHIS relies on to support its claim that SRM removal alone is sufficient to mitigate the potential BSE risk to humans shows otherwise. The commenter stated that the risk modeling shows that there are two significant factors that contribute to the reduction in potential BSE risk to humans: (1) The amount of BSE infectivity in circulation (based on the number of BSE-infected cattle), and (2) compliance with SRM removal requirements. The commenter stated that the influence of the amount of BSE infectivity is demonstrated by the fact that when the 2005 risk model was updated to include the presence of BSE-contaminated poultry litter, resulting in more BSE-infected cattle, the effectiveness of SRM removal in reducing potential BSE risk to humans was decreased by nearly half (from 20 oral ID_{50}s to 11oral ID_{50}s) [6] even with perfect compliance with SRM removal requirements.[7] (BSE infectivity is expressed in terms of cattle oral ID_{50}s. A cattle oral ID_{50} is defined as the amount of infectivity required to cause infection in 50 percent of an exposed cattle population).

The commenter stated that the authors of the risk models further substantiated that the amount of circulating infectivity impacts human health even with perfect compliance by explaining why the potential risk to humans was reduced following a simulation that prohibited SRMs from being used in both human food and animal feed. The commenter quoted the authors of the risk model as stating:

> Removing infectious tissues from both human food and animal feed, assuming that the ban effectively covers dead stock, and assuming perfect compliance, together have a substantial impact on both the potential human exposure and the spread of BSE * * *. Potential human exposure decreases both because there are fewer BSE cases and because the measures remove infectious tissues from the human food supply. Average human exposure decreases by more than 99 percent from 3,800 cattle oral ID_{50}s to 10 oral ID_{50}s.'' [8]

Response: The commenter appears to be attempting to use various model results to suggest that the SRM restrictions simulated in the models are not sufficient to mitigate the public health risk when there are higher numbers of infected animals present. However, the model results themselves do not support this conclusion. To discuss the commenter's statements in meaningful context, it is necessary to first provide a history of the models and model runs referred to.

In 2001, Harvard University provided USDA with the results of an extensive model that simulated the results of introducing BSE-infected cattle into the United States. This model has since been used and updated by both FSIS and APHIS at various times. These uses and updates include the following that are of significance and/or referenced in this docket:

- 2004—FSIS used model runs as part of their ''Preliminary Analysis of Interim Final Rules and an Interpretive Rule to Prevent the BSE Agent from Entering the U.S. Food Supply.''
- October 2005—FSIS asked Harvard to update the model and run several simulations, and these were published for public comment ''Harvard Risk Assessment of BSE Update; Phase IA, October 31, 2005.''
- December 2006—FSIS/Harvard incorporated changes based on public comment from the October 2005 simulations. This was made public, along with the responses to the public comments as ''Harvard Risk Assessment of BSE Update; Phase IA; Supplemental Simulation Results, December 26, 2006.''
- September 2007—APHIS used the model, with amendments, as part of the risk assessment supporting its September 2007 final rule. The quantitative model was used to support the exposure assessment of the risk assessment.

In each of these instances, the assumptions used, the scenarios examined, and even the model itself differed from those in the others. It is therefore challenging to compare results from different instances of using the model without understanding the changes in the assumptions and the simulations. In the following paragraphs, we summarize these different model runs in chronological order and provide selected results from each, to help clarify the interpretation of the results.

2004: In this instance, FSIS used a modified version of the 2001 Harvard BSE risk assessment model (as revised by Harvard in response to peer review comments). The baseline estimate assumed that five BSE-infected animals were imported into the United States in 2003. The model then simulated the spread of BSE infectivity until 2020. The analysis assumed that measures implemented in the United States to prevent the spread of BSE—e.g., the FDA feed ban—were in place at the time that infectivity was introduced. FSIS simulated the introduction of public health risk mitigation options—i.e., restrictions on SRMs and advanced meat recovery (AMR)—and assumed that these were implemented in 2004, 1 year after the infectivity was introduced. Therefore, because of these assumptions, the simulated mitigation options could never remove all of the infectivity that could be available for human consumption over the model simulation timeframe. In other words, BSE infectivity could enter the human food supply for 1 year before FSIS mitigations took effect. In the baseline analysis, with five infected animals introduced into the United States, over the 17-year simulation a mean of slightly less than two additional animals were affected. The baseline level of potential human exposure for the introduction of 5 infected animals—with no SRM risk mitigation options in place during the 17-year simulation—was an average of 22 cattle oral ID_{50}s over the 17-year timeframe. With the introduction of SRM and AMR requirements (essentially the same requirements as those established by the FSIS regulations), the potential human exposure was an average of 7.5 cattle oral ID_{50}s over the 17-year simulation. This was an 80 percent reduction in this simulation. Again, it is important to note that the public health assumptions used in these simulations could never remove more than 90 percent of the potential human exposure from the simulation.

[6] BSE infectivity is expressed in terms of cattle oral ID_{50}s. A cattle oral ID_{50} is defined as the amount of infectivity required to cause infection in 50 percent of an exposed cattle population.

[7] The commenter cites Harvard Risk Assessment of Bovine Spongiform Encephalopathy Update, Phase IA, Supplemental Simulation Results, December 26, 2006, Appendix 2A, Section 2.1.2c, line 15 (AR 17464); *see also* Harvard Risk Assessment of Bovine Spongiform Encephalopathy Update, Phase IA, October 31, 2005, Appendix 2A, Section 2.1.2, line 15 (AR 17109).

[8] The commenter cites the Harvard Risk Assessment of Bovine Spongiform Encephalopathy Update, Phase IA, October 31, 2005, at 29 (AR 17086).

In 2005 and 2006, FSIS again used the model to simulate a variety of risk mitigation options. The original simulations were published in October 2005 and public comment on the model and the assumptions used was invited. In response to the public comments received, some changes were made to the model and the assumptions, and the final results were published in December 2006. The base case in each of these simulations represented the circumstances in the United States prior to December 2003—i.e., with an FDA feed ban in place prior to the introduction of infected animals. In each scenario, 500 infected animals were introduced at one time and the model ran a total of 50,000 simulation runs for each scenario. The scenarios considered included various food safety measures, animal health measures (changes to the feed ban), and combinations of both.

The October 2005 model included the following results. The results of the base case simulation—500 infected animals and a simulation timeframe of 20 years—indicated a mean of 680 total infected animals over the 20 years (500 imported animals and 180 domestic animals) and a mean of 3,800 cattle oral ID_{50}s potentially available for human consumption. In comparison, the scenario that modeled a comprehensive ban from human food of SRMs from cattle 30 months of age or older (which we refer to below as ''30-month SRM restrictions'') yielded similar results for the number of infected animals, but with a mean of only 11 cattle oral ID_{50}s potentially available for human consumption over the entire 20-year timeframe. The authors noted that they found that the food safety measures enacted by USDA all reduce potential human exposure to BSE infectivity but have little effect on spread of BSE in the cattle population. They also specifically noted that the results of the food safety measures enacted were relative reductions to what is already a small risk in absolute terms, especially in light of the fact that these simulations reflect the assumed introduction of 500 infected cattle into the United States. One other scenario modeled in this report was a removal of SRMs of animals 12 months and older (which we refer to below as a ''12-month SRM restrictions'') from both the human and the animal food chain. This scenario decreased the number of infected animals to a mean of 540 total infected animals over the 20 years (including both imports and domestic cases) and indicated a mean of 9.8 cattle oral ID_{50}s potentially available for human consumption. The authors conclude that this scenario indicates potential human exposure decreases both because there are fewer BSE cases and because the measures remove infectious tissues from the human food supply, although the amount of infectivity potentially available for human consumption (9.8 oral ID_{50}s) was not significantly different from the simulation that modeled SRM removal (30 months of age and older) from only the human food supply. In other words, the number of BSE cases (680 total in the simulation with SRM removal from only human food as compared to 540 total in the simulation with SRM removal from both human and animal food chain) did not appear to significantly impact the potential human exposure.

The December 2006 model provided similar results in many ways. This report included a change to explicitly model contamination of cattle feed as a result of the recycling of poultry litter. The base case again simulated 500 infected animals introduced, with 50,000 simulation runs of 20-year timeframes. The base case results indicated a mean of 700 total infected animals over the 20 years (500 imported animals and 200 domestic animals), with a mean of 6,600 cattle oral ID_{50}s potentially available for human consumption. Modeling a requirement for removal from the human food supply of SRMs from cattle 30 months of age or older, with 100 percent compliance, indicated a mean of 20 oral ID_{50}s potentially available for human consumption over the 20-year time period. This same requirement, with an assumption of 99 percent compliance, indicated a mean of 83 oral ID_{50}s potentially available for human consumption.

APHIS used a modified version of the Harvard model as part of the risk assessment that supported the September 2007 final rule. Specifically, we used the quantitative model in our exposure assessment to consider less likely scenarios. The model simulated BSE release and exposure in the United States over 20 years, with the introduction of infected animals from Canada at a constant rate over the entire period. We assumed that the existing FDA feed ban requirements were in place throughout the 20 years, and that FSIS and FDA restrictions on SRMs in human food were the same as implemented in 2004. The base case scenario results indicated that the importation of approximately 19 infected animals leads to approximately 2 U.S. cases as secondary spread, for a total of 21 infected animals over the 20-year period. The base case indicated a mean of 45 cattle oral ID_{50}s potentially available for human consumption.

As noted above, the model results themselves do not support what seems to be the commenter's conclusion that the SRM restrictions simulated are not sufficient to mitigate the public health risk when there are higher numbers of infected animals present. Specifically, in the October 2005 model, both the base case and the 30-month SRM restrictions from human food indicated the same number of total infected animals—680 infected animals over the 20-year timeframe. Yet, the simulation modeling the 30-month SRM restrictions from human food reduced the mean amount of cattle oral ID_{50}s available for human consumption from 3,800 to 11. In the scenario where 12-month SRM restrictions were applied in both human and animal food, although the number of total BSE cases changed (540 total infected animals), the amount of oral ID_{50}s potentially available for human consumption (9.8 oral ID_{50}s) stayed essentially the same as those in the 30-month SRM restriction scenario (11 oral ID_{50}s). It should be noted that the assumptions used in the APHIS base case exposure assessment provided a total of only 21 infected animals over a 20 year time period—significantly less than the approximately 700 total infected animals in the FSIS simulations.

It is important to place some context around the results of the amount of infectivity potentially available for human consumption. The significance of cattle oral ID_{50}s to human exposure and susceptibility is not known; however, various studies suggest that the infectious agent may be 10 to 10,000 times less pathogenic in humans than in cattle because of a species barrier (EC SSC, 2000). Thus, if the cattle-human species barrier were 100, it would mean that 100 times more infective material would be required in order to have a similar probability of infecting a human as a bovine. Comer and Huntly (2003) estimated, after an evaluation of available literature, that 54,000,000 (54 million) bovine oral ID_{50}s were available for human consumption in Great Britain from 1980 to 2003. This extremely large amount of available infectivity has resulted in 168 cases of vCJD identified or suspected in the United Kingdom through March 2009, plus a few additional cases identified in other countries but attributed to exposure in the United Kingdom. When compared to the United Kingdom's BSE experience and the associated estimate of available bovine oral ID_{50}s, the mean values of 11 potentially available cattle oral ID_{50}s—

or even 20 oral ID_{50}s or 83 oral ID_{50}s—over a 20-year period are miniscule.

Issue: One commenter stated that the prevalence of BSE in Canada is significantly higher than BSE prevalence in the United States and that APHIS has no basis to claim that measures implemented in the United States to mitigate the prevalence of BSE in this country are sufficient to mitigate a much higher prevalence in Canada. The commenter referenced a statement by the Centers for Disease Control (CDC) that the prevalence of BSE in Canada has been 90 percent likely to be between 18-fold and 48-fold higher than the previously published best estimate of the prevalence of BSE in the United States. The commenter stated that CDC notes that, nonetheless, a BSE prevalence in Canada 23-fold higher than that in the United States continues to be used in the Harvard Risk Assessments' ''worst case'' analysis when evaluating the risk of imported Canadian cattle's causing BSE to spread among U.S. animals.

Response: In comparing the estimate of the prevalence of BSE in the United States with the estimated prevalence of BSE in Canada, it should be noted that the estimated number of BSE-infected animals per million is very low in either case—0.167 cases per million in the United States and 3 to 8 cases per million in Canada.

The commenter states that prevalence of disease has a significant impact on the effectiveness of mitigation measures, but provides no evidence to support this claim. Evidence in countries with significant outbreaks of BSE indicates that the animal health and public health mitigation measures are effective, even in the face of significantly higher prevalence levels. The primary animal health mitigation measure is a feed ban to prevent the inclusion of potentially infective tissues from being fed to cattle. This measure has demonstrably worked in the United Kingdom, a country with a significantly higher prevalence level relative to other countries. The number of BSE cases identified in birth year cohorts (all cattle born in a given year) in the United Kingdom has continued to decline since peaking in 1987. The United Kingdom established its initial feed ban requirement in 1988. This continuous decline clearly demonstrates the effectiveness of a feed ban as an animal health mitigative measure in the face of an outbreak with high prevalence. Similarly, on the public health side, SRM restrictions are an effective public health measure, even in a high prevalence situation. Experience in the United Kingdom and elsewhere in Europe demonstrates this effectiveness. The models used by FSIS that are discussed above continue to indicate the effectiveness of this measure, even when simulating relatively high numbers of infected animals present in the system. Given all of these points, APHIS has no reason to believe that the effectiveness of these mitigation measures is impacted by differences in prevalence levels.

Issue: One commenter stated that it is important to note that APHIS' estimate of the prevalence of BSE in Canada is based on the detection of 11 cases of BSE, and that since that estimate was made, additional cases of BSE in Canadian cattle have been diagnosed. The commenter stated that APHIS should not rely on outdated prevalence estimates to evaluate Canada's BSE risk.

Response: In conducting our assessment of the risk of importing live bovines from Canada under the provisions of the 2007 final rule, we took into account, among other factors, the estimated prevalence of BSE in Canada. In discussing our estimate of BSE prevalence in Canada in that final rule, we explained that the number of BSE cases detected through surveillance understates the disease prevalence because exposed animals may be incubating disease and carrying infectious material in their tissues without presenting clinical symptoms. We noted, additionally, that surveillance will miss a proportion of detectable cases. Therefore, as we explained in our 2007 final rule, we applied statistical methods to the available epidemiologic and surveillance data to estimate, with attendant uncertainty, the prevalence of BSE in Canada. Even taking into account this attendant uncertainty, our qualitative and quantitative assessments of release of BSE into the United States via the import of live bovines from Canada demonstrate an extremely low likelihood of release, and that, because of the comprehensive mitigations already in place in the U.S., the likelihood of establishment is negligible.

Issue: One commenter noted that the epidemiological investigation conducted by Canada regarding an animal born in 2003 indicated that the most likely source of infection was consumption of commercial cattle feed produced in Canada. The commenter concluded that such information demonstrates that what the commenter termed ''Canada's widespread BSE exposure'' occurred because the August 1997 feed ban in Canada failed to address the cross-contamination of cattle feed with feed produced for other animals.

The commenter stated that APHIS' statement that its 2005 evaluation of the feed ban in Canada revealed that overall compliance with the feed ban is good and that the feed ban was reducing the risk of transmission of BSE in the Canadian cattle population has been disproven by subsequent outbreaks of BSE in cattle that were born years after the implementation of Canada's feed ban. The commenter stated further that the CDC has reported that occurrence of BSE in Canada has risen in recent years.

The commenter stated that there is no evidence that the prevalence of BSE in Canada is decreasing at this time. The commenter noted that most of the animals diagnosed with BSE in Canada were born after Canada implemented its 1997 feed ban and that over half of those cases were born after March 1, 1999, the date that APHIS determined to be the date of effective enforcement of the feed ban in Canada. The commenter also noted that more animals determined to be infected with BSE—two—were born in 2000 than in any other year. Other commenters also expressed opposition to the removal of the delay of applicability of the provisions described above because of the diagnosis of BSE in a number of Canadian-born cows since the diagnosis of BSE in a Canadian-born cow in May 2003. Some commenters expressed particular concern regarding the discovery of BSE in Canadian cattle within the past several years. One commenter stated that Canada's feed ban was not made whole until July 2007, when Canada took steps to ban ruminant protein from all animal feed and fertilizer. The commenter concluded that USDA should withdraw the September 2007 final rule and initiate a rulemaking to determine if Canada's feed ban is likely to have become effectively enforced after July 2007.

Response: We disagree with the commenters' conclusions. The commenters suggest that, in order for the Canadian feed ban to be considered effective, BSE surveillance data would have to demonstrate that the likelihood of BSE transmission in that country has been eliminated. However, as noted in the risk assessment for our September 2007 final rule, Canadian BSE surveillance data do not provide a statistical basis for distinguishing BSE prevalence among birth year cohorts (APHIS, 2007); the overall prevalence is so low that distinguishing any difference is nearly impossible. In other words, the data cannot distinguish any significant difference in prevalence among animals born in different years, which would have been one way to demonstrate the effect of a feed ban

(e.g., if the feed ban were implemented at the beginning of 1997, surveillance data showing a higher BSE prevalence in animals born in 1996 than in animals born in 1997 would support the effectiveness of the feed ban). However, in the absence of a feed ban that reduced exposure to BSE, we would expect the prevalence of the disease to increase over time. We have no evidence that such an increase has occurred but we do have data that the feed ban is being enforced.

Furthermore, as we discussed in the risk assessment for our September 2007 final rule, detection of BSE in an animal born after the date a feed ban was implemented does not indicate an overall failure of the measures in place to stem transmission of the disease in that country. Most other countries that have experienced cases of BSE have reported similar cases. Human error is expected, which is why the feed ban is comprised of a number of interrelated measures that have a cumulative effect. Our risk assessment does not assume 100 percent compliance with all measures all of the time. We discussed factors related to the feed ban in Canada since before its implementation in 1997. We considered activities related to inspection and compliance with the feed ban, the rendering industry, the risk of cross-contamination, education activities and industry awareness, and on-farm practices that might contribute to the efficacy of the feed ban. In addition, we highlighted the fact that since the implementation of the feed ban on August 4, 1997, Canada has continued to revise and strengthen its processes and procedures to further enhance the effectiveness of the feed ban.

With regard to the commenter's recommendation that a date in July 2007 be considered as the date of effective enforcement of a feed ban in Canada, as we discussed in our September 2007 final rule, we consider the July 2007 expansion of the Canadian feed ban to be an enhancement of an already effective ban. In July 2007, Canada modified its feed ban to remove SRMs from all animal feeds, pet food, and fertilizer. CFIA, in explaining its rationale for the enhanced ban, emphasizes that although surveillance results and investigations of BSE cases indicate that the feed ban in Canada has effectively reduced the spread of BSE since being implemented in 1997, even compliance with the ban's requirements left limited opportunities for contamination during manufacture, transportation, and storage that CFIA considered worth eliminating. In addition, the accidental misuse of feed on farms with multiple species could not be discounted. With the enhanced ban, CFIA projects that the eradication of BSE in Canada will be accelerated. Following such a regulatory path does not indicate that the feed ban in Canada prior to July 2007 was not effective or effectively enforced.

Issue: One commenter stated that APHIS, in its September 2007 final rule, established that SRM removal requirements are approximately 19 percent less effective in preventing human exposure to the BSE agent when those requirements are applied to cattle born before effective BSE mitigation measures were in place, such as in cattle born before the Canadian feed ban became effective.

The commenter discussed analyses that were conducted by FSIS to estimate the likely reduction of potential human exposure to BSE given the SRM removal requirements established by that Agency. The commenter stated that, in its 2004 evaluation, FSIS estimated that the SRM removal policy adopted by that Agency could reduce potential human exposure to BSE by 80 percent, based on the assumption that five BSE-infected animals had been introduced into the United States 12 months before FSIS implemented its BSE mitigation measures, including SRM removal. In 2005, stated the commenter, FSIS re-analyzed the likely reduction in potential human exposure, this time assuming that U.S. risk mitigation measures were implemented before the introduction of BSE-infected cattle in the United States. Using that assumption, said the commenter, FSIS indicated that the mitigation measures implemented by FSIS in 2004 would reduce potential human exposure by more than 99 percent on average. APHIS discussed the results of this re-analysis in its September 2007 final rule, stating:

> ''Since all scenarios [evaluated by FSIS] included at least some time in which the mitigations were not implemented, under the simulations, a certain amount of potential infectivity was allowed into inappropriate channels, such as human food. Because none of these scenarios incorporated the more realistic assumption that the mitigations were implemented (even imperfectly) throughout the simulation period, it is inappropriate to use this analysis as a citation for the level of public health protection provided by risk mitigation measures in place in the United States.
>
> A more appropriate analysis for understanding the role of SRM removal in potential human exposure to BSE infectivity would be the FSIS update of the same Harvard simulation model that was available for public comment in 2006 * * *. This updated model used the ''base case'' as the circumstances in the United States prior to December 2003, and simulated the response of the U.S. system for 20 years following the import of BSE-infected cattle. FSIS' updated model estimated the impact of various risk management measures, including measures that were adopted, considered, or proposed by various agencies and groups. These simulations, where the risk mitigation was applied during the entire simulation, as opposed to the simulation in the [2004] analysis * * * (in which it was not), indicated that removing SRMs, as currently defined by FSIS, reduced potential human exposure by more than 99 percent, on average. This report also stated that ''[i]t is worth noting that these measures reduce what is already a small exposure in absolute terms.'' (72 FR 53335–53336)

The commenter stated that the latter FSIS analysis is irrelevant to the issue of risk related to the importation of beef from Canada derived from cattle 30 months of age or older, because Canada is known to have had at least three generations of BSE infectivity in its native cattle herd prior to the time that Canada implemented its BSE mitigation measures, including SRM removal.

Response: The commenter states that APHIS established that SRM removal requirements are approximately 19 percent less effective in preventing human exposure to the BSE agent when those requirements are applied to cattle born before effective BSE mitigation measures were in place, such as in cattle born before the Canadian feed ban became effective. However, APHIS did not establish or suggest such a conclusion. In our September 2007 final rule, we responded to a commenter who raised the issue of the FSIS 2004 model, where the potential human exposure was reduced by only 80 percent. APHIS explained that this specific use of the model was not appropriate in completely evaluating the role of SRM removal in potential human exposure and noted that the FSIS 2005/2006 simulations provided a better analysis for understanding potential human exposure. APHIS noted that the FSIS 2004 model included ''* * * at least some time in which the mitigations were not implemented * * *'' (72 FR 53336). The commenter appears to have interpreted this to include all mitigations, including animal health mitigations such as the feed ban. This is inaccurate, as the FSIS 2004 model assumed that the feed ban requirements were in place throughout the 17-year time period of the simulations.

The commenter suggests that use of the FSIS 2005 model is inappropriate in an evaluation of the risk of imported beef from Canada, because Canada had infectivity in its cattle herd for at least three generations prior to implementing SRM restrictions. The commenter is

correct that the timeframe of implementing SRM restrictions is important for public health considerations. However, the commenter's conclusion that the presence of infectivity in animals prior to the implementation of SRM restrictions affects the effectiveness of those SRM restrictions is inaccurate. Requirements to prevent the inclusion of SRMs in the human food supply provide an immediate public health impact, regardless of the length of time infectivity may have been present in animals. These restrictions prevent infectious tissues from any animal—born before or after a feed ban—from entering the human food supply. As demonstrated in the FSIS 2005 and 2006 models, they provide significant public health protection, even over a 20-year timeframe.

Issue: The commenter stated that APHIS has provided no basis for an assertion that the rate of compliance with SRM removal requirements for Canadian cattle slaughtered in either the United States or Canada is adequate to protect human health. The commenter stated that the influence of the extent of compliance with SRM removal requirements is demonstrated by that fact that, all else being equal, when compliance with SRM removal requirements drops by only 1 percent, the potential risk to human health is more than quadrupled (increasing from 20 oral ID_{50}s to 83 oral ID_{50}s).

Response: We disagree that APHIS has not provided a basis for its conclusion that SRM removal in the United States or Canada constitutes an effective safeguard of human health with regard to BSE. In our September 2007 final rule, we established conditions for the importation into the United States of live bovines born on or after the date of effective enforcement of a ruminant-to-ruminant feed ban in a BSE minimal-risk region, as well as conditions for the importation of other bovine-derived commodities. As part of that rulemaking, we conducted an assessment of the potential BSE risk of implementing the provisions of the final rule. The exposure model used for the risk assessment assumed that SRMs are effectively removed 99 percent of the time in the United States. This assumption was based on FSIS summaries of Noncompliance Records performed from January 2004 to May 2005 in about 6,000 federally inspected meat and poultry establishments. Based on these records, FSIS estimated that noncompliance with respect to SRM-related regulations had a frequency of less than 1 percent.

In our September 2007 final rule, we explored the possible impact of assuming an arbitrary decrease (compared to the results of our exposure model) in SRM removal compliance in the United States on the availability of infectivity for human consumption. The model was for the United States, not Canada, but based on similarities in slaughterhouse practices in the United States and Canada, we can make a broad general assumption that the results in Canada would be the same as those in the United States. As discussed earlier in this document, in a 2007 audit in Canada, FSIS specifically assessed controls for SRM removal in Canada and identified no related deficiencies.

In our September 2007 final rule, we discussed the significance of an order-of-magnitude increase in available infectivity compared to our model's findings. First, we considered the results of that model, which uses the unlikely assumption that prevalence in Canada (and thus the proportion of infected animals imported from Canada) remains constant over the next 20 years. In the model's scenario, the total amount of infectivity potentially available for human consumption over the 20 years of the analysis is 45 cattle oral ID_{50}s.

As discussed above, if the cattle-human species barrier were 100, it would mean that 100 times more infective material would be required in order to have a similar probability of infecting a human as a bovine. As noted, the extremely large amount of infectivity available for human consumption in Great Britain from 1980 to 2003—estimated by Comer and Huntly (2003) as 54 million bovine oral ID_{50}s—resulted in 168 cases of vCJD identified in the United Kingdom through March 2009, plus a few additional cases identified in other countries but attributed to exposure in the United Kingdom. As discussed above, when compared to the United Kingdom's BSE experience and the associated estimate of available bovine oral ID_{50}s, the expected or average value of 45 cattle oral ID_{50}s indicates that only a miniscule amount of the BSE infective agent could possibly be available for potential human exposure in the United States over a 20-year period. (The potential for human exposure under this scenario is estimated at 1,200,000 times less in the United States than what the United Kingdom experienced during its BSE epidemic.) Even if compliance with the SRM ban were not as high as the 99 percent estimated in our exposure model, and we were to assume that the infectivity available for human consumption were increased by an order of magnitude (10x), it would still be far less than that estimated to have circulated in the United Kingdom and, we conclude, not be of significance to human health.

Issue: One commenter noted that APHIS stated in its September 2007 final rule that effective enforcement of a ruminant-to-ruminant feed ban does not necessarily mean 100 percent compliance with the feed ban will be achieved. The commenter stated that, although APHIS concludes that removal of SRMs effectively mitigates the BSE risk to humans associated with cattle that pass both ante-mortem and post-mortem inspections, FSIS states that this conclusion regarding the effectiveness of SRM removal is valid only if compliance is perfect. The commenter stated that it is arbitrary and capricious for APHIS to conclude that a feed ban is effective and effectively enforced even without perfect compliance, while at the same time concluding that SRM removal requirements provide effective mitigation to human health, even though such a level of protection is predicated on perfect compliance.

Response: We disagree with the commenter's logic. There are multiple mitigation measures that contribute to reduction of BSE risk. Each has its own degree of importance in a systemic reduction in risk. As we discuss above, enforcement of an effective feed ban in a region has the effect of reducing the amount of circulating BSE infectivity in that region. This makes it less likely that any one animal in that region will be infected with BSE. SRM removal is a method of removing and disposing of tissues that present a high likelihood of containing BSE infectivity if an animal were infected. In effect, countries such as the United States, Canada, and other countries worldwide that require SRM removal are making the assumption that any one animal presented for slaughter could be infected with BSE, even though the presence of an effective feed ban in that country reduces the likelihood of that to a minimal level.

With regard to the text from the FSIS document regarding perfect compliance, it is important to review the wording cited by the commenter in context. In the FSIS interim rule referred to by the commenter, FSIS refers to the December 2006 model we describe above, and states the following:

> However, although both the number of BSE cases and the level of human exposure increased in the post-public comment runs, conclusions with regard to prohibiting the use of SRMs for human food remain the same. More specifically, even with the revised base case, the post-public comment

runs show that excluding the materials designated as SRMs in this final rule almost completely eliminates potential human exposure to the BSE agent if compliance is perfect. Similarly, the post-public comment runs found that neither lowering the age classification for SRMs from cattle 30 months of age and older to 12 months of age and older, nor from 30 months of age and older to 24 months of age and older, provides additional benefits in reducing the level of potential human exposure to the BSE agent. Thus, the results of the 2005 model, regardless of the base case used, have not led the Agency to change its conclusion that the measures adopted in this final rule are prudent for preventing potential human exposure to the BSE agent. (72 FR 38726)

In addition, in the same rule, FSIS refers to the October 2005 model we described above, and states the following: ''The pre-public comment runs found that removing SRMs from cattle 30 months of age and older almost completely eliminates potential human exposure, reducing it to 11 cattle oral ID_{50}s * * *. It is worth noting that these are relative reductions to what is already a small risk in absolute terms, especially in light of the fact that these simulations reflect the assumed introduction of 500 infected cattle into the U.S.'' (72 FR 38725)

FSIS considered all of the information from the modeling simulations, including those runs where compliance was assumed to be less than 100 percent. Evaluating all of these results and statements together demonstrates the overall conclusion that SRM removal effectively mitigates the BSE risk to humans.

We also note that APHIS did not assume 100 percent compliance with SRM removal in the exposure assessment of our risk assessment. As noted elsewhere, we assumed a 99 percent compliance rate, acknowledging that no regulatory effort can ever ensure 100 percent compliance.

Specified Risk Materials

One of the requirements for the importation of meat, meat byproducts, and meat food products derived from bovines in BSE minimal-risk regions is that the SRMs of the bovines were removed at slaughter. In §§ 94.0 and 95.1 of the regulations, SRMs are defined as ''[t]hose bovine parts considered to be at particular risk of containing the bovine spongiform encephalopathy (BSE) agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).'' With some limited exceptions, the FSIS regulations list the following tissues as SRMs: (1) The brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG from cattle 30 months of age and older, and (2) the distal ileum of the small intestine and the tonsils from all cattle. If the small intestine is to be used for human food, the distal ileum must be removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine as measured from the ceco-colic junction and progressing proximally towards the jejunum, or must be otherwise removed by a procedure that the establishment demonstrates is effective in ensuring complete removal of the distal ileum.

Issue: One commenter stated that central to APHIS' September 2008 request for comments is the Agency's assumption that SRM removal will effectively protect consumers from exposure to BSE. The commenter stated that such an assumption is called into question by numerous studies demonstrating the limitations on mitigating the risk of BSE exposure via SRM removal. The commenter stated that the CDC has acknowledged that the risk of humans developing vCJD from eating muscle meat from cattle potentially infected with BSE cannot be precisely determined. The commenter stated that APHIS should have, but has not, explained why this uncertainty does not undermine what the commenter termed APHIS' almost-exclusive reliance on SRM removal requirements to protect American public health from potentially hazardous Canadian imports.

The commenter stated that the current inability to detect BSE prions in certain tissues does not mean that there is insufficient infectivity to be a hazard and that, while BSE prions have been found only in a solitary bovine muscle of a single cow, that likely is a function of the current limited analytical sensitivity of the test. The commenter stated that all the other information points to the likelihood that prions are present in such tissues.

The commenter stated that APHIS ignores the significance of recently detected BSE variations and dismisses the relevance of new studies that have detected BSE infectivity in new tissues. The commenter stated that in its September 2008 request for comments, APHIS stated that the new findings could be the result of more sensitive tests and of detection tools that may over-express the BSE agent. The commenter stated that APHIS incorrectly argued in its September 2008 request for comments that, because demonstrating the presence of PrP does not necessarily indicate the presence of BSE infectivity, studies that have detected abnormal PrP in the facial and sciatic nerves do not warrant new mitigation measures. The commenter stated that the World Health Organization (WHO) has found both the presence of Prp^{TSE} and BSE infectivity in the peripheral nerves of cattle. The commenter stated that the WHO has identified two classifications of BSE tissue infectivity, ''high infectivity'' and ''lower infectivity,'' and that the WHO includes peripheral nerves (e.g. sciatic and facial nerves) in the category of lower infectivity.

The commenter stated that, in its request for comments, APHIS specifically cited research that detected BSE infectivity in the sciatic nerve of cattle, but only after 30 months after exposure. Despite this, stated the commenter, APHIS does not require mitigation measures regarding the sciatic nerve in cattle 30 months of age or older. The commenter stated that facial and sciatic nerves are the only bovine tissues scientifically determined by multiple studies to harbor BSE infectivity for which APHIS requires no risk mitigations, not even the mitigation of requiring that beef imported from Canada be derived only from cattle that were subject to a feed ban during their lifetimes. The commenter stated that this policy is inconsistent with APHIS' consideration of tonsils in cattle of any age as an SRM tissue, even though APHIS cites only one study that found what appears to be a very low level of infectivity in the tonsils of BSE-infected cattle.

The commenter disagreed with this policy, stating that (1) BSE infectivity is known to exist in non-SRM tissues; (2) BSE infectivity is known to have been circulating in Canadian cattle for years, leading up to and including 2003; and (3) APHIS does not know the minimum dosage necessary to cause BSE infectivity in either humans or cattle. The commenter cited 2006 WHO guidelines as stating: ''It remains unknown whether tissues containing such very small amounts of infectious material [detected by novel techniques] would transmit infection to humans.'' (The commenter cites WHO Guidelines on Tissue Infectivity Distribution in Transmissible Spongiform Encephalopathies, World Health Organization, 2006, at 10.) Based on this uncertainty, stated the commenter, APHIS should take precautionary steps to avoid human exposure to meat and meat products from Canadian cattle that pose the highest risk of infection—cattle 30 months of age or older—particularly those born before the Canadian feed ban was effective.

Response: A similar issue was raised by the commenter in response to our January 2007 proposed rule. We are aware of the studies cited by the commenter and do not agree that they question the efficacy of SRM removal. In our September 2007 final rule, we acknowledged that studies using new methods that provide increased sensitivity will probably demonstrate the presence of PrP^{BSE} (the abnormal form of the prion protein) in various tissues. However, demonstrating the presence of PrP^{BSE} does not necessarily indicate the presence of BSE infectivity, especially if no infectivity is demonstrated via the most sensitive method available: Cattle-to-cattle exposure via intracerebral transmission. Therefore, one cannot automatically assume that a finding of PrP^{BSE} in a tissue means the tissue should be defined as an SRM. The OIE made this particular point in the *Terrestrial Animal Health Standards Commission Report, October 2006—Supporting Document for Chapter 2.3.13. Of the Terrestrial Animal Health Code on Bovine Spongiform Encephalopathy,* as follows:

> The availability of experimental infectivity data has significantly increased in recent years. During the same interval, extremely sensitive tests have been developed, including those employing highly sensitive transgenic mice strains and potentially more sensitive laboratory PrP detection methods. With the development of such highly sensitive methods, the probability of detection of PrP^{BSE} in tissues that are not currently listed as infectious is increasing. However, such findings need to be considered in context, and their relevance to establishing risk to consumers evaluated carefully when the quantity of PrP^{BSE} detected is potentially below the limit of detection of intracerebral (i.c.) cattle to cattle bioassay. By April 2007, 165 variant Creutzfeldt-Jakob Disease (vCJD) cases had been detected in the United Kingdom, a country where most probably the majority of the population was exposed to the BSE-agent. The latest models of the vCJD epidemic estimate that the potential scale of the clinical epidemic arising from food-borne exposure is unlikely to exceed 400 future cases in the United Kingdom (Clarke and Ghani, 2005). The relatively low number of predicted vCJD cases in relation to the massive exposure to the BSE agent is suggested to be due mainly to a significant species barrier between cattle and humans (Comer and Huntley, 2004; Bishop *et al.,* 2006).

APHIS is familiar with the results of the study (Buschmann, 2005) in which tissues from a BSE-diseased cow were inoculated into genetically engineered (transgenic) mice that are highly susceptible to BSE and that overexpress the bovine prion protein. Using this extremely sensitive mouse assay, the study demonstrated low levels of infectivity in the peripheral nervous system (e.g., facial and sciatic nerves) of the infected cow. APHIS discussed these findings in the risk assessment it made available with its September 2007 final rule and concluded that ''[g]iven all these factors there is not sufficient information to alter our understanding of the epidemiologically significant distribution of BSE infectivity in cattle.'' (APHIS, 2007). APHIS also acknowledges the results of Japanese studies in which PrP^{BSE} has been reported in the peripheral nerves of a case of BSE (Iwamaru *et al.,* 2005) and in some peripheral nerves of cattle slaughtered at abattoirs in Japan (Iwata *et al.,* 2006) by Western blot analyses. APHIS has also reviewed the German study in which infectivity was detected in the brainstem of an animal at 24 months post-infection (Hoffman, 2007). We have carefully considered all of these findings. USDA reviews and takes into consideration all BSE research for the definitions of SRMs, as do Canada and other countries internationally. As noted in the quote above, international policies regarding SRM removal have not changed based on the results of the studies discussed. Both the U.S. and Canadian policies regarding SRM removal are consistent with international standards.

Finally, we consider the quote the commenter provides from the WHO 2006 report to be of little use when presented out of context. In the report referenced by the commenter, the WHO was discussing in a hypothetical fashion the possibility of advances in techniques to detect PrP^{TSE} not limited to PrP^{BSE}. The WHO statement reads as follows:

> Several new methods attempting to detect PrP^{TSE} using novel techniques * * * if successfully developed, might eventually offer sufficient sensitivity to demonstrate amounts of agent below the level of detection of currently validated tests. It has been speculated that such methods might find small amounts of agent in some tissues currently thought to be free of infectivity. It remains unknown whether tissues containing such very small amounts of infectious material would transmit infection to humans. (WHO, 2006)

Issue: One commenter stated that APHIS' assumption that removal of the tonsils removes the potential for BSE transmission is unjustified given that APHIS has not evaluated the potential for contamination of tongue with tonsil tissue. The commenter stated that, although APHIS claims the possibility of such contamination is eliminated by current slaughter techniques, scientists who examined over 250 bovine tongues intended for human consumption found tonsillar tissue in the vast majority; in some cases, even after the most rigorous trimming of the root of the tongue.[9]

Response: We are making no changes based on the comment. As we discussed in our September 2007 final rule, Wells *et al.* (2005) state the following:

> However, the trace level of infectivity so far detected in tonsillar tissue and the localization of the lingual tonsillar lymphoid tissue, together with the current SRM legislation for the removal of tonsil from cattle carcasses and the low and diminishing prevalence of BSE in the UK suggest that the risk of human exposure to infected tonsil is now remote. It seems likely that under these circumstances any additional trimming of the tongue would result in an immeasurable reduction in the risk * * *

In other words, the study cited by the commenter does not present a strong case for additional risk measures, and, in fact, points to the opposite conclusion.

Moreover, even before the SRM requirements were implemented in January 2004, FSIS did not consider tonsil to be edible tissue—it was previously required to be removed. As noted in FSIS Notice 50–04:

> In the preamble to 9 CFR 310.22, FSIS stated that tonsils of all livestock species, including cattle, were already required to be removed and were prohibited for use as ingredients in meat food products under 9 CFR 318.6(b)(6). The accepted practice for removing the tonsils from livestock has been to remove all visible tonsils. In cattle, this includes separation of the palatine tonsils and lingual tonsils from the tongue (in establishments that harvest the tongue for human food) by a transverse cut caudal (just behind) the last vallate papillae * * * FSIS expected that establishments would continue to remove tonsils from cattle in accordance with the procedures that they had implemented to comply with 9 CFR 318.6(b)(6) * * * Establishments that slaughter cattle should have been following these practices before tonsils were designated as SRMs. (FSIS, 2004c).

APHIS' quantitative exposure model conducted for the September 2007 final rule included an update that acknowledged the potential infectivity in tonsils and clearly added these as an SRM, with the acknowledgment that they could still be potentially available for human consumption. In fact, the output tables from the model runs show the potential oral ID_{50}s derived from tonsils and available for human consumption over the 20-year period of

[9] The commenter cites Wells, G., Spiropoulos, J., Hawkins, S., and Ryder, S., Pathogenesis of Experimental Bovine Spongiform Encephalopathy; Preclinical Infectivity in Tonsil and Observations on the Distribution of Lingual Tonsil in Slaughtered Cattle, *Veterinary Record* (2005) 156, 401–407.

the analysis. These values are obviously very low, ranging from 0.026 oral ID_{50}s in the base case scenario to 0.16 oral ID_{50}s in sensitivity analysis 6 (in which all uncertain parameters were simultaneously set to their corresponding pessimistic level). Such very small values are not surprising given the low likelihood of infectivity in the tissue itself. Moreover, although our model predicts a vanishingly low level of possible human exposure via tonsils, we have not stated that the risk is ''eliminated,'' as was suggested in the comment.

Issue: One commenter stated that it is not yet possible to demonstrate how effective SRM removal is in mitigating the risk of BSE, because SRM removal requirements have not been in place long enough for an effect to be evident, particularly in light of the lengthy incubation periods assumed for vCJD in humans. The commenter stated that any human who consumed beef from a BSE-infected animal slaughtered after SRM removal requirements were implemented would not be expected to show signs of vCJD for about 17 years. The commenter stated that, if there has been a reduction in the number of cases of vCJD infection—which the commenter said is unclear—it is much more likely that that the reduction resulted from decreases in the number of infected cattle in the past decade due to feed bans, rather than to what the commenter termed the much more recent implementation of SRM removal.

Response: The commenter raised a similar issue in response to our January 2007 proposed rule. In response to the comment, we acknowledged in our September 2007 final rule that there has been no specific controlled study that clearly and unequivocally demonstrates the effectiveness of SRM restrictions on protecting public health. However, the absence of such a study does not negate the fact that substantial epidemiological and case evidence clearly indicate the success of such control measures. As we stated in our September 2007 final rule, it is widely and generally accepted internationally, including by such international bodies as the WHO and the OIE, that the primary public health protective measure regarding BSE is the removal of SRMs from the human food supply (WHO, 2002).

The OIE Scientific Revue notes the following: ''Excluding SRM from the human food chain effectively minimizes the risk of human exposure and is the most important measure taken to protect consumers. Failure to remove SRMs would probably expose a large number of consumers to an unnecessary risk.'' (Heim and Kihm, 2003). This point is also widely acknowledged in scientific literature. For example, Bradley and Liberski (2004) conclude that ''risks to humans from infected cattle are now remote so long as the [bans on the use of SRMs in human food] are rigorously enforced.'' Fox and Peterson (2004) conclude that ''[a]doption of the human [specified bovine offal] ban in the United Kingdom in 1989 is probably the only example in the BSE story of a government going beyond expert opinion in taking a precautionary measure. It turned out to be the correct decision, and likely saved thousands of people from exposure to the disease.''

Simulation models and analysis conducted in the United Kingdom support the assumption that primary exposure sources for people were SRMs in the food supply prior to imposed restrictions. These models have been updated and revised repeatedly since the original identification of vCJD and the link to BSE in cattle (Ghani *et al.,* 1998, 2000, 2001, 2003). They incorporate assumptions for all the parameters that could influence the course of vCJD in the United Kingdom—including assumptions about primary exposure from dietary sources, calculations about how many infected cattle may have been slaughtered at different points in time, what tissues from those animals were available for consumption, and what restrictions were imposed on the tissues and types of products available for consumption. The models are updated routinely to incorporate new information about vCJD cases as they are reported.

These models have been used to predict the course of the vCJD epidemic in the United Kingdom. Initially, the projections were fairly high with considerable uncertainty. As more information is incorporated into the models, these projections continue to decline and the uncertainty levels also decrease. The number of clinical cases of vCJD in the United Kingdom has continued to decline since an apparent peak in 2000 (Andrews, 2007). This decline is consistent with projections made from the models, thus validating some of the assumptions used in the models. As an example, Cooper and Bird (2003) assume that the primary sources of exposure are the consumption of meat products—including mechanically separated meat and head meat–that were most likely contaminated with SRMs such as spinal cord, DRG, and brain. Restrictions on the inclusion of spinal cord and brain, among other tissues, were initially imposed in the United Kingdom in 1989. Restrictions on the production of mechanically separated meat, which included a significant level of infectivity from DRG, were imposed in the United Kingdom in 1995. Cooper and Bird (2003) concluded that ''[t]here is remarkable similarity between the age distribution and gender of simulated and observed vCJD patients, which supports (but does not prove) our assumption about the primary sources of exposure to BSE.''

The commenter noted the ''exceedingly long incubation periods assumed for humans.'' More recent updates of the models described previously have included estimates of the mean incubation period for vCJD (Ghani *et al.,* 2003), estimating the mean incubation period at 12.6 years when using the accumulated case data from confirmed vCJD cases. When additional information was added from results of a screening study performed on appendix and tonsil tissues, the mean incubation period was 16.7 years when fitted to this data. From this evidence, we can conclude that even the longer mean incubation period of 16.7 years would allow sufficient time to demonstrate the effect of SRM restrictions on the outbreak, since the initial SRM restrictions were imposed in 1989. We note that all vCJD cases that have been genotyped to date, with one exception, have been of the homozygous methionine (MM) genotype at codon 129 of the human prion protein gene. In describing the methodology used for their 2003 update of projections of future vJCD cases in the United Kingdom, Ghani *et al.* indicated that approximately 40 percent of the Caucasian population is homozygous methionine, with approximately 10 percent valine homozygous, and the remaining 50 percent heterozygous. While the effect of genotype on vCJD is still unknown, we can evaluate scenarios in the MM genotype as an example of epidemic progression, because this genotype may be the most susceptible and/or have shorter incubation periods than other genotypes.

Issue: One commenter stated that, in its September 2008 request for comments, APHIS misguidedly relied on OIE recommendations to justify its decision not to strengthen SRM removal requirements and to allow the importation from Canada of live cattle 30 months of age or older. The commenter stated that APHIS should base its assessment of the effectiveness of BSE mitigation measures on empirical data from countries that have imposed BSE restrictions, rather than on empirically unproven standards such as those recommended by the OIE.

The commenter stated that Japan allows the importation of beef only from cattle 20 months of age or younger and that the European Union limits imports of beef to that derived from cattle under 30 months of age.

The commenter stated that all countries in which BSE has been diagnosed, except for Canada, remove the brain, spinal column, etc., at slaughter from all bovines 12 months and over, rather than just from all bovines 30 months of age or older, as is required by APHIS for the importation of meat, meat byproducts, and meat food products from BSE minimal-risk regions. The commenter noted that Japan requires the removal of SRMs from cattle of any age. Therefore, stated the commenter, the experience with SRM removal in those countries is inapplicable for predicting risk in the United States and APHIS lacks a basis for stating that the SRM removal it requires has been demonstrated to be highly effective.

Response: We disagree with the commenter in several ways. First, contrary to the commenter's statement, the European Union has determined that its policies regarding the importation of beef are consistent with the OIE Code. Second, the commenter failed to list the United States as a country in which BSE has been diagnosed in a native animal that requires removal of the brain, spinal column, etc., at slaughter from bovines 30 months of age or older. Finally, the commenter's recommendations are inconsistent with scientific findings regarding BSE transmission generally accepted internationally.

As we noted in our September 2007 final rule, in the past few years, significant consideration has been given to the age limits on SRMs and their appropriateness. Additional information obtained from new research findings has contributed to these evaluations. Scientists in Europe have specifically examined these findings as part of their consideration of the age limit in cattle for the removal of SRMs (EFSA Journal, 2005; 2007). In each of these opinions, they conclude that any likely detectable infectivity in the central nervous system (CNS)—including the SRMs in question—appears at about 75 percent of the incubation time. These opinions also note that the experimental low-dose scenarios are more likely to resemble the actual field exposure. The low-dose research scenarios are those in which calves were exposed orally to 1 gram of highly infective brain tissue, rather than the 100 grams used in the high-dose scenario. Experimental attack rate studies indicate that the incubation period for the low-dose scenario has a mean of 60 months, with a range of 45 to 73 months (Wells *et al.,* 2007). Using the low end of this range of incubation period, and assuming that infectivity is present in the CNS at 75 percent of the incubation period, they predict that infectivity would be sub-detectable or still absent in CNS in cattle aged 33 months.

In the United Kingdom, even including cases from the height of the BSE epidemic there, which are believed to have had shorter incubation periods than more recent cases, the peak age at onset of clinical signs was 5 to 6 years. This age of clinical onset is consistent with an assumption that the average incubation period in the United Kingdom has been about 60 months. The average age of animals identified with disease in the European Union is higher than this–the average was 86 months in 2001 and has increased since then. This evidence indicates that considering certain tissues in bovines 30 months of age or older to be SRMs, and removing and disposing of those tissues, would eliminate the majority of infectivity present, and removing and disposing of these same tissues from bovines between 12 and 30 months of age would not provide any significant additional protection.

This same point is illustrated in various models. Comer and Huntly (2003) modeled the potential human exposure available in the United Kingdom from 1980 through 2002. They concluded that an estimated total of 54 million bovine oral ID_{50} units could have been consumed in that timeframe. This period included both the beginning of the epidemic in cattle, before the disease was recognized and public health control measures were established, and later in the epidemic when control measures were developed and instituted. Comer and Huntly also concluded that 99.4 percent of this estimated exposure was from animals older than 30 months of age. Therefore, SRM restrictions from animals greater than 30 months would reduce the vast majority of potential exposure.

Also, as discussed above in this document, in 2006, FSIS/Harvard incorporated changes based on public comment on an October 2005 simulation that used a modified version of the 2001 Harvard BSE risk assessment model. This was made available to the public, along with the responses to the public comments, as ''Harvard Risk Assessment of BSE Update; Phase IA; Supplemental Simulation Results, December 26, 2006.'' The base case simulated 500 infected animals introduced, with 50,000 simulation runs of 20-year timeframes. The base case results, which assumed no removal of SRMs, indicated a mean of 700 total infected animals over the 20 years (500 imports and 200 domestic), with a mean of 6,600 cattle oral ID_{50}s potentially available for human consumption. In comparison, modeling a requirement for removal from the human food supply of SRMs from cattle 30 months of age or older, assuming 100 percent compliance, indicated a mean of 20 oral ID_{50}s potentially available for human consumption over the 20-year time period. The update also modeled requirements for removal from the human food supply of SRMs from cattle 12 months of age and older and 24 months of age and older. There was no significant difference between the results of those models and that which modeled a requirement for removal from the human food supply of SRMs from cattle 30 months of age and older—*viz.,* 17 oral ID_{50}s each when SRM removal from cattle 12 months of age and older and 24 months of age and older were modeled, compared to 20 oral ID_{50}s when removal of SRMs from cattle 30 months of age was modeled.

In summary, we agree with the conclusion that has been widely reached and that has generally been accepted internationally, that the primary public health protective measure regarding BSE is the removal of SRMs from the human food supply, and we concur that the OIE recommendations address those tissues that have been shown to contain BSE infectivity.

Issue: Several commenters stated that our September 2007 final rule should be withdrawn because the USDA's OIG reported in 2008 that APHIS' import controls are not sufficient to prevent, detect, or address the entry of animals that do not meet import requirements. The commenters expressed concern about APHIS' ability to prevent the introduction of a BSE-infected animal from Canada and concluded that the OIG report demonstrates that APHIS is incapable of adequately enforcing import restrictions necessary to protect the health of U.S. cattle and U.S. consumers.

One commenter stated that the OIG report dealt with, among other things, APHIS' enforcement of requirements in its January 2005 final rule during the period between August 2006 and July 2007. The commenter stated that the report concluded that APHIS' import procedures were not sufficient to prevent unauthorized shipments of live animals into the United States. The commenter stated, further, that according to the OIG report, the

problems that the OIG found regarding compliance with APHIS' January 2005 final rule raise concerns with APHIS' controls over live animal imports and whether the controls are adequate to ensure compliance with import restrictions contained in APHIS' September 2007 final rule. The commenter stated that the OIG audit also referenced other findings regarding APHIS enforcement of its regulations.

The commenter stated that the OIG report contradicts APHIS' statement in its September 2007 final rule that there were only individual instances of errors or violations regarding the provisions of APHIS' January 2005 final rule. The commenter stated that OIG found the errors and violations to be pervasive and stated that the OIG report concluded that problems associated with inaccurate health, age, identification, and pregnancy status on Canadian cattle certificates that were used to import more than 7,000 cattle were not isolated occurrences because they involved at least 52 different Canadian veterinarians and 40 CFIA officials. The commenter stated that APHIS was aware, while preparing its September 2007 final rule, that OIG was auditing its import controls and finding what the commenter termed serious violations of APHIS' enforcement of the January 2005 final rule.

Response: We agree that the OIG audit referenced by the commenter identified several areas where APHIS could improve its management controls and documentation regarding import procedures. Our response to the audit agrees with many of the recommendations and identifies actions to address them. In many instances, these actions will assist APHIS in documenting issues to provide sufficient information for an analysis to determine the true significance of the reported issues. The report itself acknowledges that OIG had ''difficulty assessing the significance of import noncompliance * * *.'' (Audit Report, USDA's Controls Over the Importation and Movement of Live Animals, Department of Agriculture, Office of Inspector General, Midwest Region, Report No. 50601–0012–Ch, March 2008). The commenter stated that OIG found errors in certificates to be pervasive, yet the report does not reach this conclusion. OIG identified a total of 211 cattle that were imported with inaccuracies on the health certificate—86 animals inaccurately certified for pregnancy status, 105 animals allegedly inaccurately certified for age, and 21 with inaccurate identification. These inaccuracies are out of a total of 1.1 million animals imported in that year. While we agree with the recommendations in the report and are taking actions to improve our processes, we disagree with the commenter's conclusion that this level of inaccuracies is pervasive and that this demonstrates that APHIS is incapable of enforcing its import regulations.

Issue: One commenter stated that, in its September 2007 final rule, APHIS relied on disproven findings to support its decision to remove the delay of applicability of those provisions of its January 2005 final rule governing the importation of meat and meat byproducts from BSE minimal-risk regions. The commenter stated that, as justification for its decision to lift the ban on the importation of such commodities from Canada, APHIS asserted that its 2005 evaluation of the epidemiology of BSE cases identified at that time suggested that Canada's BSE outbreak was only a local exposure, based on the relatively small geographical location, temporal association, and the clustering of cases. The commenter stated that this conclusion has been disproven by subsequent outbreaks of BSE that occurred prior to APHIS' publication of its September 2007 final rule.

Response: The commenter is incorrect that, in its September 2007 final rule, APHIS cited the results of the 2005 evaluation of the epidemiology of BSE cases identified in Canada as justification for lifting the delay of applicability of certain provisions of its January 2005 final rule. In its September 2007 final rule, APHIS explained its rationale for the lifting of the delay of applicability as follows:

> Since the date of the partial delay of applicability of our January 2005 final rule, we have obtained additional information regarding all aspects of the issues that prompted the delay of applicability and have conducted additional analyses in line with the plan as described. The risk assessment for this final rule demonstrates the negligible BSE risk from the importation of additional classes of live cattle, including those 30 months of age or older. This includes acknowledging the potential risk pathway that could be available if the SRMs from infected imported cattle entered the ruminant feed supply in contravention of current feed regulations. The negligible risk from the importation of live older cattle therefore gives further support to the conclusion of the risk analysis conducted for our January 2005 final rule regarding meat and meat products derived from bovines of any age in BSE minimal-risk regions. Specifically, the risk is even lower for the importation of meat and meat products, as the SRMs will be removed in accordance with the regulations, than for live bovines. (72 FR 53316)

APHIS' description of the 2005 epidemiological investigation referred to by the commenter appeared in its September 2008 request for comments on the removal of the delay of applicability, and was included, for the sake of completeness, in a chronological list of events that occurred since APHIS' November 2003 proposal to establish the category of BSE minimal-risk regions. In the September 2008 request for comments, APHIS did not point to the 2005 epidemiological investigation as the rationale for removing the delay of applicability.

Issue: One commenter stated that, in its September 2007 final rule, APHIS projected that 75,000 cull cattle 30 months of age and older would be imported from Canada. However, stated the commenter, USDA data showed that by November 8, 2008, the United States had imported approximately 167,224 cull cattle 30 months of age or older from Canada. The commenter stated that APHIS has explained that projected imports are a key component of the likelihood of BSE infectivity. Thus, stated the commenter, APHIS' estimate that the implementation of the September 2007 final rule could lead to the introduction of between 19 and 105 BSE-infected cattle into the United States—which could, in turn, produce BSE infections in 2 to 75 U.S.-born cattle, lasting over a 20-year period—understates the actual level of BSE infectivity that has likely entered the United States in 2008.

Response: The commenter is correct that, in analyzing the potential economic effects of its September 2007 final rule, APHIS projected that 75,000 cull cattle 30 months of age and older would be imported into the United States from Canada in 2008. That number was a decrease from the 657,000 head that APHIS had originally projected in its January 2007 proposed rule, and took into account information supplied by commenters on the proposed rule. However, the risk analysis for the September 2007 final rule continued to use a projected importation of 657,000 head. Therefore, the number of cull cattle actually imported under the provisions of the final rule was less than that assumed in the risk analysis.

Issue: One commenter stated that APHIS' promulgation of its September 2007 final rule violates the Agency's Congressional mandate to take the action necessary to prevent the introduction into or dissemination within the United States and to take the steps necessary to detect, control, and eradicate animal disease. The commenter stated that APHIS acknowledged that the September 2007 final rule could result in the importation

of some BSE-infected cattle from Canada. For this reason, stated the commenter, APHIS should withdraw its September 2007 final rule.

Response: We disagree that the Secretary acted outside his broad authority under the Animal Health Protection Act (AHPA) (7 U.S.C. 8301 *et seq.*) in promulgating the September 2007 final rule. The applicable section of the AHPA provides that ''the Secretary may prohibit or restrict * * * the importation or entry of any animal, article, or means of conveyance * * * if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock'' (7 U.S.C. 8303 (a)(1)). The United States Court of Appeals for the Ninth Circuit held that this section confers ''wide discretion'' on the Secretary in dealing with imports and ''does not impose any requirement on USDA that all of its actions carry no associated increased risk of disease'' (R-*CALF* v. *USDA,* 415 F.3d 1078, 1094). The court found that open borders are a default under the AHPA and that the Secretary can close them only when he has determined that it is necessary. The court noted that the statute's use of the word ''may'' suggests that the Secretary has broad discretion to decide whether to close the borders at all (*id.* at 1094–1095). We do not believe that the September 2007 final rule violates our statutory mandate and we deny the commenter's request to withdraw the rule on this basis.

Issue: One commenter stated that the United States should prohibit the importation of beef or cattle from any country known to have BSE. Another commenter stated that beef and cattle trade with Canada should not be expanded until, among other actions pertaining just to live animals, Canada can verify 100 percent compliance with its ruminant feed ban and that its cattle herd and beef products are BSE-free.

Response: The actions recommended by the commenter are not supported by scientific evidence or empirical data, nor are they consistent with internationally accepted animal health standards. Such action, if taken in turn by U.S. trading partners with regard to U.S. beef and cattle, would eliminate the export of beef and cattle from the United States.

In a series of documents published from November 2003 through September 2008, which we discuss above in this document, APHIS provides the scientific rationale for classifying Canada as a BSE minimal-risk region and allowing the importation of certain ruminants and ruminant products from Canada under specified conditions.

The regulatory conditions for the importation into the United States of beef and cattle from a BSE minimal-risk region such as Canada are consistent with the OIE Code for trade in beef and live animals from a country recognized by the OIE as having controlled risk for BSE. Both Canada and the United States are recognized as BSE controlled risk countries.

The OIE, of which the United States is a Member country, is the internationally recognized standard-setting body that develops science-based recommendations for the safe trade of animals and animal products. The World Trade Organization has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE carries out its function through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE develops risk-based standards, which, if agreed upon by Member countries through consensus, are published in the OIE Terrestrial Animal Health Code (Code). However, each OIE Member country is obligated to review and comment on proposed OIE standards, and make decisions regarding the adoption of those standards, strictly on their scientific merits.

As an OIE Member country, the United States reviews and, where appropriate, comments on all draft OIE chapters and revisions. As part of the U.S. consideration of OIE drafts, APHIS distributes these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment.

In addition, each year, prior to formulating its comments for the OIE annual meeting, APHIS makes available on its Web site those potential changes to the Code that the OIE has submitted to Member countries for comment, and accepts information and recommendations from the public regarding those proposed changes. Through its OIE Reference Laboratories and Collaborating Centers, APHIS also provides OIE Member countries with technical assistance and expert advice on disease surveillance and control and risk analysis, as well as diagnostic assistance, evaluation, and consultation.

Over the years, the OIE Member countries, including the United States, have agreed by consensus to amend the OIE Code based on increased scientific evidence regarding the disease. The OIE Code reflects the current understanding that, depending on multiple factors, there can be gradations in the risk of the BSE agent being moved from one country to another, and gradations in the risk of BSE transmission and amplification within any particular country. As a member of the OIE, the United States, represented by APHIS, has been actively involved in the development of the OIE Code and fully supports the OIE position that gradations in BSE risk among regions should be recognized and that trade should be commensurate with risk.

Issue: One commenter stated that beef and cattle trade with Canada should not be expanded until U.S. international beef export markets are firmly established. The commenter also urged that, if the restrictions on importations from Canada are removed, American cattle producers be compensated for economic disadvantages that might arise from such importations. Another commenter stated that U.S. exports are suffering because the United States requirements for imports from Canada are consistent with OIE standards but less stringent than the requirements imposed by other countries for the importation into those countries of beef from the United States.

Another commenter stated that, as noted above, in its September 2007 final rule, APHIS projected that 75,000 cull cattle 30 months of age older would be imported from Canada. However, stated the commenter, USDA data showed that by November 8, 2008, the United States had imported approximately 167,224 cull cattle 30 months of age or older from Canada. The commenter stated that although APHIS had projected revenue losses of over $66 million for U.S. cattle producers due to the importation from Canada of cattle 30 months of age or older, the larger number of such cattle actually imported will make those losses significantly higher.

Response: As we stated in our September 2007 final rule, APHIS does

not have the statutory authority to restrict trade based purely on its potential economic impact, market access effects, or quantity of products expected to be imported. Under the AHPA, the Secretary of Agriculture may prohibit or restrict the importation or entry of any animal or article when the Secretary determines it is necessary to prevent the introduction or dissemination of a pest or disease of livestock. This authority has been delegated to APHIS.

We note that neither our January 2005 final rule nor our September 2007 final rule made any commodities eligible for importation from Canada that were not already allowed importation prior to May 2003, when a BSE-infected cow was diagnosed in Canada. One difference between the current situation and pre-May 2003, however, is that certain of the commodities that are now eligible for importation are subject to risk-mitigating importation conditions appropriate to the fact that BSE has been detected in Canada and that we consider that country a minimal-risk region for BSE. Both Canada and the United States have been classified as controlled-risk countries for BSE under the OIE Code. Nonetheless, there are some commodities (e.g., cattle born before March 1, 1999) that continue to be ineligible for importation into the United States. Even taking into account such restrictions, however, the current regulations represent to a great extent a return to trade patterns that existed between the United States and Canada for many years previously.

Issue: One commenter stated that during the period 2004–2007 the United States lost a total of $11 billion in the sale of U.S. beef abroad, including $5.7 billion in lost sales to Japan and $3.7 billion in lost sales to Korea. The commenter stated that restrictions on the importation of U.S. beef by other countries shows that those countries view OIE BSE risk mitigation standards—which the commenter stated the United States applies to imports of Canadian cattle and beef—as inadequate to protect their consumers from exposure to BSE.

Response: The reduction in export sales that the commenter cites occurred during a 3-year period that began following the diagnosis of BSE in a cow of Canadian origin in Washington State in December 2003, prior to the publication of APHIS' final rule recognizing the category of BSE minimal-risk regions. As we stated in our September 2007 final rule, U.S. Government agencies are actively negotiating with trading partners to reestablish our export markets. After the December 2003 detection of an imported BSE-infected cow in Washington State, many of the 114 nations that imported U.S. beef banned our beef and live animals, despite the apparent lack of scientific basis for such measures. The efforts of multiple U.S. Government agencies have succeeded in removing bans in over half of those markets, including our largest export market, Japan. U.S. Government agencies continue to work to reopen or further open markets where restrictions remain.

Issue: One commenter stated that beef and cattle trade with Canada should not be expanded until mandatory country of origin labeling (COOL) is fully implemented and enforced.

Response: On May 13, 2002, President Bush signed into law the Farm Security and Rural Investment Act of 2002, more commonly known as the 2002 Farm Bill. One of its many initiatives requires country of origin labeling (COOL) for beef, lamb, pork, fish, perishable agricultural commodities and peanuts. The COOL program became fully effective as of March 16, 2009. However, as USDA's Agricultural Marketing Service noted in its October 30, 2004 proposal in discussing Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d), the ''intent of the law is to provide consumers with additional information on which to base their purchasing decisions. It is not a food safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns.''

Affirmation of Position Regarding Removal of Delay of Applicability

After closely considering the issues raised by commenters in response to our September 2008 request for comments, for the reasons given in our September 2007 final rule and in this document we are affirming the position we took in removing the delay of applicability of certain provisions of our January 2005 final rule.

III. Proposed Changes

Although APHIS has amended its BSE regulations in recent years consistent with increased scientific understanding of the disease, we believe that the regulations contain certain provisions that are not yet fully consistent with the latest scientific literature. Therefore, in this document we are proposing to establish conditions for the importation of live bovines and products derived from bovines that we believe are more reflective of current scientific understanding of BSE.

We are proposing to base importation conditions on the inherent risk of BSE infectivity in specified commodities, as well as on the BSE risk status of the region from which the commodities originate. We are proposing to establish a system for classifying regions as to BSE risk that is consistent with the system employed by the OIE. The conditions we are proposing for the importation of specified commodities are based on internationally accepted scientific literature and, except in a few instances, are consistent with the OIE Code. We are also proposing to classify certain specified countries as to BSE risk and are proposing to remove BSE restrictions on the importation of cervids and camelids and products derived from such animals. We are proposing to make these amendments after conducting a thorough review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the proposed changes to the regulations would continue to guard against the introduction of BSE into the United States, while allowing the importation of additional animals and animal products into this country.

Evolution of U.S. Regulatory Response to BSE

As discussed earlier in this document, the Federal Government conducts a coordinated response to protect humans and livestock from BSE. The protective measures APHIS has taken have evolved over the years, as scientific understanding of the disease has increased. From 1997 until 2005, the only two categories of regions listed in the CFR with regard to BSE were regions in which BSE is known to exist and regions of undue risk for BSE. The regulations prohibit the importation from such regions of live cattle and other ruminants and certain ruminant products, including most rendered protein products. Imports from any region not listed in either of those two categories are not subject to any BSE prohibitions or restrictions. While this approach has been successful in protecting against the risk of BSE, advances in scientific understanding of the disease now allow the United States to take a more focused approach.

In terms of method of transmission, BSE differs from most other livestock diseases. Oral ingestion of feed contaminated with the BSE agent is the only documented route of field transmission of the disease. This understanding of the disease made it increasingly evident that preventing material potentially infected with the BSE agent from being fed to ruminants is a key to preventing introduction and amplification of the disease within a

livestock population. Scientific research also found that some bovine tissues have demonstrated infectivity, whereas others have not, and that levels of infectious agent in certain tissues vary with the age of an animal.

This scientific evidence regarding the most likely method of transmission of BSE was the basis for measures taken by Federal agencies to protect the U.S. human and livestock populations from BSE. As noted above under the heading ''Rulemaking Regarding BSE,'' in June 1997 FDA prohibited the use of all mammalian protein, with the exception of pure pork and pure equine protein from single species processing plants, in animal feeds given to cattle and other ruminants, and established measures to protect against the contamination of ''allowable'' feed material with materials that could contain the BSE agent (62 FR 30936; codified at 21 CFR 589.2000). The rule also allows exceptions for certain products believed to present a low risk of transmitting BSE: blood and blood products; gelatin; inspected meat products that have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings, referred to below as ''plate waste''); and milk products (milk and milk protein).

FSIS, in a series of three interim final rules published in the **Federal Register** on January 12, 2004, established provisions to supplement its measures to prevent the BSE agent from entering the human food supply. As discussed above, in one of the interim final rules (FSIS Docket No. 03–025IF; 69 FR 1861–1874), FSIS, among other actions, designated the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum) and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle as SRMs, and prohibited their use as human food. To ensure effective removal of the distal ileum, the SRM rule required establishments to remove the entire small intestine and dispose of it as inedible. FSIS also required all slaughtering and processing establishments to develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs. Establishments were specifically required to implement procedures to address the potential contamination of edible materials with SRMs before, during, and after entry into the establishment. FSIS did not restrict the age of cattle eligible for slaughter, because the removal of SRMs effectively mitigates the BSE risk to humans associated with cattle that pass both ante-mortem and post-mortem inspections (i.e., apparently healthy cattle). The rule also declared mechanically separated beef (MS beef)) to be inedible and prohibited its use for human food, and prohibited all non-ambulatory disabled cattle for use as human food.

The second interim final rule (FSIS Docket No. 03–038IF; 69 FR 1874–1885) prohibited products produced by advanced meat recovery systems from being labeled as ''meat'' if, among other things, they contain central nervous system (CNS) tissue.

The third interim final rule (FSIS Docket No. 01–0331IF; 69 FR 1885–1891) prohibited the use of penetrative captive bolt stunning devices that deliberately inject air into the cranial cavity of cattle because they may force large fragments of CNS tissue into the circulatory system of stunned cattle where they may become lodged in edible tissues.

On July 14, 2004, FDA published in the **Federal Register** an interim final rule (69 FR 42255–42274, Docket No. 2004N–0081), consistent with the January 2004 FSIS rulemaking, that prohibited the use of certain cattle material in human food, including dietary supplements, and cosmetics.

On September 7, 2005, FSIS published in the **Federal Register** an interim final rule (70 FR 53043–53050, Docket No. 03–025IFA) that allowed for use as human food, under certain conditions, beef small intestine, excluding the distal ileum, derived from cattle slaughtered in official U.S. establishments or in certified foreign establishments in countries listed by FSIS in 9 CFR 327.2(b) as eligible to export meat products to the United States.

Also on September 7, 2005, FDA published an interim final rule (70 FR 53063–53069, Docket No. 2004N–0081) and request for comments in which it provided that small intestine is not considered a prohibited cattle material if the distal ileum is removed by a qualifying procedure. FSIS imposed a similar requirement in its interim rule.

On July 13, 2007, FSIS published an interim final rule (72 FR 38199–38730, Docket No. 03–025F) that affirmed its January 2004 interim final rules with some changes.

In its September 2007 final rule (discussed above under the heading ''Rulemaking Regarding BSE,'') APHIS, among other things, made its BSE regulations consistent with the FSIS and FDA changes regarding the small intestine.

On April 25, 2008, FDA published a final rule (73 FR 22718–22758, Docket No. 2002N–0273) to prohibit the following in the food or feed of all animals: The entire carcass of BSE-positive cattle; the brains and spinal cord from cattle 30 months of age and older; the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which brains and spinal cords were not removed; tallow that is derived from BSE-positive cattle; tallow that is derived from other materials prohibited by the April 2008 final rule that contains more than 0.15 percent insoluble impurities; and mechanically separated beef that is derived from the materials prohibited by the April 2008 final rule.

International Standards

The science upon which U.S. Federal agencies have based their rulemaking has also been the basis for internationally accepted BSE-related standards governing the trade of ruminants and ruminant products. Much of the information that follows regarding the OIE and the United States' role in international standard setting is set out above in our response to a comment from the public on our September 2008 request for comments. We repeat it here because of its relevance to the changes we are proposing in this document. As noted above, the OIE, of which the United States is a Member country, is the internationally recognized standard-setting body that develops science-based recommendations for the safe trade of animals and animal products. The OIE is currently composed of 174 Member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The World Trade Organization has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures related to animal health.

As noted above, the OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve these through

the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE develops risk-based standards, which, if agreed upon by Member countries through consensus, are published in the OIE Terrestrial Animal Health Code (Code). The OIE Code chapters are drafted (or revised) by either the Terrestrial Animal Health Standards Commission or by *ad hoc* groups composed of technical experts nominated by the Director General of the OIE by virtue of their subject-area expertise. Once a new chapter is drafted or an existing one is revised, the chapter is distributed to Member countries for review and comment.

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the pertinent OIE Code Commission will revise that standard accordingly, circulate the revised standard to OIE Member countries for comment, and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each Member country is obligated to review and comment on proposed standards, and make decisions regarding the adoption of those standards, strictly on their scientific merits.

Through APHIS, the United States plays on ongoing role in the development and revision of the OIE Code. The science upon which APHIS has based its regulations has also been the basis for APHIS' recommendations regarding and response to BSE-related changes in the OIE Code. APHIS maintains a data base of disease and subject matter experts to review specific Code chapters; monitors and evaluates reports and scientific data produced by the OIE; and conducts meetings with staff members, pertinent industry groups, and subject matter experts to review and develop positions for the safe movement of animal and animal products.

As an OIE Member country, the United States reviews and, where appropriate, comments on all draft OIE chapters and revisions. As part of the U.S. consideration of OIE drafts, APHIS distributes these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment.

In addition, each year, prior to formulating its comments for the OIE annual meeting, APHIS makes available on its Web site those potential changes to the Code that the OIE has submitted to Member countries for comment, and accepts information and recommendations from the public regarding those proposed changes. (The proposed changes can be accessed at *http://www.aphis.usda.gov/import_export/animals/oie/*). Through its OIE Reference Laboratories and Collaborating Centers, APHIS also provides OIE Member countries with technical assistance and expert advice on risk analysis and disease surveillance and control, as well as diagnostic assistance, evaluation, and consultation.

Over the years, the OIE Member countries, including the United States, have agreed by consensus to amend the OIE Code based on increased scientific evidence regarding the disease. The OIE Code reflects the current understanding that, depending on multiple factors, there can be gradations in the risk of the BSE agent being moved from one country to another, and gradations in the risk of BSE transmission and amplification within any particular country. As a member of the OIE, the United States, represented by APHIS, has been actively involved in the development of the OIE Code and fully supports the OIE position that gradations in BSE risk among regions should be recognized and that trade should be commensurate with risk.

This recognition of varying levels of BSE risk is the underpinning for OIE's system of classifying countries according to different levels of BSE risk. Currently, the OIE categorizes countries as either negligible risk, controlled risk, or undetermined risk for BSE. For live cattle and for many products derived from cattle, the trade conditions recommended by the OIE Code are based on the BSE risk classification of the exporting country.

Changes to APHIS' Regulations Regarding BSE

In recent years, APHIS has amended its regulations consistent with scientific evidence and BSE risk management that allow the United States to take a more focused approach to categorizing regions and establishing import prohibitions and restrictions with regard to BSE. As discussed above, in January 2005, APHIS amended its regulations to recognize a category of regions that present a minimal risk of introducing BSE into the United States, even though BSE may have been diagnosed in the region. In evaluating the BSE risk from a region to determine whether to classify it as a minimal-risk region, APHIS considers a combination of factors, focusing on overall effectiveness of control mechanisms in place (e.g., surveillance, import controls, and a ban on the feeding of ruminant protein to ruminants). In its 2005 rule, APHIS also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions and recognized Canada as a BSE minimal-risk region. We based our recognition of Canada as a BSE minimal-risk region on an analysis we conducted of the conditions considered for such a designation and the information available to us regarding how Canada meets those conditions. (The risk document, ''Analysis of Risk—Update for the Final Rule: Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities.'' which also identified measures necessary to mitigate any BSE risk that specific commodities imported from Canada might present to the United States, can be accessed at *http://www.aphis.usda.gov/peer_review/downloads/risk_assessment_final9-2007.pdf*)

As noted above, in December 2005, APHIS amended its regulations to allow the importation of certain cuts of boneless beef from Japan. The risk assessment conducted for that rulemaking examined the evidence supporting the safety of this commodity. This evidence and APHIS' conclusions were consistent with OIE for trade in meat derived from cattle from regions of controlled risk for BSE. (The risk document, ''Analysis of Bovine Spongiform Encephalopathy (BSE) Risk to the U.S. Cattle Population from Importation of Whole Cuts of Boneless Beef from Japan,'' can be accessed at *http://www.regulations.gov/#!documentDetail;D=APHIS-2005-0073–0002*).

As discussed above, in September 2007, APHIS again amended the BSE regulations to allow the importation of additional commodities from BSE minimal-risk regions. As part of this rulemaking, APHIS conducted a risk assessment that was peer reviewed by recognized experts in the field. (The risk assessment, peer review, and APHIS responses to peer review comments can be accessed at *http://www.aphis.usda.gov/peer_review/downloads/risk_assessment_%20final9-2007.pdf*).

BSE Categories in Current APHIS Regulations

With the 2005 addition to the regulations of the BSE minimal-risk category, the three categories of regions

with regard to BSE set forth in APHIS' regulations became: (1) Those in which BSE is known to exist (listed in § 94.18(a)(1) of the regulations); (2) those that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance (listed in § 94.18(a)(2) of the regulations); and (3) those that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts (listed in § 94.18(a)(3) of the regulations). These are the categories set forth in the current regulations.

How APHIS categorizes a region with regard to BSE risk determines which ruminants and products derived from ruminants from that region are eligible for importation into the United States. Of the three categories listed in § 94.18(a), those regions listed in § 94.18(a)(1) (regions in which BSE is known to exist) and in § 94.18(a)(2) (regions that present an undue risk of introducing BSE into the United States) are subject to the most restrictive BSE-related regulatory provisions. The prohibitions and restrictions on the importation of live ruminants and commodities derived from ruminants are the same for regions in either of those categories.

The importation of live ruminants of any kind is prohibited from regions listed in either § 94.18(a)(1) or § 94.18(a)(2). Additionally, with certain exceptions, regions listed in either § 94.18(a)(1) or § 94.18(a)(2) are not eligible to import into the United States the following commodities derived from ruminants that have been in the regions: Meat; meat products; and edible products other than meat. Also, with certain limited exceptions, the following commodities are prohibited importation into the United States if they are derived from ruminants that have been in any region listed in § 94.18(a)(1) or § 94.18(a)(2), or if the commodities themselves have been in such regions (and, in some cases, if they are derived from nonruminant species that might have been commingled with products derived from ruminants): Processed animal protein; tankage; offal; tallow other than tallow derivatives (unless, in the opinion of the Administrator, the tallow cannot be used in feed); glands and unprocessed fat tissue; processed fats and oils; derivatives of processed animal protein, tankage, and offal; derivatives of glands; casings, other than stomachs; and serum and related materials.

Under the regulations regarding BSE minimal-risk regions, specified live ruminants and products derived from ruminants are eligible for importation from such regions, provided certain conditions are met. Factors governing the eligibility of and conditions for importation of such commodities from BSE minimal-risk regions include the following: The species of animal intended for importation or from which products were derived; whether an animal intended for importation has been properly identified; whether the animal had been subject to a ruminant-to-ruminant feed ban; and, in the case of products derived from bovines, whether specified BSE risk materials were removed from the animal at slaughter.

APHIS does not restrict the importation into the United States of ruminants and ruminant products from any region that is not listed in one of the three categories included in § 94.18(a) (regions in which BSE is known exists, regions of undue risk for BSE, and regions of minimal risk for BSE), but their importation might be prohibited or restricted due to other animal diseases.

Proposed Changes

Refining science-based regulations for safe trade in bovines and meat and other products derived from bovines has been and continues to be a high priority for APHIS. As noted above, although APHIS' regulatory changes in recent years with regard to BSE have been consistent with increased scientific understanding of the disease, we believe that further refinement of the regulations is in order given the latest scientific literature regarding BSE. In this document, we are proposing to amend the regulations to establish importation requirements based on our current scientific understanding of the risk of BSE. In many instances these changes, while still protecting livestock in the United States from BSE, would allow the importation into the United States of additional commodities. In a few cases, this proposal would make BSE-related import conditions more restrictive.[10]

OIE Code

APHIS is closely familiar with the development of the OIE Code and considers it to be based on sound science. The scientific literature upon which we are basing our proposed regulations includes literature that has been considered by OIE subject matter experts and Member countries in developing and updating the OIE Code, as well as other scientific literature reviewed by APHIS. One result of implementing these science-based changes would be to make the APHIS regulations more consistent with the 2010 OIE Code. In those few instances where our proposed provisions differ from the guidelines in the 2010 OIE Code, we provide a science-based rationale for those differences, either in this document or in the supporting scientific documentation.

The OIE Code reflects the scientific understanding of the nature of BSE and appropriate risk mitigation measures. Two of the most important risk mitigation measures are the control of SRMs and feed bans. Most of the OIE guidelines rest on these two significant mitigation measures. An additional risk mitigation measure can be the application of certain production processes that can achieve a level of inactivation of the BSE agent. In some instances, industrial production methods—such as those for gelatin production—are sufficient to provide varying levels of inactivation of the BSE agent. These are described in more detail in this document in the relevant sections for these products. The use of these mitigation measures as outlined in the OIE Code significantly reduces the risk that the BSE agent might be present in the animals or products presented for trade.

The same mitigation measures are applied domestically, thus minimizing the risk that BSE will become established in the United States if the BSE agent is present in an imported animal or product. Using the importation of live cattle as an example, we can consider the risk pathway for transmission of BSE. Several steps must take place for BSE to be transmitted to cattle in the United States from a bovine imported live from another country. A BSE-infected bovine must be imported into the United States; the infected bovine must die or be slaughtered; tissues from that animal that contain sufficient levels of the infectious agent must be sent to a rendering facility; the infectivity present in these tissues must survive inactivation in the rendering process; the resulting processed animal protein containing the abnormal prion protein must be incorporated into feed; and this feed must be fed to cattle at a level adequate to infect the cattle. (The amount of infectious material required in feed for cattle to become infected is dependent on the age of the cattle; younger cattle are more susceptible to BSE and require less BSE-contaminated feed to become infected.) The nature

[10] For example, ruminant-derived MBM and greaves, and products containing such, sourced from regions of controlled and undetermined risk would be prohibited.

and likelihood of these pathways depend in large part on mitigations—such as SRM controls and a feed ban—acting in series and in parallel that reduce the likelihood that BSE will be established in the United States.

The combined OIE requirements and additional APHIS requirements would serve to prevent the introduction and spread of the BSE agent from imported commodities regardless of a country's BSE prevalence.

Classification of Regions as to BSE Risk

One of the structural changes this proposed rule would make to the current BSE regulations would be to change the current § 94.18(a) categories of regions in which BSE is known to exist, regions of undue risk for BSE, and BSE minimal-risk regions to the system used by the OIE of classifying areas as being either of negligible risk, controlled risk, or undetermined risk for BSE.[11] Whether a live bovine or a bovine-derived product would be eligible for importation into the United States, and under what conditions, would in many cases be determined by the BSE category of the region from which the animal or product originates.[12]

BSE Classification of Regions

We are proposing to base APHIS' classification of the BSE risk status of a region on the results of an evaluation of BSE risk posed by that region. Under this proposed rule, that evaluation could have been conducted either by APHIS or by the OIE. The process the OIE uses in conducting such an evaluation and the information it considers are equivalent to the process and information APHIS considers necessary to arrive at an appropriate determination of BSE risk. The process and information considered are discussed at greater length, below, under the heading ''Process for Determining BSE Risk Classification.''

Scope of This Proposed Rule

The current APHIS regulations regarding BSE encompass all ruminants and products from all ruminants. Under the current regulations in 9 CFR parts 93, 94, and 98, *ruminants* are defined as ''all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.'' Included among ruminants are bovines (e.g., cattle), ovines (e.g. sheep), caprines (e.g., goats), cervids (e.g., deer and elk), and camelids (e.g., llamas and alpacas). Bovines are defined in the regulations as *bos taurus, bos indicus,* and *bison bison*—cattle and bison. In the following paragraphs, we discuss how this proposed rule applies to each of these groups of ruminants.

Cervids and Camelids

In prohibiting the importation of all ruminants from regions listed in § 94.18(a)(1) and (a)(2), the current regulations prohibit the importation from such regions of cervids and camelids, and products derived from such animals, from such regions. However, live cervids and camelids and products derived from cervids and camelids are eligible for importation from BSE minimal-risk regions without restriction regarding BSE.

In this document, we are proposing to remove all restrictions with regard to BSE from the importation of live cervids and camelids and their products from any region of the world. Although BSE has been shown to be naturally and experimentally transmitted to a wide range of ruminants, natural transmission of BSE has not been reported in cervids or camelids. One ongoing study shows that red deer (*cervus elaphus)* developed clinical signs similar to chronic wasting disease upon intracerebral inoculation of BSE-infected brain (Martin, *et al.,* 2007); however red deer challenged intra-gastrically with BSE-infected brain developed neither clinical signs of disease nor presence of PrPsc at post-mortem examination. In addition, surveillance in the United Kingdom and European cervid population did not show any evidence of any TSEs (*http://www.cdc.gov/Ncidod/eid/vol12no02/pdfs/05–0970.pdf; http://www.defra.gov.uk/animalh/bse/othertses/index.html*). Therefore, APHIS considers the BSE risk from removing import restrictions on cervids and camelids and their products to be very low. The OIE Code with respect to BSE does not address trade in cervids or camelids.

Ovines and Caprines

In this proposal, we continue to apply the current import prohibitions and restrictions regarding ovines and caprines (e.g., sheep and goats) and their products. We are in the process of developing a proposal to amend the BSE regulations as they affect the importation of ovines and caprines and products derived from such animals. Upon completion of such a proposal, we will publish it in the **Federal Register** for public comment.

Because this proposed rule contains no substantive changes to the import regulations regarding ovines and caprines, any comments we receive in response to this proposed rule that pertain to ovines and caprines will not be addressed in this rulemaking, but will be considered as we develop our proposed rule regarding the importation of ovines and caprines and products from such animals.

Although we are not proposing at this time to make any substantive changes to the regulations regarding the importation of ovines and caprines and products derived from such animals with regard to BSE, we are proposing certain formatting and wording changes to those regulations. We discuss these proposed changes below under the heading ''Provisions Regarding Ovines and Caprines.''

Bovines

As noted above, we are proposing to amend our import regulations with regard to bovines and BSE in a way that would result in our regulations being more consistent with the current scientific understanding of BSE, which is also reflected in the recommendations regarding trade in cattle and cattle products set forth in Chapter 11.5 of the OIE Code.[13]

[11] Although the OIE Code refers to categorization of ''countries, zones, or compartments,'' the only areas that have been classified by OIE with regard to BSE risk to date have been entire countries. In discussing animal diseases in its regulations, APHIS uses the term ''region'' to refer to foreign areas. Under the APHIS regulations, a region can consist of any of the following: (1) A national entity (country); (2) part of a national entity (zone, county, department, municipality, parish, Province, State, etc.); (3) parts of several national entities combined into an area; or (4) a group of national entities combined into a single area. In our proposed rule, we would continue to use the term ''region'' in order to be consistent with our current animal import regulations, and will refer to the geographic and political entities considered by the OIE as ''regions.'' However, when considering BSE risk classification, we do not anticipate dealing with any entities other than individual countries in their entirety. Considering the BSE risk status of entire individual countries would be consistent with past APHIS practice, as well as OIE practice.

[12] The current regulations regarding BSE minimal-risk regions apply to bison as well as cattle. In current §§ 93.400, 94.0, and 95.1 of the regulations, *bovine* is defined as *Bos taurus, Bos indicus,* and *Bison bison.* Although the research and other data cited in this proposed rule refer to bovines other than bison (i.e., to ''cattle''), there is no evidence to indicate that the BSE susceptibility of bison differs from that of cattle. We therefore assume that our conclusions based on cattle-specific evidence discussed in this proposed rule are also applicable to bison. The provisions of this proposed rule would apply to bovines as defined in the current regulations, which include bison.

[13] The current regulations regarding BSE minimal-risk regions apply to bison as well as cattle. In current §§ 93.400, 94.0, and 95.1 of the regulations, *bovine* is defined as *Bos taurus, Bos indicus,* and *Bison bison.* Although the research and other data cited in this proposed rule refer to bovines other than bison (i.e., to ''cattle''), there is no evidence to indicate that the BSE susceptibility of bison differs from that of cattle. We therefore assume that our conclusions based on cattle-specific evidence discussed in this proposed rule

Continued

As discussed above, commodities from regions not listed in any of the categories set forth in § 94.18(a) (regions in which BSE is known to exist, regions of undue risk for BSE, and regions of minimal risk for BSE) are currently not subject to import restrictions because of BSE. Imports from BSE-affected regions and those that present an undue risk are governed by the same set of restrictions, which prohibit the importation of live ruminants and most products derived from ruminants. Imports from BSE minimal-risk regions are governed by their own set of restrictions, which allow for the importation of more commodities than do the regulations regarding BSE-affected regions and those that present an undue risk.

As noted above, the 2010 OIE Code chapter regarding BSE provides for three possible BSE risk classifications: Negligible risk, controlled risk, and undetermined risk. APHIS has thoroughly reviewed the peer-reviewed scientific literature on BSE that the OIE uses to support its guidelines for risk evaluations (discussed in ''Supporting document for Chapter 2.3.13 of the Terrestrial Animal Health Code on Bovine Spongiform Encephalopathy'' (OIE TAHSC, 2006)) and, with certain limited exceptions, agrees with the OIE's recommendations and guidelines. We discuss below the factors the OIE takes into account in making its classifications.

Under the OIE Code for live cattle and many products derived from cattle, many of the recommended measures to mitigate any BSE risk from the trade of such commodities depend on the risk classification of an exporting region. The OIE takes many factors into account in determining whether the BSE risk in a particular country is negligible, controlled, or undetermined. These factors include: The history of BSE in the country; whether BSE-infected animals in the country were imported or were indigenous; if indigenous, how long ago an infected animal was born; identification and destruction of infected animals and potentially exposed animals; the level of surveillance for BSE carried out in the country and the length of time the surveillance has been carried out; whether, and for how long, appropriate awareness and notification programs and laboratory diagnostic procedures have been in place; whether, and for how long, a ban on the feeding of ruminant materials to other ruminants has been effectively enforced. These are the same factors that APHIS took into account when determining that Canada qualified as a BSE minimal-risk region.

In this proposal, we are proposing to amend our BSE regulations to structure classification of regions for BSE risk in the same way as does the OIE. Such classification is based on an overall evaluation of the BSE risk of a region, including a risk assessment. Because the data and process for a BSE risk evaluation that APHIS would conduct are equivalent to those employed by the OIE in making its own evaluations, we are proposing that APHIS' classification of the BSE risk status of an exporting region could be based on either an evaluation of the BSE risk of a country that is conducted by the OIE, or, for regions not yet classified by OIE, on an evaluation conducted by APHIS following a request.

Definitions of Regions of Negligible Risk, Controlled Risk, and Undetermined Risk for BSE

We are proposing to add definitions of a region of negligible risk for BSE, a region of controlled risk for BSE, and a region of undetermined risk for BSE to the regulations in § 92.1. The definitions we are proposing to add are substantively the same as those used by the OIE in its Code. However, stylistically, our proposed definitions are, in some places, worded differently from the wording used in the OIE Code.

Regions of Negligible Risk for BSE

There are multiple criteria that must be met for a region to qualify as a region of negligible risk for BSE. Our proposed definition of a region of negligible risk for BSE appears in § 92.1 and includes the following conditions. We are proposing that a region of negligible risk for BSE is one for which a risk assessment has been conducted that is sufficient to identify the historical and existing BSE risk factors in the region and that:

- Has demonstrated that appropriate BSE risk mitigation measures have been taken for at least as long as indicated in this definition;
- Has demonstrated that Type B surveillance in accordance with Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, has been met (OIE guidelines for surveillance are discussed below under the heading ''Epidemiological situation concerning BSE in the country.'')
- Has, for at least the past 7 years:

1. Conducted an ongoing awareness program for veterinarians, farmers, and workers involved in the transportation, marketing and slaughter of bovines to encourage reporting of all bovines showing clinical or behavioral signs that could be indicative of BSE.
2. Required notification and investigation of all bovines showing clinical signs consistent with BSE; and
3. Carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the required surveillance and monitoring system;

- Has demonstrated through an appropriate level of control and audit that, for at least the past 8 years, neither meat-and-bone meal (MBM) nor greaves derived from ruminants have been fed to ruminants. In the OIE Code, the 8-year requirement regarding a feed ban applies to MBM and greaves derived from ruminants. Even though the OIE recommends that regions that are considered controlled risk or undetermined risk should not trade in MBM and greaves derived from ruminants, or in any commodities containing such, APHIS is proposing that the recommendation apply to processed animal protein derived from ruminants or commodities containing processed animal protein derived from ruminants. In part 95 of the current regulations, *processed animal protein* is defined as ''meat meal, bone meal, MBM, blood meal, dried plasma and other blood products, hydrolyzed proteins, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.'' Like MBM, each of the other products in the definition is a rendered product, and, except for blood and blood products, we have not yet done an assessment of the BSE risk of the products. Additionally, we believe it is necessary to take into account the risk that the other products could become commingled with MBM, which, if derived from infected ruminants, may contain the infectious agent. APHIS would allow the importation of those processed animal proteins derived from ruminants or commodities containing such after an assessment of the risk has determined that these products are not commingled or contaminated with ruminant MBM or greaves.

In addition to meeting the criteria listed above, for a region to qualify as a region of negligible risk for BSE, one of the following conditions must apply; either:

- There has been no case of BSE in the region; or

are also applicable to bison. The provisions of this proposed rule would apply to bovines as defined in the current regulations, which include bison.

• There have been one or more cases, but each case has been demonstrated to have been imported and has been completely destroyed; or

• There has been at least one indigenous case, but every indigenous case was born more than 11 years ago. If there has been one or more indigenous cases, all bovines included in either of the following two categories must, if still alive, be officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, be completely destroyed:

1. All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period; or

2. If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

Regions of Controlled Risk for BSE

If a region does not qualify as a region of negligible risk for BSE, we are proposing that it could be classified as a region of controlled risk for BSE if specified conditions are met, as set forth in § 92.1 of this proposed rule and described below. We are proposing that a region of controlled risk for BSE is one for which a risk assessment has been conducted sufficient to identify the historical and existing BSE risk factors in the region and that:

• Has demonstrated that appropriate mitigations are being taken to manage all identified risks, but has not taken every mitigation measure for the length of time that would be necessary to qualify as a region of negligible risk for BSE;

• Has demonstrated that Type A surveillance in accordance with Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code or equivalent guidelines recognized by the Administrator has been met. Type B surveillance, or equivalent surveillance recognized by the Administrator, is sufficient in place of Type A surveillance once the relevant points target for Type A surveillance has been met;

• Meets the conditions of one of the two following sets of conditions:

Conditions Set 1. There has been no case of BSE in the region, or, if there have been one or more cases of BSE, every case has been demonstrated to have been imported and has been destroyed. In addition, both of the following conditions apply:

• The following conditions have been met and continue to be met:

a. The region has conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing and slaughter of bovines to encourage reporting of all bovines showing clinical signs that could be indicative of BSE;

b. The region has required notification and investigation of all bovines showing clinical signs consistent with BSE; and

c. The region has carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the required surveillance and monitoring system;

and:

• The feeding to ruminants of MBM and greaves derived from ruminants is prohibited in the region.

However, the requirements described above regarding awareness, notification, and examination have not been met for at least the past 7 years and/or it cannot be demonstrated that controls over the feeding of ruminant protein to ruminants have been in place for at least the past 8 years.

Conditions Set 2. There has been an indigenous case of BSE, and either or both of the following applies; either:

• The following conditions have been met and continue to be met, but not for at least the past 7 years:

a. The region has conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing and slaughter of bovines to encourage reporting of all bovines showing clinical signs that could be indicative of BSE;

b. The region has required notification and investigation of all bovines showing clinical signs consistent with BSE;

c. The region has carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the required surveillance and monitoring system;

or:

• The feeding to ruminants of MBM or greaves derived from ruminants is prohibited in the region, but it cannot be demonstrated through an appropriate level of control and audit that the prohibited material has not been fed to ruminants for at least the past 8 years.

• Additionally, in either of the situations described in this second set of conditions, for a region to qualify as a region of controlled risk for BSE, the following condition must be met: If alive in the region, bovines that are included in either of the following categories are officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, are completely destroyed:

a. All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period; or

b. If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as the BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

Regions of Undetermined Risk for BSE

A region of undetermined risk for BSE is defined by the OIE, and would be defined by APHIS in § 92.1, as a region that does not meet the criteria for being classified as either a region of negligible risk for BSE or a region of controlled risk for BSE.

Incorporation by Reference of OIE Code Standards for BSE Surveillance

The proposed definitions of *region of negligible risk for BSE* and *region of controlled risk for BSE* include the criteria that the region has demonstrated that specified surveillance in accordance with Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, is in place and that the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code or equivalent guidelines recognized by the Administrator has been met.

As discussed above, the OIE, of which the United States is a member country, is the internationally recognized standard-setting body that develops science-based recommendations for the safe trade of animals and animal products. We are proposing to incorporate into the regulations by reference at § 92.7 Article 11.5.22 of the

OIE Code. The OIE surveillance standards are discussed in more detail, below, under the heading ''Epidemiological situation concerning BSE in the country.'' Section 92.7 would also state that the incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and that the OIE maintains a copy of its standards on its internet homepage at *http://www.oie.int/eng/normes/Mcode/en_sommaire.htm.* Additionally, § 92.7 would state that copies of the OIE standards are available for inspection at the National Archives and Records Administration (NARA) and that information on the availability of this material at NARA can be obtained by calling 202–741–6030 or by going to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Process for Determining BSE Risk Classification

In the following paragraphs, we discuss the process followed by the OIE in conducting its evaluation of a country for BSE risk. As noted above, APHIS recognizes the scientific validity of the process used by the OIE and employed an equivalent process in classifying Canada as a BSE minimal-risk region and, in subsequent rulemaking, allowing additional imports of live bovines and bovine products from Canada.

In carrying out its evaluation process, the OIE refers to risk factors as they involve ''cattle.'' Therefore, when discussing the OIE process in this proposed rule, we use the term ''cattle.'' However, as we note above in this document, the provisions of this proposed rule would apply to bovines as defined in the current regulations, which include bison.

As described in the questionnaire for BSE status recognition (*http://www.oie.int/fileadmin/Home/eng/Animal_Health_in_the_World/docs/pdf/A_BSE quest.pdf*) that is based on Articles 11.5.3 and 11.5.4 of the OIE Code, countries requesting classification from the OIE as a country of negligible risk for BSE or a country of controlled risk for BSE must submit a dossier containing BSE historical data to support a risk assessment and overall evaluation. The information in the dossier is evaluated by BSE experts who are leading specialists regarding the disease.

In the following paragraphs we discuss the OIE procedure for recommending the BSE classification of a country and the rationale behind the considerations taken. As noted above, APHIS considers the approach taken by the OIE to be based on the current scientific understanding of BSE. In its own evaluations of the BSE risk in other countries, APHIS has taken, and will continue to take, an equivalent approach.

For purposes of discussion of the classification process, we will follow the OIE terminology in discussing the country being evaluated for BSE risk as the exporting country or exporting region. In proposed §§ 92.1, 93.400, 94.0, and 95.1, we define *exporting region* as a region from which shipments are sent to the United States.

The risk classification of an exporting country may be influenced by commodities the country has imported from another country. For purposes of discussion, we will follow the OIE terminology and refer to a country that sends commodities to the ''exporting country'' as a ''country of origin.''

Components of a Risk Assessment

A risk assessment is the primary tool used by the OIE in determining whether to recognize a country as either a country of negligible risk for BSE or a country of controlled risk for BSE, and would be the primary tool used by APHIS in making such a determination. An assessment of BSE risk includes at least two components: A release assessment and an exposure assessment. A release assessment assesses the likelihood that BSE has been introduced into the exporting country through live animals, processed animal protein, or other animal products. An exposure assessment assesses the likelihood that cattle within the exporting country could have been exposed to the BSE agent.

Under the OIE Code, in addition to the information necessary to allow OIE to conduct a risk assessment, a country requesting OIE classification as a country of negligible risk or controlled risk for BSE must also submit information regarding the country's BSE awareness program, its notification requirements for BSE, its diagnostic capabilities, and its BSE surveillance program. This type of information was also considered by APHIS in conducting its evaluation of the BSE disease risk of Canada.

Release Assessment Component of a Risk Assessment

As noted above, a release assessment assesses the likelihood of release of the BSE agent into a country through the importation of potentially infected live cattle, processed animal protein, or other products of animal origin potentially infected with BSE. In the following paragraphs, we discuss the significance of these commodities with regard to BSE risk.

Potentially Infected Live Cattle

An assessment of the risk of the release of the BSE agent in the exporting country includes consideration of whether potentially infected live cattle were imported into that country. The risk of the release of the BSE agent in the exporting country is dependent on:

- The BSE status of the country of origin of the potentially infected live cattle;
- The feeding and management of the cattle in the country of origin;
- Whether the cattle are dairy or beef breeds, if there are differences in exposure due to feeding practices in the country of origin;
- The date at which imports occurred, relative to the BSE mitigation in the country of origin; and
- The volume of potentially contaminated imports.

Products of Animal Origin That Could Pose a BSE Risk

A release assessment also considers the importation of animal products that could pose a BSE risk. As with importation of potentially infected live cattle, there are various factors that can affect the potential risk presented by products of animal origin.

- The risk of the release of the BSE agent in the exporting country due to the importation of animal products is dependent on:
- Whether products from cattle contain tissues of the type known to contain BSE infectivity (i.e., SRMs);
- The country of origin of the products and the BSE status of that country;
- The feeding and management of the animals in the country of origin;
- Whether the cattle from which the products are derived in the country of origin are dairy or beef breeds, if there are differences in exposure due to feeding practices in the country of origin; and
- The age at which the cattle from which the products were derived were slaughtered in the country of origin.

For both live animals and animal products, some of the risk factors identified can be mitigated through import requirements. These are evaluated as part of the OIE process. For example, if a country prohibited the importation of any cattle products containing or derived from SRMs, the risk would be mitigated. Therefore, imports meeting those conditions would not necessarily result in an elevated risk as noted in the risk assessment.

For most animal products, the OIE evaluates the information described above regarding products of animal origin that have been imported during the previous 7 years into the potential exporting country (i.e., the country seeking a BSE risk classification from the OIE).

Of the types of animal products derived from bovines, processed ruminant protein that either contains or has been contaminated by the BSE agent is the means of transmission of BSE. Therefore, in conducting an assessment of the BSE risk in a country, it is important to know the origin of processed animal protein, or feedstuffs containing processed animal protein, that have been imported into the country. Processed animal protein originating from high-risk countries for BSE presents a higher release risk than if originating from low-risk countries.

Because of the relatively greater BSE risk posed by processed ruminant protein compared to other animal products, the required reporting period for MBM and greaves is greater than for other animal products, and countries seeking BSE risk classification must inform the OIE whether MBM, greaves, or feedstuffs containing either, have been imported into that country within the past 8 years, and, if so, from what country and in what quantities. (In the OIE Code, MBM is defined as ''the solid protein products obtained when animal tissues are rendered, including any intermediate protein product other than peptides of a molecular weight less than 10,000 daltons and amino acids.'' Greaves are the protein-containing residue obtained after the partial separation of fat and water during the rendering process.) Eight years are associated with the incubation period of BSE, and represent a time period longer than the one representing the 95th percentile of the normal distribution of the age of clinical BSE cases detected at the peak of the United Kingdom and Swiss epidemic—i.e., 95 percent of clinical cases of BSE would be expected to be detected in some period of time less than 8 years after exposure to MBM or greaves contaminated with the BSE agent.

Exposure Assessment of the Exporting Country

The exposure assessment assesses the likelihood of exposure to the BSE agent of cattle in the exporting country, given the release of the BSE agent into the country. The exposure assessment evaluates the entire risk pathway for the transmission of BSE in the country. This includes all aspects of the cattle feed production and management systems.

Evidence indicates that field transmission of BSE requires that cattle ingest feed that has been contaminated with tissues or organs containing the BSE agent from an infected animal. Several steps in the risk pathway must take place consecutively for this to happen. An infected animal, carrying significant amounts of the infectious agent, must die or be slaughtered; tissues from that animal that contain the infectious agent must be sent to a rendering facility; the infectivity present in these tissues must survive inactivation in the rendering process; the resulting protein must be incorporated into feed, and this feed must be fed to at least one bovine at an adequate level.

The exposure assessment conducted by the OIE carefully evaluates all of these steps in the pathway as they consider the potential for the exposure of cattle to the BSE agent through consumption of MBM or greaves of bovine origin. This incorporates an evaluation of the implementation and enforcement of feed bans, including measures to prevent cross-contamination of animal feed. It includes all aspects of the potential for recycling and amplification of the BSE agent—whether the origin and use of bovine carcasses (including fallen stock), byproducts, and slaughterhouse waste presented a risk of recycling or amplification of the BSE agent; the parameters of the rendering processes; and the methods of producing feed for cattle and other animals. The OIE evaluates information addressing each of the factors listed above.

The rendering industry is crucial in reducing the risk of transmitting BSE infectivity, not only because of its role in inactivation of the BSE agent, but also because it serves as a critical control point for the redirection of ruminant protein away from cattle feeds. The OIE evaluates all aspects of the rendering industry. These include what types of tissues and/or carcasses are used as inputs in the rendering process. If SRMs are excluded from the input tissues or carcasses, this reduces the risk. It also includes the parameters of the rendering processes. Certain rendering processes can inactivate a proportion of the BSE agent present. If a fraction of the BSE infectivity were to escape in activation at the rendering facility, it would need to bypass controls imposed to prevent cross-contamination and ensure proper labeling of rendered materials (at the renderer) and feeds produced using prohibited MBM (at the feed mill).

The OIE also evaluates any feed ban or feed controls that are in place in the country. As noted above, it is widely accepted that BSE is caused by the consumption of processed animal protein of ruminant origin carrying and/or contaminated with the BSE agent. For potential exporting countries requesting a classification of BSE risk, the OIE evaluates information on whether MBM or greaves of ruminant origin have been fed to cattle in the country within the previous 8 years, including information regarding the implementation and enforcement of a feed ban and measures to prevent cross-contamination of animal feed. This evaluation includes consideration of the regulations imposing a feed ban, the veterinary infrastructure used to enforce and audit all aspects of the feed ban, and results of all audits or enforcement activities.

The overall risk of BSE in the cattle population of a country is proportional to the level of known or potential exposure to BSE infectivity and the potential for recycling and amplification of the infectivity through livestock feeding practices. For a risk assessment to conclude that the cattle population of a country is of negligible or controlled risk for BSE, it must have been demonstrated that appropriate measures have been taken for a set period of time to manage any risks identified. The risk assessment evaluates information, within the context of the risk described above, regarding all aspects of the feeding practices over the previous 8 years in the country.

Additional Factors To Be Considered in the Determination of BSE Risk Status

Epidemiological Situation Concerning BSE in the Country

Surveillance programs generate a picture of the epidemiological situation of BSE in a country. The more targeted the surveillance activities, the greater the power of the information. Surveillance targeted at high-risk populations for BSE provides more powerful information than generic animal disease surveillance for the entire cattle population.

Depending on the characteristics of the country, the goal of BSE surveillance could be to:

- Detect cases at a predetermined design prevalence;
- Monitor the evolution of the disease (i.e., introduction and/or spread);
- Monitor the effectiveness of a feed ban and/or other risk mitigation measures; or
- Provide supporting evidence for claimed BSE status or for maintaining status or advancing to a higher BSE status.

Targeted sampling for BSE surveillance focuses on two factors that

have been shown to be relevant to determining the risk for BSE: Clinical presentation and age. For the purpose of disease detection, it is most efficient to collect as many samples as possible from the surveillance stream that has the greatest likelihood of finding the disease—cattle displaying clinical signs consistent with BSE. This is referred to as targeted surveillance.

The OIE Code provides guidelines for surveillance programs based on a weighted point system (Article 11.5.22). This system reflects international scientific consensus that the best BSE surveillance programs focus on obtaining quality samples from targeted subpopulations, rather than looking at the entire adult cattle population.

OIE has identified the following four subpopulations of cattle for surveillance purposes:

1. *Clinical suspects:* Cattle over 30 months of age that display behavioral or clinical signs consistent with BSE.
2. *Casualty slaughter:* Cattle over 30 months of age that are nonambulatory, recumbent, unable to rise or to walk without assistance, sent for emergency slaughter, or condemned at ante-mortem inspection.
3. *Fallen stock:* Cattle over 30 months that are found dead on-farm or during transport to or at an abattoir.
4. *Healthy slaughter:* Cattle over 36 months that exhibit no clinical signs consistent with BSE or other diseases.

The number of points a sample receives correlates directly to an animal's clinical presentation at the time of sampling. The highest point values are assigned to those samples from the subpopulation of animals with classic clinical signs of the disease. The lowest point values correspond to animals from the subpopulation of clinically normal animals tested at routine slaughter. This weighted approach allows countries the flexibility to sample readily available surveillance streams, while taking into account the differences in the statistical value of samples from different streams. As a result, countries have the option of using varying approaches that can provide equal levels of assurance in defining the level of disease.

Type A Surveillance

Type A surveillance is recommended for countries that would like to meet the controlled-risk status. The OIE BSE surveillance guidelines recommend a target number of surveillance points for Type A surveillance based on the size of a country's cattle population. For instance, a country with an adult cattle population of 800,000 to 1 million should collect samples whose total point value equals 240,000 points. These points are accrued over 7 consecutive years, and are weighted according to the surveillance stream and age of the animal sampled.

Type B Surveillance

Type B surveillance may be carried out by countries of negligible BSE risk status to confirm the conclusions of the risk assessment (e.g., by demonstrating the effectiveness of the measures mitigating any risk factors identified, through surveillance targeted to maximize the likelihood of identifying failures of such measures).

Type B surveillance may also be carried out by countries of controlled BSE risk status (OIE Code, Article 11.5.4) following the achievement of the relevant points target using Type A surveillance, to maintain confidence in the knowledge gained through Type A surveillance. As with Type A surveillance, the recommended number of points for Type B surveillance is based on the size of a country's cattle population. For instance, a country with a cattle population of 800,000 to 1 million should collect samples whose total point value equals 120,000.

Presence of a BSE Awareness Program

The OIE will evaluate information about the existence of any awareness programs; the target audience; the curriculum; how long the program has been in place; and any contingency and/or preparedness plans that address BSE.

Compulsory Notification and Investigation

Proper management of the disease requires that there be incentives and/or obligations to report and investigate suspect BSE cases. Therefore, the OIE will evaluate information about any guidance given to veterinarians, producers, workers at auctions, slaughterhouses, etc., with regard to the criteria that would initiate the investigation of an animal as a BSE suspect; whether these criteria have changed over time; the date and content of the legal act making notification of BSE suspects compulsory; and any measures in place to stimulate notification, such as compensation payments or penalties for not reporting a suspect.

Sample Testing

For a country's BSE surveillance system to be recognized by the OIE, samples must be tested in accordance with the OIE's Manual of Diagnostic Tests and Vaccines for Terrestrial Animals. The OIE evaluates whether countries seeking BSE classification uses diagnostic procedures and methods that are consistent with those described in OIE's disease diagnostic manual and whether these diagnostic procedures and methods have been applied throughout the entire surveillance period.

BSE History of the Country

It is important to note that in order to retain classification by OIE as a country of negligible risk or controlled risk for BSE, a country must continue to observe OIE's guidelines and report any significant events that might change that status. The OIE reserves the right to revoke the given disease status of any country that fails to comply with this process. In order to retain classification, Member countries are obligated to notify the OIE in writing that the epidemiological situation with respect to each of the diseases for which the OIE has classified the country has remained unchanged in order to retain classification. APHIS also believes that it is essential to have periodically updated information from a country that APHIS recognizes as either negligible risk or controlled risk for BSE, and are including a requirement for such updated information in this proposed rule, as discussed below under the heading ''Requirement for Updated Information.''

The Process for APHIS Recognition of the BSE Risk Classification of a Region

Under this proposed rule, each country of the world will be considered by APHIS to be in the BSE undetermined risk category, unless APHIS has recognized that country as either a region of negligible risk for BSE or a region of controlled risk for BSE.

APHIS recognition of a region as a region of negligible risk or controlled risk for BSE could be achieved in one of two ways.

- If the OIE has classified a country as either BSE negligible risk or BSE controlled risk, APHIS would seek information to support concurrence with the OIE classification. This information could be publicly available information, or APHIS could request that countries supply the same information given to the OIE. APHIS would announce in the **Federal Register**, subject to public comment, our intent to concur with an OIE classification. APHIS would also post the summary of the BSE OIE ad hoc group conclusions for review during the comment period. The summaries would be available for review on the APHIS Web site. Following review of any comments received, the Administrator would announce his or her final

determination regarding classification of the country in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes a country as either negligible risk or controlled risk for BSE, the Agency would include that country in a list of regions of negligible risk or controlled risk for BSE, as applicable, that APHIS would make available to the public on the Agency's Web site.

• A region that has not received categorization by OIE as either negligible risk or controlled risk for BSE and that wishes to be recognized by USDA as negligible risk or controlled risk could submit to the Administrator a request for such classification, along with documentation sufficient to allow the USDA to conduct an evaluation of whether the region meets the criteria for such classification. If, following such evaluation, the Administrator determines that the region meets the criteria for negligible or controlled risk, APHIS would announce that determination in the **Federal Register** and would make available to the public the evaluation conducted by APHIS, as well as the information provided by the requesting region. APHIS would accept public comment on its intent. Following review of any comments received, the Administrator would announce his or her final determination regarding classification of the region in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

Requirement for Updated Information

As required by the OIE for countries classified as either negligible risk or controlled risk by the OIE, regions evaluated by APHIS and classified as negligible or controlled risk would need to submit updated information to APHIS each year. The required information includes documentation of the following:

• Relevant changes in BSE legislation, compared to the previous year;

• The importation into the region during the year of cattle, processed animal protein and products containing such material;

• Audit findings in rendering plants and feed mills that process ruminant material or material from mixed species that contains ruminant material, related to the prohibition of the feeding of MBM or greaves to ruminants;

• Audit findings in rendering plants and feed mills that process nonruminant material, related to the prohibition of the feeding to ruminants of ruminant-derived MBM and greaves;

• Infractions at the types of facilities listed above;

• If and why, in light of the audit findings, there has been no significant exposure of cattle to the BSE agent through consumption of ruminant-derived MBM and greaves;

• Surveillance efforts;

• All clinical BSE suspects;

• Any new cases of BSE.

If APHIS at any time determines that a region no longer meets the criteria for the risk classification it had previously received, APHIS would remove it from its list of regions so classified. If the OIE determines the region no longer meets the criteria for the risk classification it had previously received, APHIS may concur with the OIE determination or may request updated information from the region and determine whether to concur with the OIE decision. APHIS will announce its intent in the **Federal Register** and accept public comment regarding that intent. Following review of any comments received, the Administrator will announce in the **Federal Register** his or her final determination regarding classification of the region, along with a discussion of and response to pertinent issues raised by commenters.

Conditions for Importation of Commodities

The BSE-related importation conditions we are proposing for live bovines and products derived from bovines are based on internationally accepted data and research. These same data and research are used by the OIE in formulating its recommendations regarding trade in cattle and products derived from cattle with regard to BSE, and include experimental data, epidemiological data, information about risk mitigation strategies regarding processing, and data from risk assessment studies.

In the following section, we discuss the pertinent scientific information regarding each type of commodity considered for importation and explain APHIS' conclusions regarding mitigation measures, if any, that we consider necessary to safely allow for the importation of that type of commodity, taking into account the BSE risk classification of the region of export. In most cases, the conclusions we have reached are consistent with those reached by the OIE. In those few cases where our conclusions regarding mitigation measures differ from that of the OIE, we note the differences and explain our rationale for differing with the OIE Code. If the information we considered is based on research or other data concerning cattle and products from cattle, we discuss the information as it applies to cattle. However, for the reason we stated above in footnote 3 of this document, where we propose to modify our regulations based on that information, we propose to apply the amendments to bovines, rather than just to cattle. In the sections that follow, we discuss the OIE recommendations regarding trade of specific types of bovine commodities.

Live Bovines

The OIE Code recommends that trade in live cattle be allowed from regions of negligible, controlled, and undetermined risk for BSE under the following conditions.

From regions of negligible risk and regions of controlled risk for BSE: The bovines are accompanied by an international veterinary certificate attesting to the BSE risk classification of the region of export. Additionally, for exports of live cattle from regions of negligible risk for BSE that have had an indigenous case of BSE and from regions of controlled risk for BSE, the following conditions must be met and attested to on the certificate: The cattle intended for export were born after the date a ban on the feeding of MBM and greaves of ruminant origin to ruminants was effectively enforced, and are identified with a permanent identification system that enables them to be identified if they are birth or feed cohorts of an infected animal.

From regions of undetermined risk for BSE: The bovines were born at least 2 years after a ban on the feeding of MBM and greaves of ruminant origin to ruminants was effectively enforced, and are identified by a permanent identification system in such a way that enables them to be identified if they are birth or feed cohorts of an infected animal. In addition, the region must demonstrate that, if alive in the region, bovines that are included in either of the following two categories are officially identified with unique individual identification that is traceable to the premises of origin of the animal, their movements are controlled, and, when slaughtered or at death, they are completely destroyed:

1. All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period;

2. If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other

bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

APHIS' Proposed Provisions Regarding the Importation of Live Bovines With Regard to BSE Risk

In this proposed rule, we concur with the conclusions reached by the OIE regarding import conditions for cattle from regions of negligible risk and controlled risk with regard to BSE, but differ from the OIE Code regarding the importation of bovines from regions of undetermined BSE risk. We discuss our proposed provisions regarding importations from undetermined risk regions, below. With regard to importations of live bovines from regions of negligible or controlled risk for BSE, we are proposing in § 93.436(a) and (b) that bovines may be imported under the following conditions:

• The bovines are accompanied by an original certificate that indicates the APHIS BSE risk classification of the region of export and states that the following conditions, where applicable, have been met.

• From regions of negligible risk for BSE that have had an indigenous case of BSE and from regions of controlled risk for BSE, before the animals' arrival at the port of entry into the United States, each bovine imported into the United States is officially identified with unique individual identification that is traceable to the premises of origin of the animal. We consider this requirement necessary for us to determine the likelihood of exposure to potentially contaminated materials. We would provide that no person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter.

• From regions of negligible risk for BSE that have had an indigenous case of BSE and from regions of controlled risk for BSE, the bovines are permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. Acceptable means of permanent identification include the following:

1. A mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae);

2. A tattoo with letters identifying the exporting country must be applied to the inside of one ear of the animal;

3. Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from the BSE minimal-risk exporting region.

• From regions of negligible risk for BSE that have had an indigenous case of BSE and from regions of controlled risk for BSE, the bovines were born after the date from which the ban on the feeding of ruminants with processed ruminant proteins has been effectively enforced.

Additionally, if there has been an indigenous case of BSE in the region, the following restrictions would apply:

• Bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that an investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period would not be eligible for importation to the United States; and

• If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, no bovine born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal would be eligible for importation into the United States.

Date of Effective Enforcement of a Feed Ban

As noted, for the importation of cattle from certain risk classifications of countries, one of the OIE-recommended mitigations is that the animals were born after the date a feed ban was effectively enforced. The primary source of BSE infection, and the only documented route of field transmission of the disease, is commercial feed contaminated with ruminant protein derived from infected animals (Wilesmith, *et al.,* 1988; 1991; 1992; Prince, *et al.,* 2003). Bans that prohibit incorporation of mammalian or ruminant protein into ruminant feed have been shown to be effective in mitigating the risk of BSE transmission and are an integral factor in evaluating the BSE risk of a region. The experience regarding BSE in the United Kingdom, which was discussed in detail in the risk assessment we conducted for our September 2007 final rule, demonstrated the effectiveness of a ruminant-to-ruminant feed ban in reducing the prevalence of BSE (APHIS, 2007).

Although, in evaluating a country for BSE risk classification, the OIE examines whether the country has an effectively enforced ban on the feeding of ruminant-derived processed animal protein to other ruminants, and although some of the trade conditions recommended by the OIE with regard to BSE are dependent on when a country achieved effective enforcement of such a feed ban, the OIE does not provide specific recommendations for determining the date of effective enforcement of a feed ban. For a country that wishes to export live bovines to the United States and that is classified by APHIS as controlled risk for BSE or as negligible risk for BSE and the country has reported an indigenous case of BSE, APHIS would need to determine the date a feed ban was effectively enforced in the country.

It is important to note that the existence of an effectively enforced feed ban does not mean there will be no instances of contravention of the feed ban, either accidentally or intentionally, just as isolated transgressions of U.S. laws do not necessarily constitute ineffective enforcement of those laws. Nor does it mean that BSE will never be detected in a bovine born after the date from which a feed ban is considered to have been effectively enforced. Human error is expected, and no regulatory effort can ensure 100 percent compliance, which is why a feed ban is comprised of a number of interrelated measures that have a cumulative effect.

In our September 2007 final rule to allow additional live bovines and certain bovine products from BSE minimal-risk regions (72 FR 53314–53379, Docket No. APHIS–2006–0041), we explained the considerations and process used by APHIS to determine the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada. In this proposal, we are proposing to base our determination of the date of effective enforcement of a ruminant-to-ruminant feed on similar considerations. The information would include, but not necessarily be limited to:

• Policies and infrastructure for feed ban enforcement, including an awareness program for producers and farmers;

• Livestock and husbandry practices;

• Disposition of processed animal protein produced from domestic bovines, including the feeding of any animal species;

• Measures taken to control cross-contamination and mislabeling of feed intended for bovines with processed animal protein;

• Monitoring and enforcement of the ruminant feed ban, including audit findings in rendering plants and feed mills that process ruminant material.

Additionally, in determining the date of effective enforcement of a country's feed ban, APHIS may conduct a site visit to the requesting country to complement and verify the information provided by the country.

After receiving and evaluating the necessary information, APHIS would publish in the **Federal Register** for public comment the date APHIS considers to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the requesting region, and would make available to the public the evaluation conducted by APHIS, as well as the supporting documentation. Following review of any comments received, the Administrator would announce his or her final determination in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

Live Bovines From Regions of Undetermined Risk for BSE

With regard to the importation of live bovines, we propose allowing the importation of live bovines from regions of undetermined risk for BSE only in very limited situations.

We believe that the nature of a region that is classified as undetermined with regard to BSE risk is such that making a general determination in this regulation that the conditions recommended by the OIE have been met could not be made with a sufficient degree of confidence. When it comes to the overall BSE risk of an exporting region, factors in addition to a feed ban—such as veterinary infrastructure, surveillance, and import controls—play a role. Such factors are taken into consideration when determining whether to classify a region as negligible or controlled risk for BSE. If enough evidence has been evaluated to conclude that a region of undetermined risk for BSE has in place an effectively enforced feed ban—upon which importation of live bovines would be dependent—and that the region can demonstrate that the other conditions have been met, APHIS believes the region would qualify as at least controlled risk. We believe that the fact that a region is in the BSE undetermined-risk category argues against a generalized determination by way of this proposed rule that the OIE-recommended conditions have been met.

For the reasons discussed above, we are proposing to allow the importation of live bovines from regions of undetermined risk for BSE only in very limited situations. In § 93.436(c) of this proposed rule, we provide that, with regard to BSE, live bovines may be imported from regions of undetermined risk for BSE for specific limited uses, such as movement to exhibitions and zoos, under specified conditions on a case-by-case basis, if the Administrator determines that the bovines can be imported under conditions that will prevent the introduction of BSE into the United States. Instructions for applying for a permit for the importation of live ruminants are included in current § 93.404.

Provisions Regarding the Importation of Live Bovines From Canada

Canada is classified by the OIE as a region of controlled risk for BSE and, under our proposal, live bovines from Canada would be subject to all of the import requirements we are proposing for regions of controlled risk for BSE. However, Canada is currently singular in the APHIS BSE regulations in that it is the only region recognized by APHIS as a BSE minimal-risk region. As a BSE minimal-risk region, Canada is eligible to import live bovines into the United States that are prohibited importation from other regions listed in § 94.18(a). Under the current regulations, live bovines are eligible for importation from Canada if the conditions in § 93.436 and related sections are met.

Some of the requirements that are included in current § 93.436 would continue to apply to imports from Canada, in some cases for reasons other than BSE risk, but would not apply as a general rule to every region of controlled risk for BSE. These include the requirement in current § 93.436(a)(4) that bovines from Canada intended for immediate slaughter be moved from the port of entry to a slaughtering establishment in a sealed means of conveyance, which we are proposing to include in § 93.420 of this proposal for the importation of all ruminants imported from Canada for immediate slaughter. This provision exists as a safeguard against diseases other than BSE.

Certain of the requirements in current § 93.436 for the importation of live bovines from Canada are substantively the same as the requirements we are proposing for the importation of live bovines from any region of controlled risk for BSE—such as the requirement that live bovines intended for importation be permanently identified—by branding, tattooing, or some other method—as to country of export, and the requirement that the bovines were born on or after the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of origin. However, the provisions in current § 93.436 include specifics as to how those general requirements apply to Canada. For instance, the regulations in current § 93.436 specify the lettering that must be used for a brand or tattoo to identify the bovines as being of Canadian origin and specify that APHIS recognizes March 1, 1999, as the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada.

Because this proposed rule would retain these specifics, we are proposing to set forth the importation requirements for live bovines from Canada in sections of the CFR that would be dedicated to imports from Canada, specifically §§ 93.418 and 93.420.

Commodities Recommended for Unrestricted Trade With Regard to BSE

A review of scientific literature (discussed in the ''Supporting document for Chapter 2.3.13 of the Terrestrial Animal Health Code on Bovine Spongiform Encephalopathy'' (OIE TAHSC, 2006)) (the contents of Chapter 2.3.13 have been updated and currently appear in Chapter 11.5) has led the OIE to recognize certain products as safe for trade with regard to BSE, regardless of the BSE status of the exporting region.

Bovine-derived commodities that the OIE recommends be allowed to be traded without any restrictions for BSE include:

• Milk and milk products;

• Semen and *in vivo* derived embryos;

• Hides and skins;

• Gelatin and collagen from hides and skins;

• Tallow with a maximum level of insoluble impurities of 0.15 percent in weight; and

• Dicalcium phosphate with no trace of protein or fat.

APHIS has reached the same conclusions. Some of the commodities listed above are already eligible for importation without BSE-related restrictions from regions listed in § 94.18(a) of the regulations. These are milk and milk products, semen, and hides and skins. For these commodities, we are proposing no changes to their importation status with regard to BSE. The rationale for allowing their importation has been discussed in previous rulemaking and is not addressed in this document.

The remaining commodities listed above—those that are not currently eligible for unrestricted importation into the United States with regard to BSE—would become so under the provisions of this proposed rule.

Commodities Recommended for Trade Under the Same Conditions, Regardless of the Risk Classification of the Exporting Region

The OIE recommends that several other types of bovine commodities be eligible for trade without ''any BSE-related conditions, regardless of the BSE risk status of the cattle population of the exporting country, zone, or compartment'' (OIE Code Article 11.5.1). Although the OIE Code refers to an absence of ''BSE-related conditions'' for these commodities, the OIE recommendations do include qualifying conditions regarding the processing of such commodities, in order to guard against the contamination of the commodities by other materials that might contain BSE infectivity. These commodities are:

- Boneless skeletal muscle meat (excluding mechanically separated meat [14]) from cattle, provided (1) the cattle were not subjected to air injected stunning before slaughter or to pithing, (2) the cattle passed ante-mortem and post-mortem inspections, and (3) the product has been prepared in a manner that avoids contamination with SRMs;
- Blood and blood byproducts from cattle that were not subjected, prior to slaughter, to air-injected stunning or to pithing.

We are proposing to allow the importation of these commodities [15] from any region under the same conditions recommended by the OIE, with one exception. With regard to blood and blood products, we are proposing some additional requirements regarding the collection of blood and blood products to guard against contamination. We reference the scientific rationale for allowing such importation in a discussion of each type of commodity, below, and explain as well our rationale for proposing several risk mitigation measures slightly different from those recommended by the OIE.

Specified Risk Materials

For some commodities, a condition for importation under this proposed rule is that the commodity not contain or be potentially contaminated with SRMs. Under this proposed rule, tissues from bovines from regions of negligible risk for BSE are not considered SRMs and what is considered an SRM in a region of controlled risk differs somewhat from what is considered an SRM in a region of undetermined risk.

Regions of Negligible Risk for BSE

By definition, in a region that has been evaluated and has been determined to be a region of negligible animal health risk, there is a negligible risk of circulating BSE infectivity. Consequently, we do not believe it is necessary to consider any tissues from bovines from a region of negligible risk for BSE to be SRMs. This conclusion is consistent with internationally accepted BSE-related standards. It is also consistent with the approach taken by FSIS in an affirmation of interim final rules with amendments published on July 13, 2007 (72 FR 38199–38730, Docket No. 03–025F).

In that document, FSIS amended its September 7, 2005 interim final rule to exclude from the FSIS definition of SRMs materials from cattle from foreign countries that can demonstrate that their BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as does prohibiting SRMs for use as human food in the United States. In its document, FSIS stated that an ''evaluation of a country's BSE risk status would consider whether appropriate measures are in place to manage identified risks. This would include consideration of import policies and import history to determine the likelihood of the introduction of BSE into the country. It could also include (among other things) consideration of any of the following: Effective surveillance efforts; measures to identify and effectively control pathways for the amplification of BSE; appropriate awareness programs; effective epidemiological investigations as necessary, with appropriate tracing, control and destruction of risk animals; continuing risk considerations with corresponding revisions of existing mitigations; appropriate public health control measures commensurate with risk; and the infrastructure sufficient to define and implement any of the above.'' (72 FR 38718) FSIS stated further that evaluation of a country's measures would be conducted by FSIS officials with technical program expertise along with, where appropriate, technical experts from other agencies, such as APHIS and FDA, with FSIS making the final determination.

Regions of Controlled Risk and Negligible Risk

As noted above, in January 2004, FSIS regulations established as SRMs the skull, brain, spinal cord, trigeminal ganglia, eyes, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age or older, as well as the tonsils and distal ileum of the small intestine of cattle of all ages.[16] FSIS designates potentially infective materials, as well as certain materials that are closely associated with potentially infective materials, from cattle 30 months of age or older as SRMs. Although the skull and vertebral column of cattle infected with BSE have not demonstrated infectivity, the skull contains the eyes, trigeminal ganglia, and brain, and the vertebral column contains DRG and spinal cord. Thus, because they contain high-risk tissues, skulls and vertebral column are included in FSIS' definition of SRMs. Unlike other parts of the vertebral column, the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum do not contain spinal cord or DRG. Therefore, FSIS excludes these parts of the vertebral column from the materials designated as SRMs. Under FSIS regulations, head meat, cheek meat, and tongue may be used for human food, provided they are not contaminated with SRMs.

In §§ 92.1, 94.0, and 95.1 of this proposed rule, APHIS defines SRMs from regions of controlled risk for BSE and undetermined-risk regions as the same tissues considered by FSIS to be SRMs, with one exception. For regions of undetermined risk for BSE, APHIS is consistent with OIE in considering the tissues that FSIS considers to be SRMs in animals 30 months of age or older to be SRMs if the tissues come from animals over 12 months of age. Research demonstrates that the incubation period

[14] Mechanically separated meat is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of bovine carcasses that meets the FSIS specifications contained in 9 CFR 319.5. A definition of mechanically separated meat is included in § 94.0 of this proposed rule.

[15] Additionally, the FSIS regulations in 9 CFR 327.2 provide that, to be eligible to export meat and meat products to the United States for human consumption, a foreign country must be able to certify that it meets FSIS requirements. Therefore, prior to exporting meat and meat products to the United States, countries are required to be approved by FSIS as having an inspection system equivalent to that in the United States.

[16] On July 13, 2007, FSIS published an affirmation with amendments (72 FR 38700, Docket No. 03–025F) of its January 2004 interim final rule. Among the amendments included in July 2007 was a provision that excludes from the definition of SRMs materials from cattle from countries that can demonstrate that their BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as prohibiting SRMs for use as human food does in the United States.

for BSE is apparently linked to the infectious dose received, i.e., the larger an infectious dose received, the shorter the incubation period (EC SSC, 2002). While some cases have been found in animals less than 30 months of age, these have been relatively few and have occurred primarily in countries with significant levels of circulating infectivity. Specifically, BSE was found in animals less than 30 months of age in the United Kingdom in the late 1980s to early 1990s, when the incidence of BSE was extremely high (the youngest case, detected in 1989, was 21 months). The exceptional detection of BSE in young animals during the peak of the BSE epidemic in the United Kingdom supports a cautious approach in defining SRMs for regions of undetermined risk for BSE. Theoretically, in such regions, high levels of circulating infectivity could exist if the region is not implementing BSE risk management measures.

Because BSE infectivity is detectable in central nervous system tissue at three-quarters of the incubation period, the 12-month provision would ensure the removal of tissues potentially containing infectivity from even the single youngest animal observed since the start of BSE surveillance in the United Kingdom.

Other Bovine Commodities

According to the OIE recommendations, certain bovine commodities may or may not be eligible for importation, depending on the BSE risk classification of the country that would be exporting the commodity and on whether specified conditions have been met to mitigate BSE risk based on the country's risk classification.

These commodities include:

- Meat that does not meet the conditions, described above, for boneless skeletal muscle meat;
- Gelatin and collagen prepared from bones;
- Tallow, tallow derivatives, and dicalcium phosphate (other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight and dicalcium phosphate with no trace of protein or fat); and
- MBM and greaves.

Although APHIS' proposed provisions regarding these commodities are broadly based on OIE recommendations, we are also proposing some modifications to those guidelines, where necessary, to reflect APHIS' interpretation of the scientific literature and current USDA regulations and policies.

In the sections that follow, we discuss the science that supports the OIE recommendations and the import conditions we are proposing, and present the rationale for the few instances where our proposed provisions differ from OIE recommendations.

Meat, Meat Byproducts, and Meat Food Products

In our discussion, where we refer to meat, meat byproducts, and meat food products, we consider those commodities to be as defined in the FSIS regulations in 9 CFR 301.2.

As noted earlier in this document, BSE infectivity has not been demonstrated in the muscle tissue of BSE-infected cattle examined in either mouse bioassay studies (in which different bovine tissues are inoculated into mice to determine which tissues carried infectivity) or in cattle assays in the United Kingdom pathogenesis study (Wells, *et al.,* 1996; 2005; Wells, personal communications, 2008). Some reports have identified the presence of prions in muscle tissue from rodents, humans, and small ruminants infected with TSEs other than BSE (Bosque *et al.,* 2002). Those findings are consistent with differences in the transmission, host range, genetic susceptibility, infectivity distribution, and epidemiology found in different TSEs that affect animals and humans. In the transgenic mice over-expressing the bovine PrP gene (Tg bov XV), infectivity was detected in one muscle (semitendinosus) from a single clinical case of BSE in Germany (Buschmann and Groschup, 2005). The sensitivity of these mice to infection is significantly greater than that of the mice used for the United Kingdom pathogenesis study (10,000-fold) and even greater than that of cattle (approximately tenfold).

From studies of the pathogenesis of experimental BSE in cattle, no infectivity has been found in assays of skeletal muscle pools (triceps, masseter, sternocephalicus and longissimus dorsi) completed in wild-type mice bioassay and in cattle bioassay (*masseter, semitendinosus* and *longissimus dorsi*) from selected kill time points of the oral exposure study (Wells *et al.,* 1996 and 2005). All assays of the skeletal muscle pools were completed in March 2007 (Wells, personal communication, 2008).

Recent studies using tissues from asymptomatic cattle challenged orally with BSE and culled at 20, 24, 27, 30, and 33 months, and inoculated intracerebrally into BoPrP–Tg110 mice, have failed to detect infectivity in muscle (Espinosa *et al.,* 2007).

The United Kingdom's Spongiform Encephalopathy Advisory Committee (SEAC, 2001) and the European Commission's (EC) Scientific Steering Committee (SSC) evaluated the implications of the findings of the presence of infectivity in muscle for other TSEs in different species in relation to human food safety. EC SSC concluded that there was no reason to revise its opinions regarding the safety of meat, given the consistent negative results in BSE infectivity experiments (EC SSC, 2002a). SEAC concluded that the findings could not be directly applied to BSE in cattle and did not change the assessment of the risk to humans of consumption of beef. Updated opinions from the EC SSC are consistent with its original reports.

Skeletal muscle meat in and of itself is regarded as safe with regard to BSE, regardless of the BSE risk category of the region of export and origin. Any blood that might be associated with the meat is also, in and of itself, regarded as safe with regard to BSE, as discussed below under the heading ''Blood and Blood Products.''

However, it is possible that, in regions in which there is some circulating BSE infectivity, such meat could become contaminated with the BSE agent unless certain measures are taken to preclude such contamination. In this proposed rule, although we are proposing to allow the importation of boneless skeletal muscle meat from any BSE category of region, such importation would be contingent on the necessary safeguards against contamination having been met in the region of export.

One of these safeguards is that the bovines from which the meat was derived were not subjected to a stunning process prior to slaughter with a device injecting compressed air or gas into the cranial cavity, or to a pithing process (EFSA Journal, 2004; TAFS, 2004). Several studies have shown that penetrative captive bolt stunners that incorporate air-injection can force visible pieces of brain and other central nervous system tissue into the circulatory system of stunned cattle (Anil, *et al.,* 1999; Schmidt, *et al.,* 1999). In addition, the pithing process could cause dissemination of central nervous tissue throughout the body.

Another safeguard is the removal of SRMs. Handling of SRMs in ways that prevent contamination of the carcass is an important mitigation in preventing contamination of edible meat with BSE infectivity (EFSA Journal, 2005).

Therefore, with regard to BSE, we are proposing in § 94.18(b)(2) to allow the importation of boneless skeletal muscle meat from bovines, regardless of the BSE risk status of the region of export, provided that (1) the cattle were not subjected to air injected stunning before slaughter or to pithing, (2) the cattle

passed ante-mortem and post-mortem inspections, and (3) the meat has been prepared in a manner that avoids contamination with SRM tissues.

Additionally, the shipment of such meat to the United States would have to be accompanied by an original certificate stating that the above conditions have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the region of export, or be issued by a veterinarian designated by the national government of the region of export and endorsed by a full-time salaried veterinary officer of the region of export, representing that the veterinarian issuing the certificate was authorized to do so. Our listing of who would be eligible to issue a certificate differs slightly from the list in § 94.19 of the current regulations regarding the importation of meat and other edible products from BSE minimal-risk regions, in that we would not include veterinarians accredited by the national government of the region of origin. We are not including such individuals to avoid any situations where a veterinarian employed by an exporter might issue a certificate for that exporter's shipment.

Meat Other Than Boneless Skeletal Muscle Meat, Meat Food Products, and Meat Byproducts Derived From Bovines

For meat other than the boneless skeletal meat described above, meat food products, and meat byproducts, the conditions for importation would depend on the BSE risk classification of the region of export. These conditions are discussed in the following paragraphs.

Regions of Negligible Risk for BSE

With regard to regions of negligible risk for BSE, we are proposing in § 94.19 the conditions under which bovine meat that is not boneless skeletal meat, meat food products, and meat byproducts would be eligible for importation. These conditions are as follows; either:

1. The commodity is accompanied by certification that the region of export is a region of negligible risk for BSE in which there has not been an indigenous case of BSE, and that the commodity is derived from bovines that passed ante-mortem and post-mortem inspection; or

2. If there has been an indigenous case of BSE in the region of negligible risk, the commodity is accompanied by certification that the region of export is a region of negligible risk for BSE and that the commodity was derived from bovines that passed ante-mortem and post-mortem inspection and were subject to a ban on the feeding to ruminants of processed animal protein derived from ruminants.

Our proposed conditions for the importation of such commodities from negligible risk regions that have had an indigenous case of BSE are modified somewhat from those recommended by the OIE. The OIE recommends that such commodities be sourced from animals born after the date a ban on feeding ruminant MBM and greaves to ruminants had been effectively enforced. The OIE also recommends this condition for the importation of MBM and greaves derived from ruminants from such regions. There is a wide range of bovine products that could fall under these categories, including products that may have gone through multiple processing steps after slaughter. APHIS recognizes the difficulty in providing specific certification about the age of the animal from which the products were derived, given these steps. This difficulty, in combination with the overall low risk of such products from a negligible risk region, is why we propose to modify the OIE guidelines somewhat. We feel that because the criteria for this particular risk categorization calls for any indigenous case to be born more than 11 years ago and requires demonstration through an appropriate level of control and audit that for at least 8 years processed animal protein from ruminants has not been used in the feeding of ruminants (these criteria are discussed above under the heading ''*Regions of Negligible Risk for BSE*''), it is highly unlikely that such products could contain or be contaminated with the BSE agent. Taking these factors into consideration, APHIS concludes that the commodities under consideration pose an extremely low risk for BSE, as low as to be considered insignificant.

As noted above, in July 2007 FSIS amended its regulations to exclude from the FSIS definition of SRMs materials from cattle from foreign countries that can demonstrate that their BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as does prohibiting SRMs for use as human food in the United States. Our proposed provisions regarding the importation of meat, meat byproducts, and meat food products from regions of negligible risk for BSE are consistent with the FSIS provisions. In this proposed rule we would add a note to § 94.19 to indicate that, to be eligible to export bovine meat, meat byproducts, and meat food products to the United States under the provisions of that section, a region recognized by APHIS as a one of negligible risk for BSE would also need to be one that has demonstrated to FSIS that its BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as does prohibiting specified risk materials for use as human food in the United States.

Regions of Controlled Risk for BSE

We are proposing in § 94.20 that, in addition to boneless skeletal muscle meat that meets the requirements listed above, bovine meat, meat byproducts, and meat food products would be eligible for importation from regions of controlled risk for BSE if the following requirements are met:

- The bovines from which the commodities were derived passed ante-mortem and post-mortem inspections;
- The bovines from which the commodities were derived were not subjected to a stunning process with a device injecting compressed air into the cranial cavity or to a pithing process;
- The commodity does not contain mechanically separated meat from the skull and vertebral column of bovines 30 months of age or older;
- The commodity was produced in a manner that ensures that it does not contain and is not contaminated with SRMs, as defined in § 94.0 of this proposed rule for regions of controlled risk for BSE;
- The shipment is accompanied by an original certificate stating that the above conditions have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the region of export, or be issued by a veterinarian designated by the national government of the region of export and endorsed by a full-time salaried veterinary officer of the region of export, representing that the veterinarian issuing the certificate was authorized to do so.

Regions of Undetermined Risk for BSE

We are proposing in § 94.21 that, in addition to boneless skeletal muscle meat that meets the requirements listed above, bovine meat, meat byproducts, and meat food products would be eligible for importation from regions of undetermined risk for BSE if the following requirements are met:

- The bovines from which the commodities were derived have never been fed processed animal protein derived from ruminants;
- The bovines from which the commodities were derived passed ante-mortem and post-mortem inspections;
- The bovines from which the commodities were derived were not subjected to a stunning process with a

device injecting compressed air into the cranial cavity or to a pithing process; and

• The commodities were produced in a manner that ensures that such products do not contain and are not contaminated with: (1) Mechanically separated meat from the skull and vertebral column of bovines over 12 months of age; or (2) SRMs as defined for regions of undetermined risk for BSE.

• The shipment is accompanied by an original certificate stating that the above conditions have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the region of export, or be issued by a veterinarian designated by the national government of the region of export and endorsed by a full-time salaried veterinary officer of the region of export, representing that the veterinarian issuing the certificate was authorized to do so.

Offal

In this proposed rule, § 95.6 contains provisions regarding BSE and the importation of offal derived from bovines. In § 95.1 of the current regulations, *offal* is defined as the inedible parts of a butchered animal that are removed in dressing, consisting largely of the viscera and trimmings, which may include, but are not limited to, brains, thymus, pancreas, liver, heart, or kidneys. We are proposing to apply the same import requirements to bovine-derived offal as those described above for bovine-derived meat, meat byproducts, and meat food products, with one exception. The proposed provisions for the importation of bovine-derived meat, meat byproducts, and meat food products include the requirement that the bovines from which the commodities were derived passed ante-mortem and post-mortem inspections. That requirement is a safeguard for commodities intended for human consumption. Because offal is, by definition, inedible, there is no need to require that the offal was derived from bovines that passed ante-mortem and post-mortem inspections.

Meat or Dressed Carcasses of Hunter-Harvested Bovines

In the current regulations, § 94.19(e) contains provisions for the importation into the United States of meat or carcasses of hunter-harvested wild sheep, goats, or other ruminants other than cervids from BSE minimal-risk regions (the importation of cervid meat from BSE minimal-risk regions is unrestricted with regard to BSE). For hunter-harvested meat or carcasses to be eligible for importation with regard to BSE, the following conditions must be met:

• The meat or dressed carcass is derived from an animal that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the United States Customs and Border Protection official; and

• The animal from which the meat is derived was harvested within a jurisdiction specified by the Administrator for which the game and wildlife service of the jurisdiction has informed the Administrator either that the jurisdiction conducts no type of game feeding program, or has complied with, and continues to comply with, a ruminant feed ban equivalent to the requirements established by FDA at 21 CFR 589.2000.

Consistent with the approach we are taking in this document not to propose any changes at this time to BSE regulations related to ovines or caprines, in § 94.25(c) of this proposed rule, we are retaining the conditions described above as they apply to hunter-harvested wild ovines or caprines from BSE minimal-risk regions. In § 94.22 of this proposed rule, we are including provisions for the importation of hunter-harvested wild bovines from any region. Under those provisions, the meat or carcass of a hunter-harvested wild bovine would be eligible for importation into the United States if it is derived from a wild bovine that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the United States Customs and Border Protection official. Additionally, the carcass of a hunter-harvested wild bovine would have to be dressed (eviscerated and the head and spinal cord removed). We are not including a requirement comparable to that described above for ovines and caprines regarding the feeding of the wild bovines. BSE has been detected in wild bovines kept in captivity but not in non-captive wild bovines, and APHIS considers it very unlikely that wild bovines could be exposed to processed animal protein.

Gelatin and Collagen

Gelatin is a highly purified protein manufactured from hides, skin, and/or bones of animals using various refining processes in which each step is able to significantly inactivate BSE infectivity. A similar process, with similar inactivation results, is used in the production of collagen.

Derived From Hides or Skins

Bovine hides have not demonstrated BSE infectivity, even in infected animals. The safety of bovine hides with regard to BSE is recognized internationally. The OIE Code recommends that gelatin derived exclusively from the hides of bovines not be subject to trade restrictions. The European Commission Scientific Steering Committee's *Updated Opinion on the Safety With Regard to TSE Risk of Gelatine Derived From Ruminant Bones or Hides* (adopted by the Scientific Steering Committee at its December 5–6, 2002, meeting) states in section B(c): ''When ruminant hides are used for the production of gelatine, they are usually obtained from bovines. On the basis of current knowledge, it can be considered that the parts of the bovine hides used for the production of gelatine do not present a risk with regard to TSE's [transmissible spongiform encephalopathies, which include BSE], provided contamination with potentially infected materials is avoided.''

Therefore, we believe there is no scientific basis for prohibiting the importation of gelatin derived from the hides of bovines and are proposing in § 94.23(b) to allow the importation of gelatin derived from the hides or skins of bovines, regardless of the BSE risk classification of the region of origin, provided the gelatin has not been commingled with materials ineligible for entry into the United States. In § 95.7(b), we are proposing equivalent provisions for the importation of collagen derived from bovine hides or skins.

Derived From Bones

The different steps of the refining process in producing gelatin from bones, as well as the resulting infectivity reduction, are described below.

1. *Degreasing:* Before bone can be used to manufacture gelatin, fat must be removed. This is done by crushing the bones, washing, and degreasing the chips with hot water to remove fat residues. Studies evaluating the efficiency of the degreasing process in decreasing the amount of nervous tissues present in bones have shown that, during the degreasing step, 98–99 percent of the proteins of nervous origin are eliminated (Mantze, *et al.,* 1996).

2. *Acid treatment:* The treatment consists of immersing the degreased chip bone into hydrochloric acid (approximately 4 percent, < pH 1.5) for a period of at least 2 days. This acid treatment changes the structure of the

collagen protein and reduces the infectivity that might be present (Grobben, *et al.,* 2004).

3. *Alkaline treatment:* The materials are soaked in a saturated lime solution (pH 12.5) for a period of 20 to 50 days. The alkaline treatment changes the internal structure of the BSE protein, if present. The combination of time, temperature, and concentration of the alkaline treatments reduces the levels of BSE infectivity in the event they were present in the raw materials (Grobben, *et al.,* 2004).

4. *Further acid treatments:* In the event gelatin is produced from ossein by an acid process, the ossein is immersed for 12 to 24 hours in acid (pH 2–3.5).

5. *Gelatin extraction:* Once all the procedures are performed, gelatin is extracted by a series of hot water steps. These include purification by filtration and sterilization, both of which further remove suspended materials and thus further reduce the level of any remaining BSE infectivity, if present, which is unlikely at this stage in the production.

Research studies mimicking the manufacturing process described above were unable to show detectable levels of infectivity in the mouse bioassay. The results are consistent with TSE infectivity reduction capacity exceeding a factor of 30.000 (4.5 logs, although results from most recent research indicate clearance factors exceeding 4.8 logs) (EC SSC adopted at the 12–13 September 2002 meeting). These studies have demonstrated that the common process of manufacturing bovine gelatin provides significant assurance of gelatin safety.

Experimental studies have confirmed that the chemical processes used in the manufacture of gelatin derived from bones are sufficient to inactivate BSE infectivity that might have been present in the raw material (EC SSC, 1998). These experimental studies were designed to ensure that they accurately represented the ''lowest common denominator'' of current manufacture practices.

A quantitative risk assessment (EFSA Journal, 2006) of the residual risk in bone-derived gelatin, obtained from bones fit for human consumption calculated different scenarios resulting in different risk levels. The study did not take into consideration the sourcing of bones. Results of the risk assessment indicate that the relevant exposures are very small compared to the historical exposure of the human population in the United Kingdom (1980–2001) due to meat and meat products in its diet. The removal of skull and vertebral column from the source materials results in only a very small risk reduction. However, the input parameters to the supporting risk assessment model sourced animals only from the healthy slaughter subpopulation and did not address the scenario where material was sourced from cattle not subject to ante- and post-mortem inspection.

Although this evidence points to the conclusion that gelatin derived from bones that is produced using common manufacturing processes could be considered safe regardless of the region from which the bones originate, we believe that the limited parameters of the input data in the European Food Safety Authority (EFSA) assessment make it advisable to propose additional risk mitigations based on the BSE risk classification of the region of origin. Therefore, we are proposing in § 94.23 to allow the importation of gelatin derived from the bones of bovines under the following conditions:

Region of negligible risk: We are proposing in § 94.23(c) for gelatin and § 95.7(c) for collagen that gelatin and collagen derived from the bones of bovines would be eligible for importation from a region of negligible risk for BSE, provided that the bovines from which the gelatin was derived passed ante-mortem and post-mortem inspection, and provided the shipment is accompanied by certification as to the BSE risk classification of the region from which the gelatin or collagen originates and that the conditions for import have been met.

Region of controlled risk or undetermined risk: We are proposing in § 94.23(d) for gelatin and § 95.7(d) for collagen that gelatin and collagen derived from the bones of bovines would be eligible for importation from a region of controlled risk or undetermined risk for BSE provided that: (1) The bovines from which the gelatin was derived passed ante-mortem and post-mortem inspection; (2) skulls from bovines of any age have been excluded from the processing (due to the fact that skull might still have pieces of brain attached), as has the vertebral column from bovines 30 months of age or older; (3) and the bones are subjected to a process that includes all of the following steps, or to a process at least as effective in reducing BSE infectivity:

1. Degreasing;
2. Acid demineralization;
3. Acid or alkaline treatment;
4. Filtration; and
5. Sterilization at 138 °C (280.4 °F) or greater for a minimum of 4 seconds.

Shipments of gelatin and collagen imported into the United States under the above conditions would need to be accompanied by an original certificate that indicates the BSE risk classification of the exporting region and that states that the required conditions have been met.

We are proposing, additionally, in § 94.23(f) for gelatin and § 95.7(f) for collagen, to allow the importation of gelatin and collagen under conditions other than those described above if the Administrator determines that the gelatin and collagen will not come into contact with ruminants in the United States and that the conditions under which it will be imported will prevent the introduction of BSE into the United States. A United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors would need to be obtained. Application for a permit would need to be filed on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the material and the name and address of the consignee in the United States.

Dicalcium Phosphate

Considerable mineral content is recovered from the hydrochloric acid treatment of bone chip used in the production of gelatin. As stated earlier, before bones can be used in the manufacture of gelatin, fat and other impurities must be removed by a process called ''degreasing.'' The bones are crushed to a small size and then washed and degreased in a process that removes any residues of fat, marrow, or other soft tissues. Before degreased bone chip material can be used to produce gelatin, minerals—including calcium and phosphate—must be removed. To remove minerals, the bone chip is soaked in hydrochloric acid (approximately 4 percent, < pH 1.5) for a period of at least 2 days. The recovered minerals are further purified, followed by precipitation and drying. The resultant product is dicalcium phosphate.

In 2003, the EC SSC stated that the residual risk in dicalcium phosphate derived from bovine bones was negligible when the raw material for the production of bovine bone dicalcium phosphate is obtained from a country of any risk categorization if (1) the dicalcium phosphate is derived from appropriate tissues (i.e., from animals fit for human consumption, with SRMs—including skull and vertebrae—excluded, and cross-contamination with these bones avoided) and (2) submitted

to a production process that has a proven TSE infectivity reduction capacity (EC SSC, 2003).

The same processing steps applied for the pretreatment of bones used to produce bone-derived gelatin are followed for pretreatment of bones for the production of dicalcium phosphate. Accordingly, studies that demonstrate the safety of gelatin resulting from the pretreatment of bone during degreasing and acid demineralization (Grobben, *et al.,* 2004; Manzke, *et al.,* 1996) also indicate that a very safe dicalcium phosphate is yielded as a byproduct of the gelatin manufacturing process. Further, a significant reduction of TSE infectivity under experimental conditions has been demonstrated for dicalcium phosphate by a recent validation study in which dicalcium phosphate was prepared from bone artificially contaminated with TSEs and assayed for the presence of infectivity (Grobben, *et al.,* 2006).

In addition, according to the EC SSC (EC SSC, 2003) a 2003 validation study by Groben, *et al.,* shows that the acid process after degreasing and demineralization (as described above under the heading ''Gelatin'') together result in a reduction of infectivity of 2.6 log 10. The production process as a whole reduces the infectivity further up to 3.8 to 3.9 log 10.

Research indicates that dicalcium phosphate is not a risk factor for the transmission of the BSE agent when the dicalcium phosphate contains no traces of protein or fat. However, there is evidence that dicalcium phosphate produced from bones under normal manufacturing processes can contain a small residual proteinaceous fraction. Although the scientific evidence points to a significant reduction in infectivity during processing of dicalcium phosphate, there is a potential that it will present higher risk when it contains traces of protein or fat.

The OIE Code recommends no BSE-related restrictions for dicalcium phosphate that contains no trace of protein or fat. However, the OIE Code does recommend that dicalcium phosphate that is not free of protein or fat should originate only from negligible or controlled risk regions (OIE Code, 2010, Article 11.5.17), and that, if the material originates from a region of controlled risk for BSE, additional risk mitigation measures be applied. These additional measures are that the dicalcium phosphate is derived from cattle that have passed ante-mortem and post-mortem inspections and that the SRMs from cattle 30 months of age or older at the time of slaughter have been excluded (OIE Code, 2010, Article 11.5.17).

Based on our review of the science regarding dicalcium phosphate, we concur with the OIE's recommendations regarding trade of dicalcium phosphate. Therefore, we are proposing in § 95.10 to allow the importation of bovine-derived dicalcium phosphate that contains no trace of protein or fat from any region, regardless of the region's BSE risk classification. We are proposing to provide in § 95.10(b) to allow the importation from a region of negligible risk for BSE of bovine-derived dicalcium phosphate other than that with no trace of protein or fat if the dicalcium phosphate is accompanied by certification of the BSE classification of the exporting region. We are proposing to provide in § 95.10(c) to allow the importation from a region of controlled risk for BSE of bovine-derived dicalcium phosphate other than that with no trace of protein or fat if the dicalcium phosphate is accompanied by certification that it is derived from bovines that have passed ante-mortem and post-mortem inspection and was produced in a manner that ensures that it does not contain and is not contaminated with SRMs.

Bovine-derived dicalcium phosphate other than that with no trace of protein or fat would not be eligible for importation from a region of undetermined risk for BSE, except on a case-by-case basis as provided in the next paragraph.

We are proposing in § 95.10(e) to allow the importation of dicalcium phosphate that is not protein free under conditions other than those described above if the Administrator determines that the derivatives will not come into contact with ruminants in the United States and that the conditions under which it will be imported will prevent the introduction of BSE into the United States. A United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors must be obtained. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the material and the name and address of the consignee in the United States.

Tallow

Several studies have evaluated TSE infectivity in tallow that was spiked with infected brain material and then subjected to rendering. In two rendering studies, one with BSE (Taylor *et al.,* 1995) and the other with scrapie (Taylor, *et al.,* 1997), no detectable infectivity from either agent was demonstrated from any of the tallow samples when assayed in mice. The BSE rendering study did not demonstrate any infectivity in crude unfiltered tallow, although the same rendering procedure produced MBM with almost the same infectivity levels as the untreated raw material. These studies suggest that during the manufacturing process of tallow, both BSE and scrapie agents do not preferentially separate with tallow during rendering but tend to remain with the MBM fraction.

A review of inactivation of TSE agents during rendering (Taylor and Woodgate 2003) suggests that tallow is generally not considered to be related to risk of BSE infection for two main reasons: (1) That the BSE-spiked rendering studies confirmed the lack of detectable infectivity of tallow through mice bioassay; and (2) because epidemiological studies were not able to link the distribution and use of tallow in cattle feed to the incidence of BSE in the United Kingdom.

Some countries (e.g., Denmark and Japan) have implicated tallow in milk replacers as a potential source of BSE infection. A 2003 epidemiological report on BSE in Japan hypothesized tallow in calf milk replacer as one possible source and route of infection. However, statistical analysis of the data did not support the conclusion of any correlation between the use of milk replacer and BSE incidence (BSE Epidemiological Study Group report, 2003).

A quantitative risk assessment of BSE transmission through tallow-based milk replacer (Paisley and Hostrup-Pedersen, 2004) modeled the effects of level of impurities (0.02, 0.15, and 0.5 percent), inclusion of SRMs, and other inputs on the probability of occurrence of BSE cases. Although the results were associated with a high level of uncertainty, the study found that, under certain scenarios, tallow-based milk replacer could be associated with transmission of BSE to calves. The simulations demonstrated the importance of SRM exclusion in limiting the probability of BSE infection, particularly from tallow with high impurity levels (0.5 percent). Uncertainty in the results stemmed from infectivity in central nervous system tissue and from the level of impurities in tallow.

A quantitative risk assessment on the residual BSE risk posed by tallow (EFSA

Journal, 2005a) concluded that tallow was not a risk factor in transmitting the BSE agent, if the tallow was derived from cattle that have passed ante-mortem and post-mortem inspection. Likewise, while the level of soluble impurities did not significantly affect the risk of exposure, the assessment concluded that the source of raw material warranted further consideration. In addition, removal of SRMs corresponded to a 2 log reduction in potential BSE infectivity. The EFSA Scientific Panel concluded that, for the scenarios evaluated in the quantitative risk assessment, the exposure levels for tallow were minimal, thereby posing no risk of transmission.

The OIE guidelines regarding tallow derived from bovines, and the current APHIS regulations regarding the importation of tallow from BSE minimal-risk regions are based on the conclusion that tallow with a maximum level of insoluble impurities of 0.15 percent in weight and derivatives made from this are not a risk factor in the transmission of the BSE agent. APHIS concludes that such tallow and derivatives made from this tallow can be imported without BSE restrictions, regardless of the BSE risk classification of the region of origin. We are proposing in § 95.8(b) to allow such importation of tallow with a maximum level of insoluble impurities of 0.15 percent in weight.

In addition, the evidence suggests that tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight is not a risk factor provided it is sourced from cattle that have passed ante-mortem and post-mortem inspections and SRMs are excluded. Therefore, we are proposing in § 95.8 that tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight would be eligible for importation under the following conditions. Either:

- It is sourced from a region of negligible risk for BSE; or
- If it is sourced from a region of controlled risk for BSE, it was derived from bovines that have passed ante-mortem and post-mortem inspections and has not been prepared using SRMs.

Additionally, to be eligible for importation, bovine-derived tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight would need to be accompanied by certification of the BSE risk classification of the exporting region and that the applicable conditions, above, have been met.

Tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight would not be eligible for importation from a region of undetermined risk for BSE, except on a case-by-case basis as provided in the next paragraph.

We are proposing in § 95.8(f) to allow the importation of tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight under conditions other than those described above if the Administrator determines that the tallow will not come into contact with ruminants in the United States and that the conditions under which it will be imported will prevent the introduction of BSE into the United States. A United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors must be obtained. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the material and the name and address of the consignee in the United States.

Tallow Derivatives Other Than Those Made From Tallow With a Maximum Level of Insoluble Impurities of 0.15 Percent in Weight

In addition to tallow itself, derivatives of tallow are a commercially traded commodity. Several studies have evaluated the effects of various time, temperature, and pressure processes on prion inactivation. The BSE-spiked tallow study (Taylor, *et al.,* 1995) showed that, while infectivity does not persist in tallow during rendering, the level of infectivity of BSE subjected to a poorly inactivated rendering process remained at almost the same level as the untreated material.

The current APHIS regulations in § 95.4 allow the importation of derivatives from bovine-derived tallow without restriction with regard to BSE. Under § 95.9(b) of this proposal, derivatives from bovine-derived tallow with a maximum level of insoluble impurities of 0.15 percent in weight would continue to be eligible for importation into the United States without restriction due to BSE.

With regard to derivatives from bovine-derived tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight, the OIE Code recommends that trade be allowed in such a commodity under any of the following conditions:

- It originates from a country of negligible risk for BSE;
- It originates from a country of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs; or
- It originates from either a country of controlled risk for BSE or a country of undetermined risk for BSE and was produced by hydrolysis, saponification, or transesterification. Those processes create conditions of high enough temperature and pressure to inactivate the BSE agent.

The OIE Code does not define *tallow derivative.* However, in 21 CFR 589.2001, the FDA defines *tallow derivative* as follows: ''* * * [A]ny chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.'' According to the FDA definition, all bovine-derived tallow derivatives would meet the guideline in the OIE Code under which tallow derivatives from any country could be traded. In this document, we are proposing in § 95.1 to define *tallow derivative* as FDA does. In § 95.9, we are proposing to allow the importation from any region of tallow derivatives that meet our definition in § 95.1. In § 95.9 of this proposal, we are also providing that if an importer wishes to import a commodity the importer considers to be a tallow derivative, but that does not meet our proposed definition of *tallow derivative,* and the commodity was not derived from tallow with a maximum level of insoluble impurities of 0.15 percent in weight, it must meet one of the following conditions to be eligible for importation:

- It originates from a country of negligible risk for BSE;
- It originates from a country of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs.

Additionally, to be eligible for importation, derivatives from bovine-derived tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight would need to be accompanied by certification that the applicable conditions, above, have been met.

We are proposing in § 95.9(g) to allow the importation of derivatives of tallow other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight under conditions other than those described above if the Administrator determines that the derivatives will not come into contact

with ruminants in the United States and that the conditions under which it will be imported will prevent the introduction of BSE into the United States. A United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors must be obtained. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the material and the name and address of the consignee in the United States.

In-Vivo-Derived Embryos

The current regulations in part 98 include BSE-related restrictions on the importation of embryos from ruminants. The regulations in § 98.15(a) provide that ruminant embryos may be imported into the United States from regions in which foot-and-mouth disease or rinderpest exists only if certain conditions apply with regard to BSE and other diseases. Among the conditions related to BSE are the following:

- During the year before embryo collection, no case of BSE occurred in or within 5 kilometers of the embryo collection unit;
- During the year before embryo collection, no case of BSE occurred in any herd in which the donor dam was present;
- Not less than 30 days nor more than 120 days after embryo collection, the donor dam was examined by an official veterinarian and was found free of clinical evidence of BSE;
- Between the time the embryos were collected and all required examinations and tests were conducted, no animals in the embryo collection unit with the donor dam, or in the donor dam's herd of origin, exhibited any clinical evidence of BSE.

We are proposing to remove the BSE-related restrictions in § 98.15(a) on the importation of embryos derived from bovines, cervids, or camelids. This change would be consistent with the OIE Code regarding trade in in-vivo-derived embryos derived from bovines, and would be consistent with our proposal, discussed above under the heading ''Cervids and Camelids,'' to remove BSE-related import restrictions on cervids and camelids.

No detectable infectivity has been found in susceptible mice fed placenta from confirmed cases of BSE (Middleton and Barlow, 1993; Barlow and Middleton, 1990; Bradley, 1990), nor in placenta, placental fluids, or ovary or uterine caruncle following mouse inoculation (Fraser and Foster, 1994; MAFF, 1997; EC SSC, 2000). Male reproductive tissues (e.g., testis, epididymis, prostate, semen, seminal vesicle) inoculated into mice showed no infectivity (Fraser and Foster, 1994; MAFF, 1999). In addition, infectivity was not detected in the fetal membranes and placenta of cattle with clinical BSE after cattle were dosed oro-nasally with a pooled tissue homogenate from BSE cattle. Animals were killed at 24 and 84 months post infection with no evidence of disease (Bradley, 1996; EC SSC, 2000).

A different study examined the potential for washed embryos to transmit BSE (Wrathall *et al.,* 2002). In this study, semen from 13 bulls, 8 with clinical BSE, was used for artificial insemination (AI) of 167 clinically affected cows in the terminal stages of BSE. The resulting embryos were treated according to the recommendation of the International Embryo Transfer Society. The embryos were always transferred singly, but repeat transfers were done if returns to estrus occurred within the particular transfer session. Five hundred eighty-seven viable embryos were transferred into 347 recipient heifers imported from New Zealand. A total of 266 live offspring were born, of which 54.1 percent had a BSE-positive sire as well as a BSE-positive dam. The recipient heifers were monitored for clinical signs of BSE for 7 years after transfer, and the offspring were also monitored for 7 years after birth. Twenty-seven heifers and 20 offspring died during monitoring, but none showed signs of BSE. The brains of these animals, in addition to the brains of animals killed, as scheduled, after 7 years were examined for BSE by histopathology, PrP immunohistochemistry, and by electron microscopy for scrapie-associated fibrils. All results were negative. In addition to the embryos transferred into recipient heifers, 1,020 nonviable embryos were sonicated and inoculated intracerebrally into susceptible mice (20 embryos per mouse) that were monitored for up to 700 days post inoculation; their brains were then examined for spongiform lesions. All results were negative. Additionally, uterine flush fluid samples from 41 cows were tested for BSE infectivity by intracerebral and intraperitoneal inoculation of 946 mice. One of these mice had some vacuolar pathology, but its relevance proved difficult to determine, since the putative incubation period was inconsistent with the survival of remaining mice in the group. All other mice with injections of flush fluids from the same cow were negative when finally killed and examined. Results of the study indicate that embryos are unlikely to carry BSE, and do not transmit the disease to recipients and their embryo transfer offspring, even when they are collected from donor cows at the end-stage, when the risk of maternal transmission (if it were to exist) would potentially be the highest.

In a cohort study, 316 offspring of BSE confirmed cows (cases) and 316 offspring from cows over 6 years old and without BSE from the same farm and age cohort (controls) have been observed under controlled conditions over a 7-year period. The purpose of the study was to determine whether maternal transmission occurs, and, if so, at what level of incidence. There was a statistically significant risk difference between the two cohorts examined (i.e., calves born to dams with BSE and calves born to healthy dams more than 6 years old). This difference was 9.7 percent, with a relative risk of 3.2 for offspring of cows that developed clinical BSE. This enhanced risk for the offspring of BSE dams appeared to decline the later the offspring were born after the 1988 feed ban was in place, but increased the closer that parturition was to the onset of clinical disease in the dam. The results cannot distinguish between a genetic component and true maternal transmission for which there is no other evidence. Instead, a combination of a genetic cause (i.e., increased susceptibility to feed exposure that could have occurred in any cattle in the study) and genuine transmission fits the computer model of the epidemic best (Donnelly, *et al.,* 1997). Later studies by Donnelly, *et al.* (2002) significantly reduced the estimated risk to offspring, although they recognized that the introduction of culling of offspring of confirmed cases made estimation of the risk impossible other than by back-calculation methods. The route for the hypothetical maternal transmission of BSE has not been established. Based on the modeling study, given that less than 1 percent of the offspring of affected cattle in the United Kingdom epidemic may succumb to this means of exposure, it is likely to be difficult to determine the route. More recent work on cases born after the 1996 feed ban fails to demonstrate evidence of maternal transmission (Hill, 2005). Thus, although maternal transmission may be possible, more recent epidemiologic

evidence suggests that maternal transmission of BSE is unlikely to occur at any appreciable level, if at all.

For the reasons discussed above, we do not believe it is necessary to retain the BSE-related restrictions in § 98.15(a) on the importation of embryos derived from bovines, cervids, or camelids.

Blood and Blood Products

Blood and blood products can be divided into two main groups: (1) Whole blood and cellular derivatives such as red cell concentrate, platelets, and other cellular elements; and (2) plasma-derived products including serum (including fetal bovine serum (FBS), clotting factors, immunoglobulins, and albumin (Farshid, *et al.,* 2005)). Plasma is the cell-free portion of the blood. Serum is plasma with fibrinogen and clotting factors removed.

Transmission Studies

BSE infectivity has not been demonstrated in cattle blood or any tested derivatives (EC SSC, 2002). This conclusion derives from studies in which tissues from infected cattle were injected intracerebrally and intraperitoneally into mice (the ''mouse bioassay''), or intracerebrally into cattle (the ''cattle bioassay''). Mouse bioassays were performed using buffy coat (the white cell fraction of centrifuged whole blood), clotted blood, fetal calf blood, and serum from confirmed clinical cases (Kimberlin, 1996 cited in EC SSC, 2002). Wild-type mouse and cattle bioassays were performed on buffy coat from cattle experimentally exposed orally to the BSE agent. In all cases, no evidence of infectivity was detected. However, brain damage caused by certain stunning techniques can produce central nervous system tissue emboli in venous blood draining the head (EFSA Journal, 2004). A recent study (Espinosa, *et al.,* 2007), utilizing material derived from the second United Kingdom Veterinary Laboratories Agency pathogenesis study (cattle challenged orally with BSE and culled 20, 24, 27, and 30 months post exposure), revealed no detectable blood infectivity by assay in transgenic BoPrP–Tg110 mice.

Investigators have demonstrated that BSE can be transmitted to sheep by transfusion of whole blood from sheep experimentally infected with BSE (Houston, *et al.,* 2000; Hunter, *et al.,* 2002). In these studies, a transfusion of 400 ml of whole blood, taken from clinically normal infected sheep, caused disease in 2 of 24 recipients. Blood or buffy coat taken from clinically ill animals, however, did not cause disease in the four recipients. These same investigators also examined scrapie in sheep. A total of 4 sheep out of 21 transfused with blood from sheep naturally infected with scrapie developed disease. The transfusion of buffy coat derived from a clinically ill animal caused disease in the recipient. The EC SSC examined these studies and their implications. They concluded that the finding of infectivity in the blood of sheep could not be extrapolated to BSE in cattle (EC SSC, 2002b).

Brown, *et al.* (1999), using a human strain of TSE (Gerstmann-Straussler-Scheinker) in mice inoculated intracerebrally, concluded that infectivity was present in the buffy coat (platelets, white cells) during the preclinical phase of TSE, but absent or in only trace amounts in the plasma or plasma fractions. Following the onset of clinical signs, increased infectivity of both buffy coat and plasma was found, but still at very low levels compared to levels in the central nervous system. As cited in a review of the relevant literature (Comer, 2004, p. II.18), most studies using a rodent model and adapted strains of scrapie or CJD demonstrated that the fractions containing white blood cells have the highest levels of infectivity.

In contrast to investigations of the natural distribution of infectivity in rodent blood fractions, one ''spiking'' study added high levels of hamster-adapted scrapie infectivity from brain homogenate to normal human blood. Following fractionation by centrifugation into red cells, white cells/platelets, and plasma components, titrations indicated that the majority of infectivity was in the red cell component (Brown, *et al.,* 1998). These results, although not as relevant to understanding the natural distribution of TSEs in blood, may potentially apply to the distribution following cross-contamination at blood collection. Therefore, if contrary to current research, or if the proposed mitigations are not properly implemented, BSE infectivity is present in bovine blood, either naturally or via cross-contamination, it would likely be highest in the cellular components. These fractions, both red and white cells, are excluded when harvesting FBS and bovine serum albumin used in the preparation of vaccines and drugs.

Further decrease in TSE infectivity occurs with fractionation of plasma proteins. Fractionation is the process whereby specific proteins, such as albumin, are separated out from other components of the plasma. Infectivity in various fractions has been examined. For example, using data from several cited studies, Comer (2004) estimated that human albumin contains 3.1x10–5 vCJD ID_{50}/gram. Compared to Comer's estimates of infectivity in whole blood (2 iv vCJD ID_{50}/gram), this figure represents a dramatic decrease.

Although BSE has never been detected in any bovine blood, blood product, or fetal blood, APHIS recognizes the possibility of cross-contamination with SRMs at the time of collection, particularly in a slaughter environment. Certain slaughterhouse stunning practices–specifically the use of devices that inject compressed air or gas into the cranial cavity or pithing processes—may introduce macro-emboli of tissue from the central nervous system into the circulatory system (Anil *et al.,* 1999; Schmidt, *et al.,* 1999). In addition, collection of blood in an open manner may allow other tissues to contaminate the blood.

In order to prevent contamination due to such potential sources of infectivity, we are proposing in § 95.12 to require mitigations to decrease the risk of cross-contamination. For all blood and for products derived from blood, a condition of importation eligibility would be that the blood was collected in a hygienic manner, as determined by the Administrator, that prevents contamination of the blood with SRMs. For blood collected at slaughter and for products derived from such blood, we would require that the slaughtered animal: (1) Pass ante-mortem inspection; and (2) not be subjected to a stunning process with a device injecting compressed air or gas into the cranial cavity, or to a pithing process. For blood collected from live donor bovines and for products derived from such blood, we would require that the donor animal be free of clinical signs of disease. Although this requirement regarding the disease status of live donor animals, which is set forth in the § 95.4(e) of the current regulations, is not included in the OIE Code, we are including it here as an additional precaution against BSE contamination of the blood collected.

Additionally, we would require that each shipment of blood and blood products to the United States must be accompanied by certification that the applicable requirements have been met.

Restrictions on Processed Animal Protein Derived From Nonruminants

Although materials derived from nonruminants do not pose a BSE risk in and of themselves, the importation of such materials into the United States could pose a BSE risk if the nonruminant materials are commingled with materials from BSE-infected

ruminants. To guard against such a possibility, the current regulations in § 95.4 restrict the importation of certain animal materials, regardless of the species from which it is derived, unless it can be demonstrated that the nonruminant material (or ruminant material if the ruminants are from a country not listed in § 94.18(a)) has not been commingled with ruminant materials that are prohibited entry into the United States. The regulations in § 95.4(c)(4) also contain provisions under which a facility that wishes to export such material to the United States from a region listed in § 94.18(a), and that process or handle any material derived from mammals, must allow for periodic APHIS inspection of its facilities, records, and operations to ensure there is no commingling. Facilities in regions listed in § 94.18(a)(1) or (a)(2) that wish to export such material to the United States are required to enter into a cooperative service agreement with APHIS to provide for the payment of the costs of APHIS inspections.

This proposed rule would continue to include safeguards against the commingling of nonruminant materials with materials that could contain BSE infectivity. The non-commingling provisions in proposed § 95.4(c) regarding materials derived from ovines and caprines would continue to apply to a variety of materials—e.g., processed animal protein, tankage, offal, tallow other than tallow derivatives, processed fats and oils, and derivatives of processed animal protein, tankage, and offal, pending any future rulemaking regarding ovines and caprines. However, in proposed §§ 95.13 and 95.14, which address potential BSE contamination of nonruminant-derived materials due to commingling with materials derived from bovines, the provisions would apply only to processed animal protein, based on the scientific evidence discussed above regarding the role of such material in BSE transmission.

We are proposing in § 95.13 that processed animal protein from a region of negligible risk for BSE that is derived from animals other than ruminants may not be imported into the United States unless the following conditions are met:

- The material is not otherwise prohibited under the provisions in § 95.4 regarding materials derived from ovines or caprines;
- The shipment of materials into the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must indicate the BSE risk classification of the region of export;
- The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. (VS Form 16–3 may be obtained from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*.)

We are proposing in § 95.14 that processed animal protein from a region of controlled risk or undetermined risk for BSE that is derived from animals other than ruminants may not be imported into the United States unless, in addition to the requirements for importation listed above for importation from a region of negligible risk for BSE, the following conditions are met:

- Except as provided in the next bulleted condition for blood and blood products, the processed animal protein does not contain and was not commingled with material derived from ruminants originating in a region of controlled risk or undetermined risk for BSE.
- For blood meal, blood plasma, and other blood products, the material does not contain and was not commingled with ruminant blood or blood products prohibited importation into the United States. Because, as noted above, BSE infectivity has not been demonstrated in cattle blood or any tested derivatives (EC SSC, 2002), we do not believe it is necessary to require that processed animal protein derived from nonruminants not contain or be commingled with blood and blood products derived from any ruminant from a BSE controlled- or undetermined-risk region. However, because of the possibility that blood derived from bovines could be contaminated with the BSE agent if collected in a manner that does not ensure that it is not contaminated with tissues containing the BSE agent, we consider it necessary to prohibit the contamination or commingling of nonruminant processed animal protein from controlled- or undetermined-risk regions with blood or blood product that does not meet all the conditions (e.g., collection in a hygienic manner) necessary to make it eligible for importation into the United States.
- Inspection of the facility for compliance with the provisions of this section is conducted at least annually by a competent authority of the government agency responsible for animal health in the region, unless the region chooses to have such inspections conducted by APHIS. The inspections must verify either that:

1. All steps of processing and storing the material are carried out in a facility that has not been used for the processing or storage of materials derived from ruminants originating in a BSE controlled- or undetermined-risk region; or
2. The material is produced in a manner that prevents contamination of the processed animal protein with materials prohibited importation into the United States.

- If APHIS conducts the required inspection, the facility has entered into a cooperative service agreement executed by the operator of the facility and APHIS. In accordance with the cooperative service agreement, the facility must be current in paying all costs for a veterinarian of APHIS to inspect the facility (it is anticipated that such inspections will occur approximately once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds). In addition, the facility must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

Processed Animal Protein Derived From Ruminants

Epidemiological evidence indicates the consumption by a susceptible animal of processed animal protein of ruminant origin contaminated by the BSE agent is the route by which BSE is transmitted. A region recognized by APHIS as a region of negligible risk for BSE and in which there has never been an indigenous case of BSE would have a negligible likelihood of circulating BSE infectivity and, therefore, pose a negligible risk that a BSE-infected animal would be incorporated into rendered protein. Therefore, we are proposing in § 95.5 to allow the

importation of processed animal protein derived from ruminants from such a region.

In the case of a region of negligible risk for BSE that has had an indigenous case of the disease, we would require in § 95.5 that the product be derived from ruminants that were subject to a ruminant-to-ruminant feed ban.

Under this proposal, processed animal protein derived from ruminants would not be eligible for importation into the United States from a region of controlled risk for BSE or a region of undetermined risk. Because the primary source of BSE exposure has been shown to be processed animal protein derived from ruminants contaminated with the BSE agent, and because processed animal protein could potentially carry or be contaminated with the BSE agent, we are proposing to prohibit the importation of processed animal protein from regions of controlled risk for BSE unless it can be demonstrated that such product has not been commingled or contaminated with ruminant MBM or greaves. We would prohibit the importation of processed animal protein derived from ruminants from regions of undetermined risk for BSE because of the possibility that such a region may not have adequate infrastructure and the capability to implement BSE-related risk mitigations, including an effectively enforced feed ban.

Transiting Provisions

In the current regulations, §§ 94.18(d) and 95.4(h) provide that articles that are otherwise prohibited importation into the United States under the BSE regulations may transit air and ocean ports in the United States for immediate export, provided certain conditions are met. The requirements are that:

- The person moving the articles has obtained an import permit from APHIS;
- The articles are sealed in leakproof containers bearing serial numbers during transit, and each container remains sealed during the entire time that it is in the United States;
- The person moving the articles notifies, in writing, the inspector at both the place in the United States where the articles will arrive and the port of export before such transit. The notification must include the import permit number; the times and dates of arrival in the United States; the times and dates of exportation from the United States; the mode of transportation; and the serial numbers of the sealed containers; and
- The articles transit the United States in Customs bond.

We are proposing in § 94.27 and § 95.15 to continue to allow such transiting of articles otherwise prohibited importation by the BSE regulations.

Sections 94.18(d) and 95.4(h) of the current regulations also allow the overland transit through the United States of articles from BSE minimal-risk regions, provided the requirements listed above are met, and the following additional requirements are met:

- The articles are eligible to enter the United States in accordance with the BSE provisions in part 94 or part 95, as applicable;
- The shipment is exported from the United States within 7 days of its entry;
- The commodities are not transloaded while in the United States, except for direct transloading under the supervision of an inspector, who must break the seals of the national government of the exporting region on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government; and
- A copy of the required import permit is presented to the inspector at the port of arrival and the port of export in the United States.

In this document, we are proposing in § 94.27 and § 95.15 to allow the overland transit of products governed by the BSE regulations, provided the same conditions for overland transit as those listed above are met.

Certification of Certain Materials

Section 95.29 of the current regulations requires certification regarding the source, processing, and storage of certain specified animal materials imported from regions other than those listed in § 94.18(a), which lists regions from which the importation of ruminants and ruminant products are restricted because of BSE. The materials for which certification is required are the following:

- Processed animal protein, tankage, offal, and tallow other than tallow derivatives, unless, in the opinion of the Administrator, the tallow cannot be used in feed, regardless of the animal species from which the material is derived;
- Glands and unprocessed fat tissue from ruminants;
- Processed fats and oils, and derivatives of processed animal protein, tankage, and offal, regardless of the animal species from which the material is derived;
- Derivatives of glands from ruminants; and
- Any product containing any of the listed materials.

We are proposing to amend the provisions of § 95.29 (redesignated as § 95.40 in this proposed rule) to make them apply only to materials derived from ovines or caprines. As discussed above, we are not at this time proposing to make any substantive changes to the BSE regulations governing ovines or caprines or products from such animals. The purpose of the provisions in current § 95.29 as they apply to materials from nonruminant animals and to ruminants other than ovines and caprines—to ensure that materials eligible for entry into the United States have not been commingled with materials ineligible for entry because of their BSE risk—would be met by the provisions we are proposing to set forth in new § 95.13, which we discuss above under the heading ''Restrictions on Processed Animal Protein Derived from Nonruminants.''

Importation of Casings

Part 96 of the current regulations includes provisions regarding the importation of animal casings into the United States. Current § 96.2(b) prohibits the importation of casings, except stomachs, from ruminants that originated in or were processed in any region listed in § 94.18(a) for BSE, unless specified conditions in § 96.2(b)(1) or (b)(2) are met. These provisions are as follows:

- The casings are derived from sheep that were slaughtered in a BSE minimal-risk region listed in § 94.18(a)(3) (currently only Canada) at less than 12 months of age and that were from a flock subject to a ruminant feed ban equivalent to the requirements established by the FDA at 21 CFR 589.2000; or
- The casings are derived from bovines that were slaughtered in a BSE minimal-risk region, provided, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by FSIS at 9 CFR 310.22 and the FDA at 21 CFR 189.5.

Casings that are imported in accordance under either of the above scenarios must also be accompanied by certification that the applicable conditions have been met.

In this document, we are proposing to amend § 96.2(b) to specify that the prohibitions in that paragraph that currently apply to casings from all ruminants would apply only to casings derived from ovines or caprines. We are proposing no changes to the current provisions governing the importation of

casings derived from sheep from Canada.

We are proposing to amend the current § 96.2 provisions regarding casings derived from bovines to allow for the importation of casing derived from bovines provided the following conditions are met:

- If the casings are derived from bovines from a region of negligible risk for BSE, the certification required under § 96.3 indicates the APHIS BSE risk classification of the region in which the bovines were slaughtered and the casing processed.
- If the casings are derived from bovines from a region of controlled risk for BSE or a region of undetermined risk for BSE, the casings are not derived from the small intestine or, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by FSIS at 9 CFR 310.22 and FDA at 21 CFR 189.5.
- The casings are accompanied by a certification that the required conditions have been met.

Provisions Regarding Ovines and Caprines

In this proposal, we retain the current import prohibitions and restrictions regarding ovines and caprines (e.g., sheep and goats) and their products. However, we are proposing to make formatting and wording changes to the regulations regarding such animals, for several reasons.

In many cases, the current import regulations regarding BSE apply to all ruminants or to several types of ruminants. For instance, the regulations in current § 94.18 prohibit or restrict the importation of most products derived from ruminants from regions in which BSE exists (listed in current § 94.18(a)(1)) or that pose an undue risk of BSE (listed in current § 94.18(a)(2)), whether the ruminant from which the product is derived is a bovine, ovine, caprine, cervid, or camelid. Similar blanket prohibitions or restrictions are set forth in current part 93 with regard to live ruminants, in current part 95 with regard to products derived from ruminants other than meat and other edible products, and in current part 96, with regard to casings.

The current regulations apply no BSE prohibitions or restrictions to live cervids and camelids from BSE minimal-risk regions (listed in current § 94.18(a)(3)) or to products derived from such animals. The importation from BSE minimal-risk regions of live bovines, sheep, and goats—and products derived from such animals—is allowed under specified conditions.

Because, in this proposed rule, we would retain the current importation provisions with regard to BSE as they apply to ovines and caprines—but not as they apply to bovines, cervids, and camelids—it is necessary to revise the current regulations to make them particular to ovines and caprines, pending any future rulemaking regarding such animals. Among the revisions we are proposing to the regulations regarding ovines and caprines is the removal of the terminology currently used in § 94.18(a) to refer to the BSE risk status of a region (i.e., regions in which BSE exists, regions of undue risk for BSE, and regions of minimal-risk for BSE). In order to avoid confusion as to our intent regarding our proposed BSE risk classification system with regard to bovines (i.e., BSE negligible-, controlled-, and undetermined-risk regions), when we refer to regions that are listed in current § 94.18(a) with regard to ovines and caprines, we simply list the names of those regions.

In this proposed rule, the provisions in part 94 that are particular to ovines and caprines are set forth in §§ 94.24 through 94.27. The provisions in part 95 that are particular to ovines and caprines are set forth in §§ 95.4, 95.15, and 95.40. In parts 93 and 96, the BSE import provisions related to ovines and caprines and their products are set forth in the same regulatory sections as in the current regulations.

Definitions

In addition to the definitions we are proposing to add to the regulations that we discuss elsewhere in this document, we are proposing to add to § 92.1 definitions of *approved laboratory, OIE, OIE Code,* and *OIE Terrestrial Manual*. Additionally, we are proposing to amend the definition of *recognized slaughtering establishment* in § 93.400 to mean a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act. This proposed definition is the same as that currently contained in 9 CFR 78.1.

Miscellaneous Nonsubstantive Changes

We are also proposing to make nonsubstantive editorial and formatting changes to parts 92, 93, 94, 95, and 96, in order to make the text in those parts consistent with the changes that we discuss above in this document. These nonsubstantive changes include redesignation and reformatting of regulatory sections and amendment of cross-references where necessary.

We are also proposing nonsubstantive editorial changes to § 96.3 to reflect the changes we are proposing to make in § 96.2.

APHIS Classification of BSE Risk Status of Countries That Have Received Classification by the OIE

As we discussed above in this document under the heading ''The Process for APHIS Recognition of the BSE Risk Classification of a Region,'' if the OIE has classified a country as either BSE negligible risk or BSE controlled risk, APHIS would give notice to the public that the Agency considers such classification by the OIE to be a basis for APHIS' recognition of the country as having the BSE risk classification determined by the OIE, subject to public comment regarding that intent.

In accordance with that proposed process we are giving notice in this document that APHIS gives preliminary concurrence to the OIE risk classifications of the following countries:

- *Regions of negligible risk for BSE:* Argentina, Australia, Chile, Denmark, Finland, Iceland, New Zealand, Norway, Panama, Paraguay, Peru, Sweden, and Uruguay.
- *Regions of controlled risk for BSE:* Austria, Belgium, Brazil, Canada, Colombia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Poland, Portugal, Republic of Korea, Slovak Republic, Slovenia, Spain, Switzerland, and the United Kingdom.[17]

The OIE recommendations regarding each of the above countries can be viewed at *http://www.oie.int/en/animal-health-in-the-world/official-disease-status/bse/list-of-bse-risk-status/*.

Date of Effective Enforcement of Feed Ban in Mexico

As noted above, we are proposing to recognize Mexico as a country of controlled risk for BSE. Also as discussed above, for a country classified by APHIS as negligible-risk or controlled-risk for BSE that wishes to export live bovines to the United States, APHIS would need to determine the date a feed ban was effectively enforced in the country. Consequently, we have conducted an evaluation to determine the date of effective enforcement of a feed ban in Mexico. Based on that evaluation, we consider the date of

[17] The United States is also classified by the OIE as a region of controlled risk for BSE.

effective enforcement of a feed ban in Mexico to be November 30, 2007. Copies of our evaluation, as well as the supporting documentation, are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Public Comment Regarding BSE Classification of Countries and Date of Effective Enforcement of Feed Ban in Mexico

We will accept public comment on our preliminary BSE risk classification of the countries listed above, as well as on our preliminary determination of the date of effective enforcement of a feed ban in Mexico, for the length of the comment period for this proposed rule document. Any final classification of countries regarding BSE risk would depend both on whether the classification system and procedures we are proposing in this document are made final and on comments received from the public regarding such classifications. Following review of any comments received, we will inform the public in the **Federal Register** of the Administrator's final determination regarding classification of the countries listed above and the date of effective enforcement of a feed ban in Mexico, along with a discussion of and response to pertinent issues raised by commenters.

Provisions Regarding the Importation of Live Bovines From Mexico

As we discuss earlier in this document with regard to the importation of live bovines from Canada, the provisions we are proposing in § 93.436 for the importation of live bovines from a region of controlled risk are generic to any such region. For instance, the provisions in § 93.436 require that live bovines imported from a controlled risk region for BSE must have been born after the date from which the ban on the feeding of ruminants with MBM and greaves derived from ruminants has been effectively enforced. Also, the provisions in § 93.436 require that live bovines intended for importation be permanently identified—by branding, tattooing, or some other method—as to the country of export. As noted above, in this document we are proposing to recognize November 30, 2007, as the date of effective enforcement of a feed ban in Mexico. Further, in this document, we are proposing to specify that the letters ''MX'' be used to identify sexually intact bovines as being of Mexican origin. (The regulations already require that cattle from Mexico that are other than sexually intact be identified as to country of origin, for diseases other than BSE.) To make this specific information more easily accessible in the regulations, we are proposing to set forth the provisions regarding the importation of live bovines from Mexico with regard to BSE in a new paragraph (f) in § 93.427. Current § 93.427 contains requirements governing the importation of cattle from Mexico with regard to fever ticks, brucellosis, and tuberculosis.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The proposed rule would make our bovine and bovine product import restrictions related to bovine spongiform encephalopathy (BSE) more reflective of current scientific thinking while continuing to guard against the introduction of BSE. The proposed process for classifying regions with respect to BSE risk would be based on the comprehensive review of relevant, internationally accepted scientific literature and would be consistent with the process employed by the World Organization for Animal Health (OIE). The proposed rule would also remove BSE-related restrictions on the importation of live cervids and camelids and their products.

While benefits of the proposed rule are expected to exceed its costs, effects on U.S. imports are expected to be minimal. Potential impacts of the proposed rule on U.S. export markets, by influencing trading partners' import policies, are not considered in this analysis.

Live Bovines (Cattle and Bison)

Canada and Mexico are the sources of nearly all U.S. bovine imports. In the past 15 years, they have accounted for 99.9 percent of all cattle and bison imported into the United States. APHIS is proposing to classify Canada and Mexico as countries of controlled risk for BSE (their classification by the OIE).

Imports from Canada are likely to be unaffected by this proposed rule because the proposed requirements would cause no change in the number or type of animals that are eligible for importation, based on Canada's status as a BSE minimal-risk region. Imports from Mexico also are likely to be largely unaffected, since nearly all cattle imported from Mexico (98 to 99 percent) are estimated to be less than 24 months of age and APHIS is proposing in this rule to establish November 30, 2007, as the date of effective enforcement of a ruminant-to-ruminant feed ban in Mexico (the earliest date that bovines imported from Mexico could be born).

Products Derived From Bovines

Six countries, Argentina, Australia, Brazil, Canada, New Zealand, and Uruguay, accounted for 93 percent of all U.S. bovine product import volume (and 92 percent of the import value) over the five-year period, 2006–2010. Imports from each of the six countries should continue essentially unchanged and without interruption under the proposed rule, because the protocols in place in these countries are already in full compliance with the proposed criteria. Argentina, Australia, New Zealand, and Uruguay are APHIS-proposed negligible risk regions for BSE that have never reported a case of BSE. Canada and Brazil, as proposed controlled risk regions for BSE, already satisfy FSIS inspection requirements and prohibitions on certain animal stunning or pithing and mechanically separated meat.

Imports from the 36 (primarily European) countries listed in 9 CFR 94.18 as prohibited from shipping bovine products to the United States likely would be insignificant under the proposed rule. In none of the years from 1990 through 1996, that is, prior to the prohibition on ruminant product imports from all of Europe in 1997, did the volume of U.S. bovine product

imports from the 36 countries account for more than 0.6 percent of imports of these products. Nor does the current trade climate suggest a significant volume of imports from the 36 countries in the future, at least in the near term. U.S. imports of beef and other bovine products have been in decline, a situation that makes it increasingly difficult for foreign exporters to compete in the U.S. market. Second, while bovine product exports by the European Union (EU–27) more than doubled in nominal value in five years, from $0.43 billion in 2006 to $1.01 billion in 2010, the value of bovine product imports by EU–27 member countries in 2010 ($2.1 billion) was twice the value of their bovine product exports. The EU–27 continues to be a large net importer of bovine products overall. Emerging markets, such as Russia, are likely to take a growing share of Europe's bovine product exports.

Bovine product imports from other countries that are not currently subject to BSE-related restrictions are not expected to be significantly affected. Over the five years, 2006–2010, annual imports from such countries as a group averaged 6 to 7 percent of all U.S. bovine product imports by volume (7 to 8 percent by value), with virtually all of the products coming from Mexico, Nicaragua, and Costa Rica. Imports from Mexico already meet the proposed requirements of a region of controlled risk for BSE largely by way of FSIS requirements. The potential impact on imports from Nicaragua and Costa Rica, which APHIS is proposing to recognize as regions of undetermined risk for BSE, should be minimal at most. Almost all imports from those two countries are of boneless beef that already satisfy the proposed rule's requirements, again, largely by way of FSIS requirements.

Live Cervids and Camelids and Their Products

Removal of the prohibition on the importation of live cervids and camelids and their products from the 36 countries listed in 9 CFR 94.18 would likely have little or no impact. The United States has not imported any live cervids or camelids from these countries since at least 1990. In none of the years from 1990 through 1996, before the prohibition of ruminant meat, meat products, and other edible products from all of Europe in 1997, did the volume of U.S. imports of meat and edible offal of deer from the 36 countries account for more than 3.3 percent of total imports. Moreover, U.S. imports of meat and edible offal of deer have declined since 2005, a situation that makes it increasingly difficult for foreign exporters to compete in the U.S. market. The volume of U.S. imports of camelid products is very small. Their annual value averaged less than $50,000 over the five-year period, 2006–2010, and 90 percent of those imports were supplied by Canada and China.

Benefits, Costs, and Alternatives

Consumers benefit from imports to the extent that consumer choice is broadened and the increased supply of the imported commodity leads to a price decline. We anticipate that the proposed rule would have little impact on consumer choice or import volumes. Likewise, we anticipate little or no impact for U.S. businesses because of changes in import volumes.

Although the impact of this proposed rule on U.S. consumers and producers is expected to be minimal, the benefits of the rule are expected to outweigh its costs. Leaving the bovine regulations unchanged would be unsatisfactory, because it would perpetuate the current situation in which our BSE-related import conditions are not fully supported by scientific evidence. Additionally, maintaining the status quo would not provide an opportunity to recognize a region's BSE risk status in a more timely fashion than is possible under current regulations. Another alternative, amending the BSE regulations related to the importation of bovines and bovine-derived products to match precisely the OIE Code without allowing for modification deemed necessary by APHIS, would also be unsatisfactory, because it would not allow APHIS to independently interpret the scientific literature and findings that underlie OIE risk categorization recommendations. Making no changes to the regulations that govern the importation of cervids and camelids would also be unsatisfactory, because it would perpetuate an unnecessary constraint on trade in those commodities.

Small entities are prevalent in industries potentially affected by the proposed rule, but as described, we expect at most a minimal economic impact for U.S. businesses. We invite public comment on the rule's potential economic impact, including comment on the potential impact on small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

Our affirmation of the position we took in removing the delay of applicability of certain provisions of our January 2005 final rule leaves those regulations unchanged. Therefore, we are also affirming the overall conclusions we reached in the environmental assessments we conducted for our January 2005 and September 2007 final rules.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed revision of the conditions for the importation of live bovines and products derived from bovines with regard to BSE set forth in this proposed rule, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule. In addition, copies may be obtained by calling or writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2008–0010. Please send a copy of your comments to: (1) Docket No. APHIS–2008–0010, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer,

OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to revise the conditions for the importation of live bovines and products derived from bovines with regard to BSE, and is proposing to establish a system and process for classifying regions as to BSE risk that is consistent with the system and process employed by the OIE. For the most part, the changes made by this rule would expand the number and types of commodities eligible for entry into the United States with regard to BSE. However, in many cases, the commodities would be eligible for entry into the United States only if specified conditions have been met, and the commodities are accompanied by certification that the required conditions have been met. In some cases, the person seeking to import a commodity would need to apply for an import permit from APHIS.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .3960737 hours per response.

Respondents: U.S. importers of regulated animal products; full-time salaried veterinary officials of exporting regions; and foreign exporters of edible and inedible products derived from bovines.

Estimated annual number of respondents: 784.

Estimated annual number of responses per respondent: 41.4528.

Estimated annual number of responses: 32,499.

Estimated total annual burden on respondents: 12,872 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E–Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

References

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List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are proposing to amend 9 CFR parts 92, 93, 94, 95, 96, and 98 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 92.1, definitions of *approved laboratory, bovine, exporting region, OIE, OIE Code, OIE Terrestrial Manual, processed animal protein, region of controlled risk for BSE, region of negligible risk for BSE, region of undetermined risk for BSE, specified risk materials (SRMs) from regions of controlled risk for BSE,* and *specified risk materials (SRMs) from regions of undetermined risk for BSE* are added, in alphabetical order, to read as follows:

§ 92.1 Definitions.

* * * * *

Approved laboratory. A properly equipped institution in the exporting region, approved by the official authority who is responsible for animal health matters in that region, that is staffed by technically competent personnel under the control of a specialist in veterinary diagnostic methods who is responsible for the results.

* * * * *

Bovine. Bos taurus, Bos indicus, and *Bison bison.*

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

OIE. The World Organization for Animal Health.

OIE Code. The Terrestrial Animal Health Code of the World Organization for Animal Health.

OIE Terrestrial Manual. The Manual of Diagnostic Tests and Vaccines for Terrestrial Animals of the World Organization for Animal Health.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.

* * * * *

Region of controlled risk for bovine spongiform encephalopathy (BSE).[1] A region for which a risk assessment has been conducted sufficient to identify the historical and existing BSE risk factors in the region and that:

(1) Has demonstrated that appropriate mitigations are being taken to manage all identified risks, but may not have been taken for the periods of time necessary to be classified as a region of negligible risk for BSE.

(2) Is a region in which it can be demonstrated through an appropriate control and audit that neither meat-and-bone meal nor greaves derived from ruminants has been fed to ruminants.

(3) Has demonstrated that Type A surveillance in accordance with Article 11.5.22 of the OIE Code, incorporated by reference in § 92.7, or with equivalent guidelines recognized by the Administrator is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator has been met. Type B surveillance in accordance with Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, is sufficient in place of Type A surveillance or its equivalent once the relevant points target for Type A surveillance or its equivalent has been met.

(4) Meets one of the following conditions:

(i) Has had no case of BSE in the region or every case has been demonstrated to have been imported and has been completely destroyed; or

(ii) Has had at least one indigenous case, and all bovines described in either paragraph (4)(ii)(A) or (4)(ii)(B) of this definition, if still alive, are officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, are completely destroyed:

(A) All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period; or

(B) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

(5) Meets the conditions in one of or both paragraphs (5)(i) or (5)(ii) of this definition:

(i) Has met the following conditions, but not for at least the past 7 years:

(A) Conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing, and slaughter of bovines to encourage reporting of bovines showing clinical signs that could be indicative of BSE;

(B) Required notification and investigation of all bovines showing clinical signs consistent with BSE; and

(C) Has carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the surveillance and monitoring described in paragraphs (2) and (5)(i)(A) and (5)(i)(B) of this definition; or

(ii) Has prohibited the feeding to ruminants in the region of meat-and-

[1] A list of regions classified by APHIS as regions of controlled risk for BSE is available at [ADDRESS TO BE ADDED IN FINAL RULE]

bone meal and greaves derived from ruminants, but it cannot be demonstrated through an appropriate level of control and audit that the prohibited materials have not been fed to ruminants in the region for at least the past 8 years.

Region of negligible risk for bovine spongiform encephalopathy (BSE).[2] A region for which a risk assessment has been conducted sufficient to identify the historical and existing BSE risk factors in the region and that:

(1) Has demonstrated that appropriate mitigations to manage all identified risks have been taken for each relevant period of time to meet each identified risk, as set forth in this definition.

(2) Has demonstrated that Type B surveillance in accordance with Article 11.5.22 of the OIE Code, incorporated by reference in § 92.7, or with equivalent guidelines recognized by the Administrator is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator has been met.

(3) Meets one of the following conditions:

(i) Has had no case of BSE in the region or every case has been demonstrated to have been imported and has been completely destroyed; or

(ii) Has had at least one indigenous case, but every indigenous case was born more than 11 years ago, and all bovines described in either paragraph (3)(ii)(A) or (3)(ii)(B) of this definition, if still alive, are officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, are completely destroyed:

(A) All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period; or

(B) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

(4) Has, for at least the past 7 years:

(i) Conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing, and slaughter of bovines to encourage reporting of bovines showing clinical signs that could be indicative of BSE;

(ii) Required notification and investigation of all bovines showing clinical signs consistent with BSE; and

(iii) Carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the required surveillance and monitoring described in paragraphs (2) and (4)(i) and (4)(ii) of this definition.

(5) Has demonstrated through an appropriate level of control and audit that, for at least the past 8 years, neither meat-and-bone meal nor greaves derived from ruminants have been fed to ruminants in the region.

Region of undetermined risk for bovine spongiform encephalopathy (BSE). Any region that is not classified as either a region of negligible risk for BSE or a region of controlled risk for BSE.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

3. A subpart heading is added after § 92.1 to read as follows:

Subpart A—Procedures for Requesting Recognition of Regions Other Than for BSE

4. A new Subpart B—Procedures for Requesting BSE Risk Status Classification With Regard to Bovines, §§ 92.5, 92.6, and 92.7, is added to read as follows:

Subpart B—Procedures for Requesting BSE Risk Status Classification With Regard to Bovines

Sec.
92.5 Determination of the BSE risk classification of a region.
92.6 Determination of the date of effective enforcement of a ruminant-to-ruminant feed ban.
92.7 OIE Code standards for surveillance for BSE.

Subpart B—Procedures for Requesting BSE Risk Status Classification With Regard to Bovines

§ 92.5 Determination of the BSE risk classification of a region.

All countries of the world are considered by APHIS to be in one of three BSE risk categories—negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1 of this part. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The listing of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS Web site at [ADDRESS TO BE ADDED IN FINAL RULE]. The listing can also be obtained by writing to APHIS at [ADDRESS TO BE ADDED IN FINAL RULE]. APHIS may classify a region for BSE according to either paragraph (a) or paragraph (b) of this section.

(a) *BSE risk classification based on OIE classification.* If the OIE has classified a country as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support concurrence with the OIE classification. This information could be publicly available information, or APHIS could request that countries supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, each intent to concur with an OIE classification. APHIS will also post the summary of the BSE OIE ad hoc group conclusions for review during the comment period. The summaries would be available for review on the APHIS Web site at [ADDRESS TO BE ADDED IN FINAL RULE]. Following review of any comments received, the Administrator will announce his or her final determination regarding classification of the country in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes a country as either negligible risk or controlled risk for BSE, the Agency will include that country in a list of regions of negligible risk or controlled risk for

[2] A list of regions classified by APHIS as regions of negligible risk for BSE is available at [ADDRESS TO BE ADDED IN FINAL RULE].

BSE, as applicable, that APHIS will make available to the public on the Agency's Web site at [ADDRESS TO BE ADDED IN FINAL RULE].

(b) *Regions seeking classification as negligible or controlled risk that have not been classified by the OIE.* A region that has not received classification by OIE as either negligible risk or controlled risk for BSE and that wishes to be classified by APHIS as negligible risk or controlled risk must submit to the Administrator a request for such classification, along with documentation sufficient to allow APHIS to conduct an evaluation of whether the region meets the criteria for the classification. A list of the documentation required can be accessed on the APHIS Web site at [ADDRESS TO BE ADDED IN FINAL RULE]. If, following evaluation of the information submitted, the Administrator determines that the region meets the criteria for classification as negligible risk or controlled risk, APHIS will announce that determination in the **Federal Register** and will make available to the public on the APHIS Web site the evaluation conducted by APHIS, as well as the information provided by the requesting region. APHIS will accept public comment on its intent. Following review of any comments received, the Administrator will announce his or her final determination regarding classification of the region in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

(d) *Retention of classification as either negligible risk or controlled risk.* (1) As required by the OIE for countries classified as either negligible risk or controlled risk by the OIE, regions evaluated by APHIS and classified as negligible or controlled risk would need to submit updated information to APHIS each year. The required information includes documentation of the following:

(i) Relevant changes in BSE legislation, compared to the previous year;

(ii) The importation into the region during the year of cattle, processed animal protein, and products containing processed animal protein.

(iii) Audit findings in rendering plants and feed mills that process ruminant material or material from mixed species that contains ruminant material, related to the prohibition of the feeding to ruminants of processed animal protein derived from ruminants;

(iv) Audit findings in rendering plants and feed mills that process nonruminant material, related to the prohibition of the feeding to ruminants of processed animal protein;

(v) Infractions at the types of facilities listed above;

(vi) If and why, in light of the audit findings, there has been no significant exposure of cattle to the BSE agent through consumption of processed animal protein of bovine origin;

(vii) Surveillance efforts;

(viii) All clinical BSE suspects;

(ix) Any new cases of BSE.

(2) If APHIS at any time determines that a region no longer meets the criteria for the risk classification it had previously received, APHIS will remove the region from its list of regions so classified. If the OIE determines the region no longer meets the criteria for the risk classification it had previously received, APHIS may concur with the OIE determination or may request updated information from the region and determine whether to concur with the OIE decision. APHIS will announce its intent in the **Federal Register** and accept public comment regarding that intent. Following review of any comments received, the Administrator will announce in the **Federal Register** his or her final determination regarding classification of the region, along with a discussion of and response to pertinent issues raised by commenters.

§ 92.6 Determination of the date of effective enforcement of a ruminant-to-ruminant feed ban.

(a) In order for APHIS to determine the eligibility of live bovines for importation from a region classified as BSE negligible risk or BSE controlled risk, APHIS must determine the date from which a ban on the feeding of ruminant material to ruminants has been effectively enforced in the region. APHIS will base its determination of the date of effective enforcement on the information included in the dossier the region submitted when it requested to be classified regarding BSE risk. The information APHIS will consider will include, but not be limited to:

(1) Policies and infrastructure for feed ban enforcement, including an awareness program for producers and farmers;

(2) Livestock husbandry practices;

(3) Disposition of processed animal protein produced from domestic bovines, including the feeding of such material to any animal species;

(4) Measures taken to control cross-contamination and mislabeling of feed; and

(5) Monitoring and enforcement of the ruminant-to-ruminant feed ban, including audit findings in rendering plants and feed mills that process ruminant material.

(b) After conducting its evaluation, APHIS will announce in the **Federal Register** for public comment the date APHIS considers to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the requesting region, and will make available to the public the evaluation conducted by APHIS, as well as the supporting documentation. Following review of any comments received, the Administrator will announce his or her final determination in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

§ 92.7 OIE Code standards for surveillance for BSE.

Article 11.6.22 of the OIE Code, effective 2009, are incorporated by reference. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The OIE maintains a copy of these standards on its Internet homepage at *http://www.oie.int/eng/normes/Mcode/en_sommaire.htm*. Copies are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

5. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

6. Section 93.400 is amended by revising the definition of *recognized slaughtering establishment* and adding definitions of *exporting region* and *processed animal protein,* in alphabetical order, to read as follows:

§ 93.400 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather

meal, fish meal, and any other similar products.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.[2]

* * * * *

§ 93.401 [Amended]

7. In § 93.401, paragraph (a), the second sentence is amended by adding the word ''non-bovine'' before the word ''ruminant'' and by removing the citation ''§ 94.18(a)(1) or (a)(2)'' and adding the citation ''§ 94.24(a)'' in its place.

§ 93.405 [Amended]

8. In § 93.405, paragraph (a)(4) is amended by removing the words ''bovines, sheep, or goats from regions listed as BSE minimal-risk regions in 94.18(a)(3) of this subchapter'' and adding the words ''sheep or goats from Canada'' in their place and by removing the words ''and § 93.436(a)(3) and (b)(4)''.

9. In § 93.418, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 93.418 Cattle and other bovines from Canada.

* * * * *

(d) In addition to meeting the requirements of paragraphs (a) through (c) of this section, bovines may be imported from Canada only under the following conditions:

(1) The bovines are imported for immediate slaughter under § 93.420; or

(2) The bovines are imported for other than immediate slaughter under the following conditions:

(i) The bovines were born after March 1, 1999, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada;

(ii) The bovines are imported only through a port of entry listed in § 93.403(b) or as provided for in 93.403(f);

(iii) The bovines were officially identified prior to arriving at the port of entry in the United States with unique individual identification that is traceable to each bovine's premises of origin. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter; and

(iv) The bovines are permanently and humanely identified using one of the following additional methods:

(A) A ''C∧N'' mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae); or

(B) A tattoo with the letters ''CAN'' applied to the inside of one ear of the animal; or

(C) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Canada.

(3) The bovines are accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraph (d)(2) of this section, as applicable, have been met.

10. Section § 93.420 is revised to read as follows:

§ 93.420 Ruminants from Canada for immediate slaughter other than sheep and goats.

(a) *General requirements.* The requirements for the importation of sheep and goats from Canada for immediate slaughter are contained in § 93.419. There are no BSE-related restrictions on the importation of cervids or camelids from Canada. All other ruminants imported from Canada for immediate slaughter, in addition to meeting all other applicable requirements of this part, may be imported only under the following conditions:

(1) The ruminants must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) and be inspected at the port of entry and otherwise handled in accordance with § 93.408.

(2) The ruminants must be moved directly from the port of entry to a recognized slaughtering establishment in conveyances that are sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at the recognized slaughtering establishment by an authorized USDA representative.

(3) The ruminants must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which must include the location of the recognized slaughtering establishment.

(b) *Bovines.* In addition to meeting the requirements of paragraph (a) of this section, bovines may be imported from Canada for immediate slaughter only under the following conditions:

(1) The bovines must have been born after March 1, 1999, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada.

(2) Before the animal's arrival at the port of entry into the United States, each bovine imported into the United States from Canada must be officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter;

(3) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (b)(1) and (b)(2) of this section have been met.

11. In § 93.423, a new paragraph (e) is added to read as follows:

§ 93.423 Ruminants from Central America and the West Indies.

* * * * *

(e) In addition to meeting all other applicable requirements of this part, bovines from Central America and the West Indies may be imported only in accordance with § 93.436.

* * * * *

12. In § 93.427, the section heading is revised and a new paragraph (e) is added to read as follows:

§ 93.427 Cattle and other bovines from Mexico.

* * * * *

(e) *BSE.* In addition to meeting the requirements of paragraphs (a) through (d) of this section and all other applicable requirements of this part, bovines may be imported from Mexico only under the following conditions:

(1) The bovines were born after November 30, 2007, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Mexico.

(2) The bovines were officially identified prior to arriving at the port of entry in the United States with unique individual identification that is traceable to each bovine's premises of origin. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into

[2] See footnote 1.

or through the United States, except that the identification may be removed at slaughter.

(3) The bovines, if sexually intact, are permanently and humanely identified using one of the following additional methods:

(i) An ''MX'' mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae); or

(ii) A tattoo with the letters ''MX'' applied to the inside of one ear of the animal; or

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Mexico.

(4) The bovines are accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraph (e)(1) through (e)(3) of this section have been met.

13. In § 93.432, the section heading is revised and a new paragraph (e) is added to read as follows:

§ 93.432 Cattle and other bovines from the Republic of Ireland.

* * * * *

(e) In addition to meeting all other applicable requirements of this part, bovines from the Republic of Ireland may be imported only in accordance with § 93.436.

14. Section § 93.436 is revised to read as follows:

§ 93.436 Bovines from regions of negligible risk, controlled risk, and undetermined risk for BSE.

The importation of bovines is prohibited, unless the conditions of this section and any other applicable conditions of this part are met. Once the bovines are imported, if they do not meet the conditions of this section, they must be disposed of as the Administrator may direct.

(a) *Bovines from a region of negligible risk for BSE in which there has been no indigenous case of BSE.* Bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, in which there has been no indigenous case of BSE, may be imported only if the bovines are accompanied by an original certificate issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated or accredited by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, and the certificate attests that the exporting region of the bovines is classified by APHIS as a negligible-risk region for BSE in which there has been no indigenous case of BSE.

(b) *Bovines from a region of negligible risk for BSE in which there has been an indigenous case of BSE and bovines from a region of controlled risk for BSE.* Bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, in which there has been an indigenous case of BSE, and bovines from a region of controlled risk for BSE, as defined in § 92.1 of this chapter, may be imported only under the following conditions:

(1) Prior to importation into the United States, each bovine is officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter.

(2) The bovines are permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. Acceptable means of permanent identification include the following:

(i) A mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first cocygeal vertebrae);

(ii) A tattoo with letters identifying the exporting country must be applied to the inside of one ear of the animal;

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from the BSE minimal-risk exporting region.

(3) The bovines were born after the date from which the ban on the feeding of ruminants meat-and-bone meal or greaves derived from ruminants has been effectively enforced.

(4) The bovines are accompanied by an original certificate issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated or accredited by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, and the certificate attests to the BSE risk classification of the exporting region and that the conditions of paragraphs (b)(1) through (b)(3) of this section have been met.

(5) If there has been an indigenous case of BSE in the exporting region, the following restrictions apply:

(i) Bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that an investigation showed consumed the same feed that potentially contained SRM material as the infected animal during that period are not eligible for importation into the United States; and

(ii) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal are not eligible for importation into the United States.

(c) *Bovines from a region of undetermined risk for BSE.* Importation of bovines from a region of undetermined risk for BSE, as defined in § 92.1 of this subchapter, is prohibited; *Except that:* The Administrator may allow such imports on a case-by-case basis if the live bovines are imported for specific uses, including, but not limited to, show or exhibition, and under conditions determined by the Administrator to be adequate to prevent the spread of BSE.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

15. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

16. Section 94.0 is amended by removing the definitions of *cervid* and

specified risk materials (SRMs) and adding definitions of *exporting region, mechanically separated meat, processed animal protein, specified risk materials (SRMs) from regions of controlled risk for BSE,* and *specified risk materials (SRMs) from regions of undetermined risk for BSE,* in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Mechanically separated meat. A finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of bovine carcasses that meets the FSIS specifications contained in 9 CFR 319.5.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.[.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

§ 94.1 [Amended]

17. In § 94.1, paragraphs (b)(4) and (d) are amended by removing the citation ''§ 94.22'' both times it appears and adding the citation ''§ 94.28'' in their place.

§ 94.9 [Amended]

18. In § 94.9, paragraph (c) is amended by removing the citation ''§ 94.24'' and adding the citation ''§ 94.30'' in its place.

§ 94.10 [Amended]

19. In § 94.10, paragraph (c) is amended by removing the citation ''§ 94.24'' and adding the citation ''§ 94.30'' in its place.

20. Section 94.18 is revised to read as follows:

§ 94.18 Bovine spongiform encephalopathy; importation of edible products derived from bovines.

(a) The importation of meat, meat products, and other edible products derived from bovines is prohibited with regard to BSE, except as provided in this section and in §§ 94.19, 94.20, 94.21, 94.22, 94.23, and 94.27.

(b) The following commodities derived from bovines may be imported into the United States without restriction regarding BSE, provided that all other applicable requirements of this part are met:

(1) Milk and milk products;

(2) Boneless skeletal muscle meat (excluding mechanically separated meat) that:

(i) Is derived from bovines that were not, prior to slaughter, subjected to a pithing process or to stunning with a device injecting compressed air or gas into the cranial cavity, and that passed ante-mortem and post-mortem inspection;

(ii) Has been prepared in a manner to prevent contamination with SRMs; and

(iii) Is accompanied to the United States by an original certificate stating that the conditions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

21. Section 94.19 is revised to read as follows:

§ 94.19 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of negligible risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2—except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were derived from bovines that were born and raised in a region of negligible risk for BSE.

(b) If BSE has been diagnosed in one or more indigenous bovines in the region of negligible risk, the commodities were derived from bovines subject to a ban on the feeding to ruminants of meat-and-bone meal or greaves derived from ruminants.

(c) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(d) The commodities are accompanied by an original certificate stating that the exporting region is classified by APHIS as a region of negligible risk for BSE and that the conditions of paragraphs (a) through (c) of this section, as applicable, have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

Note: To be eligible to export meat, meat byproducts, and meat food products under the conditions of this section for human consumption, a region must also be one that has demonstrated to FSIS in accordance with 9 CFR 310.22 that its BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as does prohibiting specified risk materials for use as human food in the United States.

22. Section 94.20 is revised to read as follows:

§ 94.20 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of controlled risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2—except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from a region of controlled risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were derived from bovines that were born and raised in either a region of negligible risk for BSE that complies with § 94.19(a) through (c), as applicable, or a region of controlled risk for BSE.

(b) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(c) The commodities were derived from bovines that were not subjected to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process.

(d) The commodities were produced and handled in a manner that ensured that such commodities do not contain and are not contaminated with either of the following:

(1) SRMs from regions of controlled risk for BSE; or

(2) Mechanically separated meat from the skull and vertebral column from bovines 30 months of age or older.

(e) The commodities are accompanied by an original certificate stating that the exporting region is classified by APHIS as a region of controlled risk for BSE, and that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

23. A new § 94.21 is added to read as follows:

§ 94.21 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of undetermined risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2—except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from regions of undetermined risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were derived from bovines that have never been fed meat-and-bone meal or greaves derived from ruminants.

(b) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(c) The commodities were derived from bovines that were not subjected to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process.

(d) The commodities were produced and handled in a manner that ensured that such commodities do not contain and are not contaminated with any of the following.

(1) SRMs from regions of undetermined risk for BSE; or

(2) Mechanically separated meat from the skull and vertebral column from bovines over 12 months of age.

(e) The commodities are accompanied by an original certificate stating that the exporting region is a region of undetermined risk for BSE and that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

§ 94.27 [Removed]

24. Section 94.27 is removed.

§§ 94.22 through 94.26 [Redesignated]

25. Sections 94.22 through 94.26 are redesignated as §§ 94.28 through 94.32, respectively.

26. New §§ 94.22 through 94.27 are added to read as follows:

§ 94.22 Meat or dressed carcasses of hunter-harvested bovines.

(1) The meat or dressed carcass (eviscerated and the head is removed) is derived from a wild bovine that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the United States Customs and Border Protection official.

§ 94.23 Importation of gelatin derived from bovines.

(a) The importation of gelatin derived from bovines is prohibited because of BSE, unless:

(1) The gelatin meets the requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section and all other applicable requirements of this part; or

(2) The gelatin is authorized importation under paragraph (f) of this section and meets all other applicable requirements of this part.

(b) The gelatin is derived from hides and skins, provided the gelatin has not been commingled with materials ineligible for entry into the United States.

(c) The gelatin is derived from the bones of bovines and originates in a region of negligible risk for BSE.

(d) The gelatin is derived from the bones of bovines, originates in a region of controlled risk or undetermined risk for BSE, and meets the requirements of paragraphs (d)(1) through (d)(4) of this section:

(1) The bones from which the gelatin was derived were derived from bovines that passed ante-mortem and post-mortem inspection.

(2) The bones from which the gelatin was derived did not include the skulls of bovines or the vertebral column of bovines 30 months of age or older.

(3) The bones were subjected to a process that includes all of the following steps, or to a process at least as effective in reducing BSE infectivity:

(i) Degreasing;

(ii) Acid demineralization;

(iii) Acid or alkaline treatment;

(iv) Filtration; and

(v) Sterilization at 138 °C (280.4 °F) or greater for a minimum of 4 seconds; and

(4) The gelatin has not been commingled with materials ineligible for entry into the United States.

(e) The gelatin is accompanied to the United States by an original certificate that indicates the BSE risk classification of the exporting region and that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

(f) The Administrator determines that the gelatin will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the gelatin has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

§ 94.24 Restrictions on importation of meat and edible products from ovines and caprines due to bovine spongiform encephalopathy.

(a) Except as provided in paragraph (b) of this section and in § 94.25, the

importation of meat, meat products, and edible products other than meat (excluding milk and milk products) from ovines and caprines that have been in any of the following regions is prohibited: Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

(b) The importation of gelatin derived from ovines or caprines that have been in any region listed in paragraph (a) of this section is prohibited unless the following conditions have been met:

(1) The gelatin is imported for use in human food, human pharmaceutical products, photography, or some other use that will not result in the gelatin coming in contact with ruminants in the United States.

(2) The person importing the gelatin obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

§ 94.25 Restrictions on the importation from Canada of meat and edible products from ovines and caprines other than gelatin.

The commodities listed in paragraphs (a) of this section may be imported from Canada if the conditions of this section are met.

(a) *Meat, carcasses, meat byproducts, and meat food products from ovines or caprines.* (1) The meat, carcass, meat byproduct, or meat food product, as defined by FSIS in 9 CFR 301.2, is derived from ovines or caprines that are from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000, and the ovines or caprines:

(2) Were less than 12 months of age when slaughtered;

(3) Were slaughtered at a facility that either slaughters only ovines or caprines less than 12 months of age or complies with a segregation process approved by the national veterinary authority of the region of origin and the Administrator as adequate to prevent contamination or commingling of the meat with products not eligible for importation into the United States;

(4) Did not test positive for and were not suspect for a transmissible spongiform encephalopathy;

(5) Never resided in a flock or herd that has been diagnosed with BSE; and

(6) Were not subject to any movement restrictions within Canada as a result of exposure to a transmissible spongiform encephalopathy.

(b) The commodities listed in paragraph (a) of this section are accompanied by an original certificate of such compliance issued by a full-time salaried veterinary officer of Canada, or issued by a veterinarian designated by the Canadian government and endorsed by a full-time salaried veterinary officer of the government of Canada, representing that the veterinarian issuing the certificate was authorized to do so; and if all other applicable requirements of this part are met.

(c) *Meat or dressed carcasses of hunter-harvested ovines or caprines.* (1) The meat or dressed carcass (eviscerated and the head is removed) is derived from a wild ovine or caprine that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the United States Customs and Border Protection official; and

(2) The animal from which the meat is derived was harvested within a jurisdiction specified by the Administrator for which the game and wildlife service of the jurisdiction has informed the Administrator either that the jurisdiction conducts no type of game feeding program, or has complied with, and continues to comply with, a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000.

(d) *Ports.* All products to be brought into the United States under this section must, if arriving at a land border port, arrive at one of the following ports: Eastport, ID; Houlton, ME; Detroit (Ambassador Bridge), Port Huron, and Sault St. Marie, MI; International Falls, MN; Sweetgrass, MT; Alexandria Bay, Buffalo (Lewiston Bridge and Peace Bridge), and Champlain, NY; Pembina and Portal, ND; Derby Line and Highgate Springs, VT; and Blaine (Pacific Highway and Cargo Ops), Lynden, Oroville, and Sumas (Cargo), WA.

§ 94.26 Gelatin derived from horses or swine or from ovines or caprines that have not been in a region restricted because of BSE.

Gelatin derived from horses or swine or from ovines or caprines that have not been in any region listed in § 94.24(a) must be accompanied at the time of importation into the United States by an official certificate issued by a veterinarian employed by the national government of the region of origin. The official certificate must state the species of animal from which the gelatin is derived and, if the gelatin is derived from ovines or caprines, certify that the gelatin is not derived from ovines or caprines that have been in any region listed in § 94.24(a).

§ 94.27 Transit shipment of articles

Meat, meat products, and other edible products derived from bovines, ovines, or caprines that are otherwise prohibited importation into the United States in accordance with § 94.18 through § 94.26 may transit air and ocean ports in the United States for immediate export if the conditions of paragraphs (a) through (d) this section are met. Meat, meat products, and other edible products derived from bovines, ovines, or caprines are eligible to transit the United States by overland transportation if the requirements of paragraphs (a) through (e) of this section are met:

(a) The person moving the articles must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

(b) The articles must be sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed during the entire time that it is in the United States.

(c) The person moving the articles must notify, in writing, the inspector at both the place in the United States where the articles will arrive and the port of export before such transit. The notification must include the:

(i) United States Veterinary Permit for Importation and Transportation of

Controlled Materials and Organisms and Vectors permit number;

(ii) Times and dates of arrival in the United States;

(iii) Times and dates of exportation from the United States;

(iv) Mode of transportation; and

(v) Serial numbers of the sealed containers.

(d) The articles must transit the United States in Customs bond.

(e) The commodities must be eligible to enter the United States in accordance with §§ 94.18 through 94.26 and must be accompanied by the certification required by that section. Additionally, the following conditions must be met:

(i) The shipment must be exported from the United States within 7 days of its entry;

(ii) The commodities may not be transloaded while in the United States, except for direct transloading under the supervision of an authorized inspector, who must break the seals of the national government of the region of origin on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government;

(iii) A copy of the import permit required under paragraph (a) of this section must be presented to the inspector at the port of arrival and the port of export in the United States.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

27. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

28. Section 95.1 is amended by removing the definition of *specified risk materials (SRMs),* and adding definitions of *exporting region, specified risk materials (SRMs) from regions of controlled risk for BSE, specified risk materials (SRMs) from regions of undetermined risk for BSE,* and *tallow derivative* in alphabetical order, to read as follows:

§ 95.1 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

Tallow derivative. Any chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

* * * * *

29. Section 95.4 is revised to read as follows:

§ 95.4 Restrictions due to bovine spongiform encephalopathy on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and serum due to bovine spongiform encephalopathy.

(a) Except as provided in paragraphs (c), (d), (e), (f), or (g) of this section or in § 95.15, any of the materials listed in paragraph (b) of this section derived from animals, or products containing such materials, are prohibited importation into the United States if paragraph (a)(1), (a)(2), or (a)(3) of this section applies:

(1) The animals have been in any region listed in paragraph (a)(4) of this section;

(2) The materials have been stored, rendered, or otherwise processed in a region listed in paragraph (a)(4) of this section; or

(3) The materials have otherwise been associated with a facility in a region listed in paragraph (a)(4) of this section.

(4) Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

(b) *Restricted materials:* (1) Processed animal protein, tankage, offal, and tallow other than tallow derivatives, unless in the opinion of the Administrator, the tallow cannot be used in feed;

(2) Glands, unprocessed fat tissue, and blood and blood products;

(3) Processed fats and oils, and derivatives of processed animal protein, tankage, and offal; or

(4) Derivatives of glands and blood and blood products.

(c) The import prohibition in paragraph (a) of this section does not apply if the following conditions are met prior to importation:

(1) The material is derived from one of the following:

(i) A nonruminant species and the material is not ineligible for importation under § 95.13 or § 95.14;

(ii) Cervids or camelids;

(iii) Bovines, and the material is not ineligible for importation under the conditions of § 95.5, § 95.6, § 95.7, § 95.8, § 95.9, § 95.10, or § 95.12; or

(iv) Ovines or caprines that have never been in any region listed in paragraph (a)(4) of this section.

(2) In any region other than Canada that is listed in paragraph (a)(4) of this section, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ovines or caprines that have been in any region that is listed in paragraph (a)(4) of this section.

(3) In Canada, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ovines and caprines that have been in any region other than Canada that is listed in paragraph (a)(4) of this section.

(4) The facility demonstrates to APHIS that the materials intended for exportation to the United States were transported to and from the facility in a manner that would prevent cross-contamination by or commingling with prohibited materials.

(5) If the facility processes or handles any material derived from mammals, inspection of the facility for compliance with the provisions of this section is conducted at least annually by a representative of the government agency responsible for animal health in the region, unless the region chooses to have such inspection conducted by APHIS. If APHIS conducts the inspections required by this section, the facility has entered into a cooperative service agreement executed by the

operator of the facility and APHIS. In accordance with the cooperative service agreement, the facility must be current in paying all costs for a veterinarian of APHIS to inspect the facility (it is anticipated that such inspections will occur approximately once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds). In addition, the facility must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(6) The facility allows periodic APHIS inspection of its facilities, records, and operations.

(7) Each shipment to the United States is accompanied by an original certificate signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the exporting region certifying that the conditions of paragraphs (d)(1) through (d)(5) of this section have been met.

(8) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. (VS Form 16–3 may be obtained from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*.)

(d) Except as provided in paragraph (e) of this section and in § 95.15, serum from ovines or caprines that have been in any region listed in paragraph (a)(4) of this section is prohibited importation into the United States, except for scientific, educational, or research purposes if the Administrator determines that the importation can be made under conditions that will prevent the introduction of BSE into the United States. Such serum must be accompanied by a permit issued by APHIS in accordance with § 104.4 of this chapter and must be moved and handled as specified on the permit.

(e) The importation of serum albumin, serocolostrum, amniotic liquids or extracts, and placental liquids derived from ovines or caprines that have been in any region listed in paragraph (a)(4) of this section, and collagen and collagen products that are derived from ovines or caprines and that would otherwise be prohibited under paragraphs (a) and (b) of this section, is prohibited unless the following conditions have been met:

(1) The article is imported for use as an ingredient in cosmetics;

(2) The person importing the article has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3 (VS Form 16–3 may be obtained from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*); and

(3) The permit application states the intended use of the article and the name and address of the consignee in the United States.

(f) Insulin otherwise prohibited under paragraphs (a) and (b) of this section may be imported if the insulin is for the personal medical use of the person importing it and if the person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the insulin and the name and address of the consignee in the United States.

Note to Paragraph (f): Insulin that is not prohibited from importation under this paragraph may be prohibited from importation under other Federal laws, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*

(g) Offal that is otherwise prohibited under paragraphs (a) and (b) of this section because it is derived from ovines or caprines that have been in a region listed in paragraph (a)(4) of this section may be imported into the United States if the offal is derived from ovines or caprines from Canada that have not been in a region listed in paragraph (a)(4) of this section other than Canada, and the following conditions are met:

(1) The offal:

(i) Is derived from ovines or caprines that were less than 12 months of age when slaughtered and that are from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000;

(ii) Is not derived from ovines or caprines that have tested positive for or are suspect for a transmissible spongiform encephalopathy;

(iii) Is not derived from animals that have resided in a flock or herd that has been diagnosed with BSE; and

(iv) Is derived from ovines or caprines whose movement was not restricted in the BSE minimal-risk region as a result of exposure to a transmissible spongiform encephalopathy.

(2) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (g)(1) of this section have been met; and

(3) The shipment, if arriving at a U.S. land border port, arrives at a port listed in § 94.25(d) of this subchapter.

§§ 95.5 through 95.30 [Redesignated]

30. Sections 95.5 through 95.30 are redesignated as §§ 95.16 through 95.41, respectively,

31. Sections 95.5 through 95.15 are added to read as follows:

§ 95.5 Processed animal protein derived from ruminants.

The importation of ruminant-derived processed animal protein, or any commodities containing such products, is prohibited unless the conditions of paragraph (a) and (b) of this section are met:

(a) The exporting region is a region of negligible risk for BSE, or the product is derived from ruminants born and raised in a region of negligible risk for BSE, or it has been demonstrated that the product has not been commingled or contaminated with ruminant meat-and-bone meal or greaves. Additionally, if either paragraph (a)(1) or (a)(2) of this section applies, the product must be derived from ruminants that were subject to a ban on the feeding of ruminants with meat-and-bone meal or greaves derived from ruminants:

(1) The product is exported to the United States from a region of negligible risk for BSE in which there has been at least one indigenous case of BSE; or

(2) The product is derived from ruminants that were born or raised in a region of negligible risk for BSE in

which there has been at least one indigenous case of BSE.

(b) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the exporting region is a region of negligible risk for BSE and that the requirements of paragraph (a) of this section, as applicable, have been met.

§ 95.6 Offal derived from bovines.

Offal derived from bovines is prohibited importation into the United States unless it meets the requirements for the importation of meat, meat products, and meat byproducts in either § 94.19, § 94.20, or § 94.21, with the exception of the requirements in § 94.19(c), § 94.20(b), and § 94.21(b), respectively.

§ 95.7 Collagen derived from bovines.

(a) The importation of collagen derived from bovines is prohibited because of BSE unless:

(1) The collagen meets the requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section and all other applicable requirements of this part; or

(2) The collagen is authorized importation under (f) of this section and meets all other applicable requirements of this part:

(b) The collagen is derived from hides and skins, provided the collagen has not been commingled with materials ineligible for entry into the United States.

(c) The collagen is derived from the bones of bovines that originated from a region of negligible risk for BSE.

(d) The collagen is derived from the bones of bovines that originated from a region of controlled or undetermined risk for BSE and meets the requirements of paragraphs (d)(1) through (d)(4) of this section:

(1) The bones from which the collagen was derived were derived from bovines that passed ante-mortem and post-mortem inspection;

(2) The bones from which the collagen was derived did not include the skulls of bovines or the vertebral column of bovines 30 months of age or older;

(3) The bones were subjected to a process that includes all of the following steps, or to a process at least as effective in reducing BSE infectivity:

(i) Degreasing;

(ii) Acid demineralization;

(iii) Acid or alkaline treatment;

(iv) Filtration; and

(v) Sterilization at 138 °C (280.4 °F) or greater for a minimum of 4 seconds; and

(4) The collagen has not been commingled with materials ineligible for entry into the United States.

(e) The collagen is accompanied to the United States by an original certificate that indicates the BSE risk classification of the exporting region and that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

(f) The Administrator determines that the collagen will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the collagen has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the collagen and the name and address of the consignee in the United States.

§ 95.8 Tallow derived from bovines.

(a) The importation of bovine-derived tallow is prohibited unless:

(1) The requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section are met; or

(2) The requirements of paragraph (f) of this section are met.

(b) The tallow is composed of a maximum level of insoluble impurities of 0.15 percent in weight; or

(c) The tallow originates from a region of negligible risk for BSE; or

(d) The tallow originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and has not been prepared using SRMs as defined for regions of controlled risk for BSE in § 92.1 of this part.

(e) The tallow is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), or (d) of this section, as applicable, have been met and, for tallow other than that described in paragraph (b) of this section, must indicate the BSE risk classification of the exporting region.

(f) The Administrator determines that the tallow will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the tallow and the name and address of the consignee in the United States.

§ 95.9 Derivatives of tallow derived from bovines.

(a) The importation of derivatives of tallow from bovines is prohibited unless the commodity meets the conditions of either paragraph (b), (c), (d), or (e) of this section as well as paragraph (f) of this section, or, alternatively, meets the conditions of paragraph (g) of this section.

(b) The commodity meets the definition of tallow derivative in § 95.1.

(c) The derivative is from tallow composed of a maximum level of insoluble impurities of 0.15 percent in weight.

(d) The derivative is from tallow that originates from a region of negligible risk for BSE.

(e) The derivative is from tallow that originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs as defined for regions of

controlled risk for BSE in § 92.1 of this subchapter.

(f) The tallow derivative is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), (d), or (e) of this section, as applicable, have been met and, for tallow derivatives other than those described in paragraph (b) or (c) of this section, must indicate the BSE risk classification of the exporting region.

(g) The Administrator determines that the tallow derivative will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow derivative has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the tallow derivative and the name and address of the consignee in the United States.

§ 95.10 Dicalcium phosphate derived from bovines.

(a) The importation of dicalcium phosphate derived from bovines (other than dicalcium phosphate with no trace of protein or fat) is prohibited unless:

(1) The requirements of either paragraph (b) or (c), and the requirements of paragraph (d) of this section are met; or

(2) The requirements of paragraph (e) of this section are met.

(b) The dicalcium phosphate originates from a region of negligible risk for BSE; or

(c) The dicalcium phosphate originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs as defined for regions of controlled risk for BSE in § 92.1 of this subchapter.

(d) The dicalcium phosphate is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must indicate the BSE risk classification of the exporting region and state that the requirements of paragraph (b) or (c) of this section, as applicable, have been met.

(e) The Administrator determines that the dicalcium phosphate will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the dicalcium phosphate has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the dicalcium phosphate and the name and address of the consignee in the United States.

§ 95.11 Specified risk materials.

Notwithstanding any other provisions of this part, the importation of specified risk materials from controlled-risk regions or undetermined-risk regions for BSE, and any commodities containing such materials, is prohibited, unless the Administrator determines that the materials or other commodities will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the materials or other commodities has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the materials and other commodities and the name and address of the consignee in the United States.

§ 95.12 Blood and blood products derived from bovines.

The importation of bovine blood and products derived from bovine blood is prohibited unless the following conditions and the conditions of all other applicable parts of this chapter are met:

(a) For blood collected at slaughter and for products derived from blood collected at slaughter:

(1) The blood was collected in a hygienic manner, as determined by the Administrator, that prevents contamination of the blood with SRMs; and

(2) The slaughtered animal passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity.

(b) For blood collected from live donor bovines and for products derived from blood collected from live donor bovines:

(1) The blood was collected in a hygienic manner, as determined by the Administrator, that prevents contamination of the blood with SRMs; and

(2) The donor animal was free of clinical signs of disease.

(c) The blood and blood products are accompanied to the United States by an original certificate that states that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

§ 95.13 Importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants.

The importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants is prohibited importation into the United States unless the following conditions are met:

(a) The processed animal protein is not prohibited importation under § 95.4;

(b) The processed animal protein imported into the United States in accordance with this section is

accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, that indicates that the material originates from a region classified by APHIS as a region of negligible risk for BSE.

(c) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

§ 95.14 Importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants.

The importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants is prohibited importation into the United States unless the following conditions are met:

(a) The processed animal protein is not prohibited importation under § 95.4;

(b) Except as provided in paragraph (c) of this section, the processed animal protein does not contain and was not commingled with material derived from ruminants originating in a BSE controlled- or undetermined-risk region;

(c) For blood meal, blood plasma, and other blood products, the material does not contain and was not commingled with ruminant blood or blood products prohibited importation into the United States under this part.

(d) Inspection of the facility for compliance with the provisions of this section is conducted at least annually by a competent authority of the government agency responsible for animal health in the region, unless the region chooses to have such inspections conducted by APHIS. The inspections must verify either that:

(1) All steps of processing and storing the material are carried out in a facility that has not been used for the processing or storage of materials derived from ruminants originating in a BSE controlled- or undetermined-risk region; or

(2) The material is produced in a manner that prevents contamination of the processed animal protein with materials prohibited importation into the United States.

(e) If APHIS conducts the inspections required by paragraph (d) of this section, the facility has entered into a cooperative service agreement executed by the operator of the facility and APHIS. In accordance with the cooperative service agreement, the facility must be current in paying all costs for a veterinarian of APHIS to inspect the facility (it is anticipated that such inspections will occur approximately once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds). In addition, the facility must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(f) The facility allows periodic APHIS inspection of its facilities, records, and operations.

(g) The processed animal protein imported into the United States in accordance with this section is accompanied by an original certificate signed by a full-time, salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time, salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, that indicates the APHIS BSE risk classification of the exporting region and states that the conditions of this section have been met.

(h) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

§ 95.15 Transit shipment of articles.

Articles that are otherwise prohibited importation into the United States in accordance with §§ 95.4 through 95.14 may transit air and ocean ports in the United States for immediate export if the conditions of paragraphs (a) through (d) this section are met. Articles are eligible to transit the United States by overland transportation if the requirements of paragraphs (a) through (e) of this section are met.

(a) The person moving the articles must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

(b) The articles must be sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed during the entire time that it is in the United States.

(c) Before such transit, the person moving the articles must notify, in writing, the inspector at both the place in the United States where the articles will arrive and the port of export. The notification must include the:

(i) United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors permit number;

(ii) Times and dates of arrival in the United States;

(iii) Times and dates of exportation from the United States;

(iv) Mode of transportation; and

(v) Serial numbers of the sealed containers.

(d) The articles must transit the United States under Customs bond.

(e) The commodities must be eligible to enter the United States in accordance with §§ 95.4 through 95.14 and must be accompanied by the certification required by that section. Additionally, the following conditions must be met:

(i) The shipment must be exported from the United States within 7 days of its entry;

(ii) The commodities may not be transloaded while in the United States, except for direct transloading under the supervision of an authorized inspector, who must break the seals of the national government of the exporting region on the means of conveyance that carried the commodities into the United States

and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government; and

(iii) A copy of the import permit required under paragraph (a) of this section must be presented to the inspector at the port of arrival and the port of export in the United States.

§ 95.17 [Amended]

32. In newly redesignated § 95.17, the introductory text is amended by removing the citation ''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.18 [Amended]

33. In newly redesignated § 95.18, the introductory text is amended by removing the citation ''§ 95.8'' and adding the citation ''§ 95.19'' in its place, and footnote 1 to paragraph (c) is amended by removing the citation ''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.19 [Amended]

34. In newly redesignated § 95.19, the introductory text is amended by removing the citation ''§ 95.7'' and adding the citation ''§ 95.18'' in its place.

§ 95.20 [Amended]

35. In newly redesignated § 95.20, the introductory text is amended by removing the citation ''§ 95.10'' and adding the citation ''§ 95.21'' in its place, and footnote 1 to paragraph (c) is amended by removing the citation ''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.21 [Amended]

36. In newly redesignated § 95.21, the introductory text is amended by removing the citation ''§ 95.9'' and adding the citation ''§ 95.20'' in its place.

§ 95.23 [Amended]

37. In newly redesignated § 95.23, the introductory text is amended by removing the citation to ''§ 95.11'' and adding the citation ''§ 95.22'' in its place.

§ 95.25 [Amended]

38. In newly redesignated § 95.25, the introductory text is amended by removing the citation ''§ 95.16'' and adding the citation ''§ 95.27'' in its place.

§ 95.26 [Amended]

39. Newly redesignated § 95.26 is amended by removing the citation ''§ 95.16'' and adding the citation ''§ 95.27'' in its place.

§ 95.27 [Amended]

40. In newly redesignated § 95.27, the introductory text is amended by removing the citation ''§ 95.15'' and adding the citation ''§ 95.26'' in its place.

§ 95.29 [Amended]

41. Newly redesignated § 95.29 is amended by removing the citation ''§ 95.17'' and adding the citation ''§ 95.28'' in its place.

§ 95.32 [Amended]

42. Newly redesignated § 95.32 is amended by removing the citation ''§ 95.28'' and adding the citation ''§ 95.39'' in its place, and by removing the citation ''§ 95.22'' and adding the citation ''§ 95.33'' in its place.

§ 95.33 [Amended]

43. Newly redesignated § 95.33 is amended by removing the citation ''§ 95.28'' and adding the citation ''§ 95.39'' in its place, and by removing the citation ''§ 95.21'' and adding the citation ''§ 95.32'' in its place.

§ 95.36 [Amended]

44. In newly redesignated § 95.36, paragraphs (a) and (b) are amended by removing the citation ''§ 95.26'' both times it appears and adding the citation ''§ 95.37'' in their place.

45. Newly redesignated § 95.40 is revised to read as follows:

§ 95.40 Certification for certain materials.

(a) In addition to meeting any other certification or permit requirements of this chapter, the following articles, if derived from ovines or caprines, may be imported into the United States from any region not listed in § 95.4(a)(4) only if they are accompanied by a certificate, as described in paragraph (b) of this section:

(1) Processed animal protein, tankage, offal, and tallow other than tallow derivatives, unless, in the opinion of the Administrator, the tallow cannot be used in feed;

(2) Glands and unprocessed fat tissue;

(3) Processed fats and oils, and derivatives of processed animal protein, tankage, and offal;

(4) Derivatives of glands; and

(5) Any product containing any of the materials listed in paragraphs (a)(1) through (a)(4) of this section.

(b) The certificate required by paragraph (a) of this section must be an original official certificate, signed by a full-time, salaried veterinarian of the agency responsible for animal health in the exporting region, that states the following:

(1) The animal species from which the material was derived;

(2) The region in which any facility where the material was processed is located;

(3) That the material was derived only from animals that have never been in any region listed in § 95.4(a)(4), with the regions listed in § 95.4(a)(4) specifically named;

(4) That the material did not originate in, and was never stored, rendered, or processed in, or otherwise associated with, a facility in a region listed in § 95.4(a)(4); and

(5) The material was never associated with any of the materials listed in paragraph (a) of this section that have been in a region listed in § 95.4(a)(4).

(c) The certification required by paragraph (a) of this section must clearly correspond to the shipment by means of an invoice number, shipping marks, lot number, or other method of identification.

(Approved by the Office of Management and Budget under control number 0579–0183)

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

46. The authority citation for part 96 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

47. In § 96.2, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 96.2 Prohibition of casings due to African swine fever and bovine spongiform encephalopathy.

* * * * *

(b) *Casings from ovines or caprines.* The importation of casings, except stomachs, derived from ovines or caprines that originated in or were processed in any region listed in § 95.4(a)(4) are prohibited, unless the following conditions are met:

(1) The casings are derived from sheep that were slaughtered in Canada at less than 12 months of age and that were from a flock subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000; and

(2) The casings are accompanied by an original certificate that meets the requirements of § 96.3 and:

(i) States that the casings meet the conditions of this section;

(ii) Is written in English;

(iii) Is signed by an individual eligible to issue the certificate required under § 96.3; and

(iv) Is presented to an authorized inspector at the port of entry.

(c) *Casings from bovines.* The importation of casings derived from bovines is prohibited, unless the following conditions are met:

(1) If the casings are derived from bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, the certificate required under § 96.3 of this part indicates the APHIS BSE risk classification of the region in which the bovines were slaughtered and the casings were collected.

(2) If the casings are derived from bovines from a region of controlled risk for BSE or a region of undetermined risk for BSE, as defined in § 92.1 of this subchapter, the casings are not derived from the small intestine or, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by the Food Safety and Inspection Service at 9 CFR 310.22 and the Food and Drug Administration at 21 CFR 189.5.

(3) The casings are accompanied by an original certificate that meets the requirements of § 96.3 and paragraphs (b)(2)(i) through (b)(3)(iv) of this section.

* * * * *

48. In § 96.3, paragraph (d) is revised to read as follows:

§ 96.3 Certificate for animal casings.

* * * * *

(d) In addition to meeting the requirements of this section, the certificate accompanying sheep casings from Canada must state that the casings meet the requirements of § 96.2(b) and the certificate accompanying bovine casings must state that the casings meet the requirements of either § 96.2(c)(1) or (c)(2) as applicable.

* * * * *

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

49. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

50. Section 98.11 is amended by adding definitions of *camelid* and *cervid,* in alphabetical order, to read as follows:

§ 98.11 Definitions.

* * * * *

Camelid. All species of the family *Camelidae,* including camels, guanacos, llamas, alpacas, and vicunas.

Cervid. All members of the family *Cervidae* and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

* * * * *

51. In § 98.15, the introductory text of paragraph (a) is revised to read as follows:

§ 98.15 Health requirements.

* * * * *

(a) The donor dam is determined to be free of communicable diseases based on tests, examinations, and other requirements, as follows, except that, with regard to bovine spongiform encephalopathy, the following does not apply to bovines, cervids, or camelids.

* * * * *

Done in Washington, DC, this 8th day of March 2012.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2012–6151 Filed 3–15–12; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 52 March 16, 2012

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP), the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP), and the Pelagic Sargassum Habitat of the South Atlantic Region (Sargassum FMP) as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule specifies annual catch limits (ACLs) and accountability measures (AMs) for species in the Snapper-Grouper, Dolphin and Wahoo, and Golden Crab FMPs. This final rule also describes the current terminology and measures in place in the Sargassum FMP that are equivalent to ACLs and AMs. For *Sargassum,* this final rule does not specifically set an ACL because there is currently a commercial quota in place which functions as an ACL, and there are commercial closure provisions in the event the quota is met or projected to be met which functions as an AM. To implement the Snapper-Grouper FMP, this final rule revises the snapper-grouper fishery management unit (FMU), including the removal of some species, designation of ecosystem component (EC) species, and the development of species groups. This final rule also establishes a daily vessel limit for the recreational possession of wreckfish and creates a closed season for the wreckfish recreational sector. To implement the Dolphin and Wahoo FMP, this final rule prohibits recreational bag limit sales of dolphin from for-hire vessels, and sets a minimum size limit for dolphin off South Carolina that complements the existing minimum size limit off Georgia and Florida. The intent of this final rule is to specify ACLs for species not undergoing overfishing while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: This rule is effective April 16, 2012.

ADDRESSES: Electronic copies of the Comprehensive ACL Amendment, which includes a final environmental impact statement (FEIS), a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/Comp%20ACL%20Am%20101411%20FINAL.pdf.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fisheries for snapper-grouper, golden crab, dolphin and wahoo, and pelagic *Sargassum* habitat of the South Atlantic are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October, 20, 2011, NMFS published a notice of availability for the Comprehensive ACL Amendment and requested public comment (76 FR 65153). On December 1, 2011, NMFS published a proposed rule for the Comprehensive ACL Amendment and requested public comment (76 FR 74757). Additionally, on December 30, 2011, NMFS published an amended proposed rule for the Comprehensive ACL Amendment specific to a revised allowable biological catch (ABC) and a corresponding reduction to the commercial and recreational sector ACLs for wreckfish and requested public comment (76 FR 82264). On January 18, 2012, the Secretary of Commerce approved the Comprehensive ACL Amendment.

In the proposed rule that published on December 1, 2011 (76 FR 74757), the revised commercial quota for greater amberjack that was referenced in § 622.49(b)(11)(i)(A) was inadvertently not revised in the commercial quota section in § 622.42(e)(3). Subsequent proposed and final rulemaking, that is currently being developed as described in the Comprehensive ACL Amendment, will incorporate the revised commercial quota for greater amberjack of 769,388 lb (348,989 kg), gutted weight.

The proposed rules and the Comprehensive ACL Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

Snapper-Grouper FMP

This final rule identifies snapper-grouper species that do not need Federal management and can therefore be removed from the Snapper-Grouper FMP; designates selected snapper-grouper species as EC species; establishes species groups for selected snapper-grouper species for more effective management; establishes ACLs and AMs for the commercial and recreational sectors; establishes a daily vessel limit for the recreational possession of wreckfish and creates a closed season for the wreckfish recreational sector.

Designation of Species To Be Removed From the FMP

There are currently 73 species in the Snapper-Grouper FMP and the Council decided to remove 13 of these species based on Magnuson-Stevens Act National Standard 7 (NS 7) guidelines (50 CFR 600.340(b)(2)). This rule removes black margate, bluestriped grunt, crevalle jack, French grunt, grass porgy, porkfish, puddingwife, queen triggerfish, sheepshead, smallmouth grunt, Spanish grunt, tiger grouper, and yellow jack from the Snapper-Grouper FMP.

Designation of Ecosystem Component Species in the FMP

This rule designates six species as EC species based on an evaluation of the Magnuson-Stevens Act National Standard 1 (NS 1) Guidelines criteria to be considered when designating an EC species (50 CFR 600.310(d)(5)). This final rule designates bank sea bass, cottonwick, longspine porgy, ocean triggerfish, rock sea bass, and schoolmaster as EC species within the Snapper-Grouper FMP. The designation of these species as EC species retains them in the Snapper-Grouper FMP, but they are not required to have an ACL or AM (50 CFR 600.310 (c) and (d)). These EC species are also not subject to any other management actions within the Comprehensive ACL Amendment and are not subject to other Federal management measures such as recreational bag limits and size limits. Where those types of management measures are already in place, this final rule removes those applicable Federal regulations. Of the species to be

designated as EC species, all are currently included in the aggregate snapper-grouper recreational bag limit and the schoolmaster has current size limit regulations.

Species Groupings

This final rule establishes species group or complex ACLs for selected snapper-grouper species within the Comprehensive ACL Amendment based on NS 1 Guidelines and as described in the Comprehensive ACL Amendment. This final rule revises the current snapper-grouper species grouping, and places selected snapper-grouper species into the complexes for: Deep-water species (yellowedge grouper, blueline tilefish, silk snapper, misty grouper, sand tilefish, queen snapper, black snapper, and blackfin snapper); shallow-water groupers (red hind, rock hind, yellowmouth grouper, yellowfin grouper, coney, and graysby); snappers (gray snapper, lane snapper, cubera snapper, dog snapper, and mahogany snapper), jacks (almaco jack, banded rudderfish, and lesser amberjack), grunts (white grunt, sailors choice, tomtate, and margate), and porgies (jolthead porgy, knobbed porgy, saucereye porgy, scup, and whitebone porgy). An ACL and AM is specified for each complex. Heavily targeted stocks, stocks with assessments, stocks with fishery closures where the ACL equals zero, or stocks that did not fall into any complex grouping will be managed under individual ACLs. Species not included in species groups but for which individual ACLs will be established are black grouper, wreckfish, Atlantic spadefish, greater amberjack, scamp, red porgy (recreational sector only), hogfish, yellowtail snapper, blue runner, bar jack, gray triggerfish, and mutton snapper.

ACLs

This final rule assigns initial ACLs for each of the species or species groups or complexes retained for Federal management in the Comprehensive ACL Amendment, excluding EC species. For selected snapper-grouper species or species groups that will have an ACL established through this final rule, the ACL is equal to both the OY and the allowable biological catch (ABC).

This final rule specifies an ACL for species in both the commercial and recreational sectors, except for red porgy. For red porgy, this final rule establishes an ACL for red porgy for the recreational sector only because a commercial quota is already in place for red porgy and functions as the equivalent of a commercial ACL.

For wreckfish specifically, a commercial quota is in place and is reduced through this final rule. The wreckfish commercial ACL established through this final rule will be equal to the revised commercial quota of 223,250 lb (101,264 kg), round weight. This final rule also establishes an ACL for the wreckfish recreational sector of 11,750 lb (5,330 kg), round weight. The wreckfish ACLs initially proposed in the rule that published on December 1, 2011 (76 FR 74757) were later proposed to be revised based on the November 2011 recommendation of the Council's Scientific and Statistical Committee (SSC) and the Council's concurrence of that recommended action. The revised sector ACLs for wreckfish were announced through an amended proposed rule published in the **Federal Register** on December 30, 2011 (76 FR 82264).

AMs

This final rule implements AMs for the commercial sector, excluding wreckfish. If the commercial ACL for a species or species group is exceeded during a fishing year, then the sector would be closed for the remainder of that fishing year for that specific species or species group. If the ACL for a species group is exceeded, all species contained within that group would be subject to their respective group AM. If a species, or at least a single member of a species group is designated as overfished, and the commercial ACL is exceeded, then during the following fishing year, the commercial sector ACL would be reduced by the amount of the commercial ACL overage in the prior fishing year. For red porgy, the commercial quota closure provisions function as the equivalent to an AM in the event that the red porgy commercial quota is exceeded in a fishing year.

The wreckfish commercial sector is managed under the individual transferrable quota (ITQ) program and this final rule will make the ITQ program itself the AM for the commercial sector because commercial landings are closely monitored and ITQ participants are limited to their specific ITQ allocation each fishing year.

For the recreational sector AMs, if the recreational ACL is exceeded for a species or species group in a fishing year, then during the next fishing year the NMFS Regional Administrator (RA) will monitor the recreational landings for a persistence in increased landings, and using the best scientific information available, will reduce the length of the recreational fishing season as necessary to ensure the recreational landings do not exceed the recreational ACL.

Wreckfish Management Measures

This final rule implements a one wreckfish per vessel daily recreational possession limit and a recreational wreckfish closed season of January 1 through June 30, and September 1 through December 31, each year.

Dolphin and Wahoo FMP

This final rule specifies ACLs and AMs for dolphin and wahoo. This final rule also prohibits recreational bag limit sales of dolphin harvested from for-hire vessels, and sets a minimum size limit for dolphin off South Carolina equal to the established minimum size limit off Georgia and Florida.

ACLs

This final rule establishes ACLs for dolphin and wahoo. For the ACLs established through this final rule, the ACL is equal to both the OY and the ABC. ACLs are specified for species in both the commercial and recreational sectors.

AMs

For the commercial sector, if the commercial ACL is exceeded during a fishing year, then the commercial sector would be closed for the remainder of that fishing year for that species. If a species is designated as overfished, and the commercial ACL is exceeded, then during the following fishing year, the commercial sector ACL would be reduced by the amount of the commercial ACL overage from the prior fishing year.

For the recreational sector, if the recreational ACL is exceeded for a species in a fishing year, then during the next fishing year the RA will monitor the recreational landings for a persistence in increased landings, and using the best scientific information available, reduce the length of the recreational fishing season as necessary to ensure the recreational landings do not exceed the recreational ACL.

Dolphin Bag Limit Sales

This final rule prohibits recreational bag limit sales of dolphin harvested by persons while onboard for-hire vessels. This prohibition ensures that the Federal regulations are fair and equitable by making sure that fish harvested by the recreational sector are not counted toward commercial quotas through submitted dealer reports and that total landings data are accurate. Accordingly, this final rule prohibits the sale of dolphin harvested or possessed under the bag limit by a vessel for which a Federal charter vessel/headboat permit for Atlantic dolphin and wahoo

has been issued in the Atlantic exclusive economic zone (EEZ).

Dolphin Minimum Size Limit

This final rule establishes a minimum size limit for dolphin of 20 inches (50.8 cm) fork length to include the Federal waters off South Carolina. Currently, the dolphin minimum size limit is 20 inches (50.8 cm) fork length, for the Federal waters off Florida and Georgia. This final rule extends the applicability of that size limit from Florida through South Carolina to ensure consistency in the regulations as well as help prevent the large scale harvest of very small dolphin.

Golden Crab FMP

This final rule specifies an ACL and an AM for golden crab.

ACLs

This rule assigns an initial ACL for golden crab. The ACL is only specified for the commercial sector of the golden crab fishery as no recreational sector within the golden crab fishery exists and there are no identified golden crab recreational fishers. Therefore, a recreational ACL will not be established through this final rule.

AMs

If the golden crab commercial sector exceeds the ACL during a fishing year, then the sector would be closed for the remainder of that fishing year. If, at a later date golden crab were to be designated as overfished, and the commercial ACL was exceeded, then during the following fishing year, the sector ACL would be reduced by the amount of the commercial ACL overage from the prior fishing year.

Measures Contained in This Final Rule That Are Not in the Comprehensive ACL Amendment

This final rule revises the boundary coordinates for the harvest prohibition for pelagic *Sargassum* in the South Atlantic EEZ. The current northern boundary for this harvest prohibition defined at 50 CFR 622.35(g)(1)(i) is approximately 2 nautical miles (3.7 km) north of the intercouncil boundary between the Mid-Atlantic Fishery Management Council and the South Atlantic Council as defined at 50 CFR 600.105. The Sargassum FMP specifies that the northern boundary for management of *Sargassum* in the South Atlantic EEZ is the Virginia/North Carolina boundary, which is the boundary between the Mid-Atlantic and South Atlantic Councils. Therefore, this final rule specifies the latitude for the northern boundary of the management area for *Sargassum,* which is the boundary between the Mid-Atlantic and South Atlantic Councils.

Comments and Responses

A total of 91 comments were received on the Comprehensive ACL Amendment, the proposed rule, and the amended proposed rule. Comments were received from individuals, environmental organizations, recreational fishing associations, and a Federal agency. Additionally, a minority report was submitted by five members of the Council. One Federal agency submitted comments on the Comprehensive ACL Amendment. Of the 91 comments received, 12 contained remarks on the potential economic impacts of the Comprehensive ACL Amendment, specifically related to the actions implementing management measures for dolphin. Comments related to the actions contained in the Comprehensive ACL Amendment, the two proposed rules, and NMFS's respective responses are summarized and responded to below.

Comment 1: Several commenters supported the removal of 13 species from the snapper-grouper FMU. One commenter recommended this action be disapproved, and states that with the exception of the 3 species covered under the Florida Marine Life Species Rule (porkfish, puddingwife, and queen triggerfish), 10 of the 13 species (black margate, bluestriped grunt, crevalle jack, French grunt, grass porgy, sheepshead, smallmouth grunt, Spanish grunt, tiger grouper, and yellow jack), are either considered ''likely to become subject to overfishing or overfished'', have average landings in excess of 35,000 lb (15,876 kg) per year, or remain unregulated in Florida, Georgia, and South Carolina.

Response: The Magnuson-Stevens Act National Standard 7 (NS 7) Guidelines state that the principle implicit in NS 7 is that not every fishery needs regulation. The Magnuson-Stevens Act requires fishery management councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose; and where the present or future benefits of regulation would justify the costs. Decisions about the composition of FMUs are an integral part of the plan development process, as FMUs define the specific species that are to be the target of Federal conservation and management. Magnuson-Stevens Act guidelines specify that FMUs may be organized around biological, geographic, economic, technical, social, or ecological goals (50 CFR 600.320(d)(1)). Of the 13 species proposed for removal from the FMU, 10 species (black margate, bluestriped grunt, crevalle jack, French grunt, grass porgy, porkfish, puddingwife, sheepshead, Spanish grunt, and yellow jack) have over 95 percent of their landings reported in state waters. Therefore, these species could be, or are already adequately managed by the states. Three of these species (porkfish, puddingwife, and queen triggerfish) are managed by Florida in their state waters under the Florida Marine Life Species Rule, which contains more stringent protections for the species than current Federal regulations. In addition, two species (tiger grouper and smallmouth grunt) identified for removal through this final rule had no reported commercial or recreational landings in Federal waters from 2005 to 2009. Therefore, any conservation and management measures applied to Federal waters are not expected to have a noticeable effect on the population of the 13 species identified for removal from the FMU. Furthermore, effects on bycatch would be minimal, and the socio-economic benefits associated with retaining management of the 13 snapper-grouper species would be relatively small.

Removal of these 13 species should not affect state regulations for these species, with the exception of South Carolina. In South Carolina, for all species in the snapper-grouper FMU, regulations in state waters (*http://www.dnr.sc.gov/regulations.html*) are currently structured to be compatible with the regulations in Federal waters. Therefore, any species that is no longer subject to Federal regulations would not be subject to state regulations in South Carolina waters, unless the state acted to establish such regulations. However, only two of the species identified for removal (sheepshead and crevalle jack) are harvested from South Carolina state waters. Additionally, while state compatibility with Federal regulations is often desirable from a management standpoint, managing state fisheries is not and was never an intended goal of the Snapper-Grouper FMP. The intent of the FMP is to manage snapper-grouper species within its ''area of authority,'' which includes Federal waters from the North Carolina/Virginia border through the Atlantic side of the Florida Keys.

The Council intends to evaluate landings in state and Federal waters and other available information on species removed from the snapper-grouper FMU every 5 years, or sooner if necessary. Monitoring and data collection will continue for all species that are sold to dealers or caught recreationally, even if not in the FMU. If the Council determines that a removed species is in

need of Federal management, the species could be added back into the Snapper-Grouper FMP in the future.

Comment 2: NMFS and the Council should include criteria in addition to landings information such as species vulnerability, species misidentification issues, and species distribution to determine which species should be included or removed from the snapper-grouper FMU. NMFS and the Council should monitor and compare landings proportions of removed species in state and Federal waters.

Response: The Council and NMFS used the Magnuson-Stevens Act National Standards guidelines to inform this decision. National Standard 3 discusses the composition of an FMU and states that it may be organized around biological, geographic, economic, technical, social, or ecological goals (50 CFR 600.320(d)(1)). Moreover, NS 7 guidelines discuss seven factors to be used for determining whether to include species in an FMU for purposes of Federal conservation and management (50 CFR 600.340(b)(2). These factors include the importance of the fishery to the Nation and the regional economy, the condition of the stock, whether an FMP can improve or maintain that condition, the extent to which the fishery could be or already is adequately managed by states, the need to resolve competing interests and whether an FMP can further that resolution, the economic conditions of the fishery and whether an FMP can produce a more efficient utilization, the needs of a developing fishery and whether an FMP can foster the orderly growth, and the costs associated with the FMP balanced against benefits.

Using all of this information, the Council evaluated and analyzed whether all 73 species originally included in the snapper-grouper FMU were in need of Federal conservation and management. The Council concluded, and NMFS agrees, that Federal conservation and management is not needed for 13 species, and removed them from the FMP. Monitoring and data collection will continue for all species that are sold to dealers or caught recreationally, regardless of whether or not they are in the snapper-grouper FMU. If the Council determines that a removed species is in need of Federal management, the species could be added back into the snapper-grouper FMU in the future.

Comment 3: Several commenters supported the designation of six species in the snapper-grouper FMU (cottonwick, longspine porgy, bank sea bass, rock sea bass, ocean triggerfish, and schoolmaster), as EC species. One commenter recommended that the EC designation of bank sea bass be disapproved, due to the findings of a recent study for this species. Additionally, close monitoring of the other five designated EC species was recommended.

Response: The Council determined, and NMFS agrees that six species (cottonwick, longspine porgy, bank sea bass, rock sea bass, ocean triggerfish, and schoolmaster) currently contained in the snapper-grouper FMU most closely meet the criteria in the NS 1 Guidelines pertaining to EC species designation. An ''exploratory assessment'' conducted by some college students indicated the bank sea bass stock was overfished and undergoing overfishing, however, this ''exploratory assessment'' has not been peer-reviewed and the document states that all work in the report is considered to be preliminary (NOAA Technical Memorandum NMFS–SEFSC–167). As in the action to remove species from the Snapper-Grouper FMP, ongoing monitoring and data collection will continue for all species that are sold to dealers or caught recreationally, including those considered to be EC species. The EC status of a species may be reconsidered if new information becomes available and the Council determines a species is in need of Federal management and conservation.

Comment 4: Several commenters opposed the establishment of species groups, stating that fishing opportunities for many species could be lost due to one species of a group meeting the ACL. The treatment of all geographic areas as equal while establishing species groups is unfair, and dismisses scientific data that should be applied to the range of the species. The Marine Resources Monitoring Assessment and Prediction Program (MARMAP) data used in establishing species groups are based on small sample size and do not sample all areas such as South Florida and the Florida Keys. Furthermore, converting landings data from the Marine Recreational Fishing Statistical Survey (MRFSS) to the Marine Recreational Information Program (MRIP) will cause problems with accuracy.

Response: Species groups were not specified for all species in the snapper-grouper FMU. The approach for the establishment of species groups applied scientific data to the geographic range of species and included life history information, fishery-dependent data, and fishery-independent data. Data used in the establishment of species groups were not limited to those from MARMAP and MRFSS. Additionally, the analysis considered species distribution and therefore did not treat all geographic areas as equal. Identified associations between stocks, as described in Appendix O of the Comprehensive ACL Amendment, were used to develop 6 species groups for unassessed stocks and 12 individual ACLs for assessed and targeted species. The Council's preferred alternative to establish species groups within the snapper-grouper FMU is consistent with the guidelines at 50 CFR 600.320(d)(1) for establishing stock complexes.

The Council intends to evaluate landings and other available information on all species through stock assessment and fishery evaluation reports. Ongoing monitoring and data collection will continue for all species that are sold to dealers or caught recreationally, even if not included in complexes. If the Council determines that landings of any species within a species group have changed significantly, more appropriate species groupings may be established that reflect any changes in landings and the appropriateness of the organization of any specific species groups.

Comment 5: One commenter recommends partially disapproving the Comprehensive ACL Amendment since it fails to provide clear status determination criteria for overfishing as required by the Magnuson-Stevens Act. The commenter advises that the maximum fishing mortality threshold (MFMT) or overfishing limit (OFL) for 12 assessed snapper-grouper species be included in the amendment. Another commenter recommends that NMFS and the Council undertake a comprehensive review of OY and use the results from the analysis to modify the current OY definition of the Council.

Response: Status determination criteria, including MFMT, have been specified in previous amendments for species addressed by the Comprehensive ACL Amendment. When available, OFL has been specified in Southeast Data Assessment and Review assessments, and is then incorporated into the FMP via amendments. One purpose of the Comprehensive ACL Amendment is to identify an ABC control rule that can be utilized by the Council's SSC to determine and recommend an ABC to the Council. Another purpose is to specify ACLs and AMs to ensure overfishing does not occur for species not currently undergoing overfishing.

The NS 1 Guidelines describe the relationship between catch levels (ACLs and annual catch targets (ACTs)) and OY. These guidelines were used to

modify the Council's current OY definition for species addressed in this final rule where OY was set equal to ACL. The NS 1 Guidelines state that if OY is set close to the maximum sustainable yield (MSY), the conservation and management measures in the fishery must have very good control of the amount of catch in order to achieve the OY without overfishing. Many species in the Comprehensive ACL Amendment are data poor, and the value for MSY is currently unknown. By setting the OY equal to the ACL, which is the catch level that ensures overfishing does not occur, there will be a greater likelihood that OY can be achieved without overfishing occurring.

Comment 6: Several commenters opposed the Council's ABC control rule and recommended an ABC control rule where the ABC equals the ACL. Two commenters supported the ABC control rule, but recommended future incorporation of the recommendations developed by the Council's SSC's ''only reliable catch series'' (ORCS) working group. One commenter recommended that the ABC control rule be disapproved and revised to define clear criteria for evaluating stock status as part of the Council decisionmaking process.

Response: The NS 1 Guidelines state that each fishery management council must establish an ABC control rule based on scientific advice from its SSC. The ABC control rule in the Comprehensive ACL Amendment was developed by the Council and its SSC and provides recommendations for the specification of ABCs based on a systematic inspection of sources of uncertainty, including variables such as susceptibility, vulnerability, bycatch, and discard information. The ABC control rule contains four levels, with a species assigned to a specific level depending on the amount of information available about the species. Stock status is one of the criteria used in determine the magnitude of the ABC under Level 1 of the ABC control rule. The ABC control rule for Level 1 assessed species has four dimensions included in the control rule framework: Assessment information; characterization of uncertainty; stock status; and productivity/susceptibility of the stock. Each dimension contains tiers that can be evaluated for each stock to determine a numerical score for scientific uncertainty. The uncertainty buffer, or difference between OFL and ABC, is expressed in terms of a reduction in the probability of overfishing. A greater buffer between the OFL and ABC is established for species that are overfished and/or undergoing overfishing.

The ABC can be determined using the ABC control rule for assessed and unassessed (data poor) species. The ABC control does not specify the ACL; the ACL is established by the Council based on the information as described in this final rule and in the Comprehensive ACL Amendment. The Council and the SSC will periodically evaluate the performance of the ABC control rule, and determine if it needs to be modified. In addition, the SSC intends to re-evaluate the unassessed species' portion of the ABC control rule in April of 2012 (including the incorporation of the findings of the SSC's ORCS working group), to assess whether modifications are necessary.

Comment 7: Two commenters recommended that the Comprehensive ACL Amendment should include an update on the implementation of the Council's standardized bycatch reporting methodology (SBRM), the Atlantic Coastal Cooperative Statistics Program (ACCSP), and describe why it is not suitable for monitoring current bycatch and dead discards in the fishery in the current state of implementation. The commenters also recommended that NMFS assess monitoring needs in order to move toward total catch accounting.

Response: Numerous studies are conducted to assess bycatch, including survivorship of discards. Some studies are continuous, but many studies are intermittent and subject to funding. In the snapper-grouper commercial sector, approximately 20 percent of permitted vessels are randomly selected each year to fill out supplementary logbooks to provide discard information. For the recreational sector, estimates of discards are available each year from the MRFSS and from headboat logbook data. Recent studies conducted with funding from the Cooperative Research Program, Sea Grant, the Marine Fisheries Initiative, and other sources have provided estimates of bycatch and release mortality for many species. The ACCSP methodology has been approved by the NMFS and the Council. However, it is unknown when funding will be available to implement the bycatch module of the ACCSP. In the interim, estimates of discards will continue to be available from MRFSS and MRIP and supplementary commercial and headboat logbooks. Furthermore, the Council recently approved an action in Amendment 18A to the Snapper-Grouper FMP (the notice of availability of Amendment 18A was published on January 31, 2012 (77 FR 4754)) which includes an action to enhance data reporting in the for-hire sector. The Council is also developing a generic amendment to improve data reporting by dealers and by the commercial sector of the snapper-grouper fishery and several other fisheries.

Comment 8: Several commenters opposed allocations between the commercial and recreational sectors due to their lack of confidence in the MRFSS data, and recommended waiting until the transition to MRIP has fully occurred. The Council's minority report also opposed the method used to establish allocations between sectors as well as the method used for calculating sector allocations. One commenter supported the Council's preferred approach to establish sector allocations in the Snapper-Grouper FMP.

Response: MRIP modifies the catch estimation method for recreational harvest for the period of 2004–2010 to address improvements for estimation algorithms. MRIP also addresses concerns raised in the 2006 National Resource Council review of MRFSS that estimation methods may not be consistent with the sampling probabilities of individually sampled access sites and could result in biased estimates. Revised estimates have been developed and are undergoing review, and will be applied to existing data going back to 2004. Correction of estimates prior to 2004 will also be considered in the future. As of September 2011, when the Council approved the Comprehensive ACL Amendment, the new MRIP estimates had not yet been released. NMFS notes that MRIP data became available in January of 2012. While the Council is fully aware of these ongoing issues, the Council and NMFS must still work to meet Magnuson-Stevens Act deadlines to establish the required ACLs and management measures to ensure overfishing does not occur. If needed, the Council may take action through a future amendment to revise the appropriate values.

The Council's preferred approach for sector allocations divides allocations between the recreational and commercial sectors based on landings information from 1986–2008 and 2006–2008, and therefore, considers past and present participation. The Council decided to establish allocations based on balancing long-term catch history with more recent catch history, and believes that approach to be a fair and equitable method to allocate fishery resources. Furthermore, the Council determined an additional benefit of this alternative was its inclusion of a mathematically transparent formula to specify allocations. If indicated by MRIP data, the Council may take action in a

future amendment to revise sector allocations if the MRIP data indicates that an allocation adjustment is warranted.

Comment 9: Several commenters supported setting the ACLs in the Comprehensive ACL Amendment equal to the ABC as determined by the Council. Two commenters advised against this approach because it did not account for management uncertainty, and recommended setting a buffer between the ABC and ACL. One of the two commenters cited a failure on part of NMFS to ensure accountability for bycatch in the ACL-setting mechanism.

Response: The NS 1 Guidelines indicate that the choice of an ACL is directly related to the choice of an ABC, and an ACL may not exceed the ABC. The Council's preferred alternative for an ABC control rule takes uncertainty into consideration in the specification of an ABC regardless of the level for data availability. For assessed species where OFL is known (Level 1), the ABC control rule establishes a buffer between the OFL and the ABC. For extremely data poor species for which a precise OFL cannot be determined, the Council adopted a tiered approach for estimating the probability of exceeding an overfishing limit, and considered various factors in making appropriate decisions about constraining harvest levels to ensure the ABC is set at a level where overfishing would not occur. These factors include, but are not limited to, the available landings data, trends, whether a species is an ecosystem species, and whether a species is targeted or is primarily bycatch for other species. In reviewing this information, the Council decided it was unnecessary to establish an additional buffer between the ABC and ACL. For the commercial sectors of the fisheries contained in this amendment, the Council concluded that quota monitoring, in addition to the in-season and post-season AMs specified for the commercial sector in the Comprehensive ACL Amendment, are sufficient to account for management uncertainty. The in-season AMs would close the commercial sector when the commercial ACL is reached or projected to be reached and limit all harvest to the recreational bag limit once the closure is implemented. For overfished species only, the post-season AMs would correct for any ACL overages by implementing a payback provision in the following year based on the overage and the best scientific information available. To account for the possibility of additional uncertainty within the recreational sector, and consistent with the National Standard 1 Guidelines, the Council is establishing ACTs for stocks within the Snapper-Grouper and Dolphin and Wahoo FMPs that would serve as a target and as a performance measure for management to avoid the ACL from being exceeded. Additionally, the recreational sector AMs provide for shortening the length of the recreational fishing season by the amount necessary to ensure the recreational ACL is not exceeded. Consistent with the National Standard 1 Guidelines, if NMFS and the Council conclude that an ACL or ACT is being chronically exceeded, and post-season AMs are repeatedly implemented to correct for ACL overages, the Council could revise the ACTs, ACLs, and associated AMs (50 CFR 600.310(g)(3)).

Comment 10: Several commenters supported the Council's decision to not set an ACT for the commercial sector for species included in the Comprehensive ACL Amendment. Two commenters opposed this approach and recommend that an ACT be established for the commercial sector with a buffer between the ACL and the ACT.

Response: The NS 1 Guidelines state that setting of ACTs is left to the discretion of each fishery management council and should be based on the level of management uncertainty in each fishery. For the commercial sectors of the fisheries contained in this amendment, the Council concluded that quota monitoring, in addition to the in-season and post-season AMs specified for the commercial sector in the Comprehensive ACL Amendment, are sufficient to account for management uncertainty. The in-season AMs would close the commercial sector when the commercial ACL is reached or projected to be reached and limit all harvest to the recreational bag limit once the closure is implemented. For overfished species only, the post-season AMs would correct for any ACL overages by implementing a payback provision in the following year based on the overage and the best scientific information available. Therefore, the Council determined, and NMFS agreed, that a commercial ACT is not necessary at this time.

Comment 11: Several commenters were opposed to the Council's preferred approaches to setting ACTs and AMs for the recreational sector for species included in the Comprehensive ACL Amendment. They preferred not to have any ACTs/AMs, and supported the use of average landings calculated over a 3-year period to specify post-season AMs for the recreational sector.

Two commenters supported the approach for setting ACTs and AMs for the recreational sector outlined in the Comprehensive ACL Amendment, but supported the subalternative that specifies a post-season AM of adjusting the recreational fishing season to account for ACL overages.

Response: The Council determined that the level of management uncertainty for the recreational sector is currently high enough to warrant the specification of recreational ACTs. The Comprehensive ACL Amendment specified a recreational sector ACT, which is set lower than the recreational sector ACL by 50 percent or the ACL multiplied by one minus the percent standard error, whichever is greater. This approach also establishes an ACT for the recreational sector that serves as a performance measure. The NS 1 Guidelines recommend a performance standard by which the efficiency of any system of ACLs and AMs can be measured and evaluated. If tracking the ACT through time reveals a trend in ACT and ACL overages, the entire system of ACTs and ACLs would be reevaluated and some corrective action could be linked to the ACT in the future to prevent the ACL from being exceeded. The Council concluded that the preferred alternative best met the need to account for management uncertainty in the recreational sector for species that currently lack AMs.

The Council selected recreational sector AMs that would be triggered if the annual landings exceed the recreational sector ACL in a given year. In-season AMs were not chosen for the recreational sector because in-season monitoring of recreational landings is difficult, and there is a significant delay in the availability of recreational data. There would likely be considerable uncertainty in imposing in-season AMs for species in the recreational sector, particularly for species that are infrequently taken. Therefore, post-season AMs were determined to be more appropriate for the recreational sector. Implementation of post-season AMs for the recreational sector ensures that the amount of the previous year's ACL overage is accounted for in the subsequent year's adjustment via a shortened fishing season. Furthermore, monitoring of landings data also allows for any anomalies or data reporting irregularities to be taken into account before the AMs would be effective.

Comment 12: Two commenters, and the Council's minority report, opposed the reduction of the ACL for wreckfish. The commenters stated that the best available science was not used to make the determination, would cause adverse impacts to the vested participants, and its failure could threaten NMFS' catch share initiative in the Southeast Region.

Response: The specification of the ABC for wreckfish was discussed extensively by the Council's SSC. In April 2010, the SSC determined the wreckfish ABC was unknown because effort and landings were reduced to the extent that landings information was confidential. The SSC indicated the Council should consider an ACL that did not exceed 200,000 lb (90,718 kg), round weight. Additionally, the SSC discussed setting an ABC for wreckfish during their August 2010 meeting. The SSC stated that a 2001 assessment indicated wreckfish stock depletion occurred at higher historical levels of effort and that the catch reductions may have occurred mainly from gear restrictions, a spawning season closure, and the wreckfish ITQ implementation. The SSC stated that a depletion-based stock reduction analysis (Level 2 of the ABC control rule) or depletion-corrected average catch (DCAC) (Level 3 of the ABC control rule) estimate could be calculated, but recent wreckfish landings are confidential; therefore, the SSC was not able to perform the calculations to produce these estimates. The SSC agreed the 2001 assessment was dated and no longer applied to current wreckfish landings and conditions. The SSC additionally concluded that the ABC control rule based on catch-only data (Level 4 of the ABC control rule) should be used even though a dated stock assessment exists for wreckfish. Therefore, in September of 2010, the SSC recommended setting the ABC at the average historical catch (1997-recent) of 250,000 lb (113,398 kg), round weight. As a result of the confidentially of wreckfish commercial data, a more precise level could not be determined.

A DCAC analysis for wreckfish was subsequently completed and presented to the SSC at its November 2011 meeting. The SSC reviewed and adopted the DCAC methodology to develop a new ABC recommendation of 235,000 lb (106,594 kg), round weight for wreckfish, in accordance with the ABC control rule contained in the Comprehensive ACL Amendment. There is greater confidence in the ABC estimate of 235,000 lb (106,594 kg) based on the Level 3 DCAC analysis than in the previous 250,000 lb (113,398 kg) estimate derived from Level 4 of the ABC control rule. The Council reviewed the recommended revised ABC value in December 2011 and decided to further adjust the wreckfish ACL to reflect the revised ABC value. The ACL for wreckfish contained in the initial proposed rule for the Comprehensive ACL Amendment (76 FR 74757, December 1, 2011) was 250,000 lb (113,398 kg), round weight. Because that ACL then exceeded the catch level recommendation of the Council's SSC, an amended proposed rule was published on December 30, 2011 (76 FR 82264), which proposed to further revise the wreckfish ACL to 235,000 lb (106,594 kg), round weight based on the revised ABC value. This final rule sets the ACL for wreckfish at 235,000 lb (106,594 kg), round weight with the commercial ACL for wreckfish at 223,250 lb (101,264 kg), round weight, and the recreational ACL at 11,750 lb (5,330 kg), round weight.

Additionally, a notice of availability for Amendment 20A to the Snapper-Grouper FMP was published on January 12, 2012 (77 FR 1908), which addresses further management measures for the commercial sector of the wreckfish component of the snapper-grouper fishery. Actions included in Amendment 20A are intended to allow commercial fishermen with wreckfish shares to better maximize harvest potential within the constraints of the commercial ACL implemented through this final rule.

Comment 13: Several commenters were opposed to the Council's recreational allocation for wreckfish in the Comprehensive ACL Amendment and some recommended a recreational allocation of 10 percent, while others recommended the recreational allocation be set at 50 percent.

Response: Wreckfish has been managed under a commercial ITQ program since 1992. In recent years, recreational fishermen have reported an increased incidence of wreckfish encounters during recreational trips. Because wreckfish are caught in very deep water (1,476–1,969 ft (450–600 m)), it is assumed that all incidentally caught wreckfish die upon reaching the surface and must be released dead since only commercial wreckfish shareholders are allowed to retain the fish. By establishing an allocation for the recreational sector, the Council is attempting to reduce wreckfish bycatch mortality by allowing fishermen to retain wreckfish. Through this final rule, a wreckfish recreational sector is established by allocating 5 percent of the wreckfish stock ACL to the recreational sector. This 5 percent wreckfish recreational allocation serves to mitigate bycatch mortality of any occasionally encountered wreckfish during recreational trips. The Council concluded that any recreational catch of wreckfish is likely to be small and a larger allocation of the wreckfish stock ACL was unnecessary.

Comment 14: Several commenters opposed the jurisdictional allocation of black grouper, yellowtail snapper, and mutton snapper between the Gulf of Mexico and the South Atlantic Councils. Some of the commenters recommended the establishment of an equal allocation of 50 percent between the two jurisdictional areas.

Response: This final rule establishes a jurisdictional allocation for black grouper, yellowtail snapper, and mutton snapper, based on the Florida Keys (Monroe County) jurisdictional boundary between the Gulf of Mexico and South Atlantic Councils. Currently, the ABC for each of these species applies across Council jurisdictions, and stock assessments for each of these three species treat each species as a single stock. This creates an issue for management, because the two Councils manage these species under two separate FMPs. For example, black grouper is also part of the ''other shallow water grouper'' species complex in the Gulf of Mexico individual fishing quota program. Without the jurisdictional allocations established in this final rule, these three species would need to be managed jointly, with both Councils having to manage a common set of regulations. Furthermore, the status quo allocations would not adhere to ''best available science'' and not be based on post-stratified data which captures actual harvest more accurately between the two jurisdictions. Both Councils agreed to the allocation procedure for the three species, which considers both historical and recent data, and provides extra emphasis to more recent landings. A jurisdictional allocation of 50 percent for the Gulf of Mexico and 50 percent for the South Atlantic would not consider historical and recent data with respect to landings. The Council concluded that the allocation procedure chosen in the Comprehensive ACL Amendment provides an accurate biological basis for management and ensures fairness and equity in practice.

Comment 15: One commenter and the authors of the minority report opposed the allocation of dolphin in the Comprehensive ACL Amendment between the recreational and commercial sectors stating that the commercial allocation for dolphin has never been exceeded, and opposed the formula used to calculate the dolphin sector allocation.

Response: Currently, a non-binding allocation of 13 percent for the commercial harvest and 87 percent for the recreational harvest is in place for dolphin. This final rule establishes a binding allocation that is used to specify

sector specific ACLs. The Comprehensive ACL Amendment uses a formula that would equal 50 percent * average of long catch range (lb) 1999–2008 + 50 percent * average of recent catch trend (lb) 2006–2008, thereby balancing the total time series with more recent data. This is consistent with the Council's approach to sector allocations in other fisheries, such as snapper-grouper. This method provides the added biological benefits of accurately accounting for the fishing effort in both sectors, in addition to a fair, equitable, and mathematically transparent approach.

Comment 16: One commenter opposed Alternative 2 in Action 25, and questioned the economic analysis for the action addressing management measures for dolphin, particularly relating to the prohibition of bag limit sales of dolphin from for-hire vessels. The commenter asserted the estimated effects provided in the proposed rule (76 FR 74757, December 1, 2011) were incomplete and inaccurate.

Response: Action 25 addresses management measures for dolphin. Essentially, only two revisions were made to existing management measures. The 20-inch fork-length size limit now extends from waters off the south Atlantic coast of Florida through waters off of South Carolina, and bag limit sales of dolphin from for-hire vessels are prohibited unless they are commercially permitted and not operating under hire. In preparing the economic analysis conducted for this action NMFS utilized the best scientific information available, including data recorded in the Federal logbook program. In addition to the requirement that for-hire vessels possess a Federal dolphin-wahoo for-hire permit to harvest dolphin in the EEZ, with the exception of vessels fishing north of 39° N. lat., for-hire vessels must also possess a Federal commercial dolphin-wahoo permit to legally sell dolphin harvested when operating under hire. All vessels with a Federal commercial dolphin-wahoo permit are annually provided with a Federal logbook. A logbook record, including information pertaining to any sale of fish, must be completed for each commercial fishing trip taken by the permitted vessel and reported to NMFS. Therefore, analysis of logbook data is the appropriate method of analyzing the expected economic effects of this action and the analysis should be complete and sufficient. As discussed in the proposed rule (76 FR 74757, December 1, 2011), based on an analysis of logbook data, the prohibition on the sale of dolphin harvested under the bag limit by for-hire vessels is expected to result in an annual loss of approximately $71,000 in gross revenue by all for-hire vessels.

However, proper reporting through the Federal logbook system may not occur in all instances. In that case, then the estimates of the economic effects of the prohibition of the sale of dolphin harvested under the bag limit provided in the proposed rule (76 FR 74757, December 1, 2011) could constitute a lower bound of the estimated economic effects. In order to estimate an upper bound accounting for reporting discrepancies, NMFS re-analyzed the potential economic effects of the prohibition of the sale of dolphin harvested under the bag limit by for-hire vessels using an alternative methodology and data, as described below. Over the period 2005–2009, the average annual revenue from dolphin identified as legal sales potentially originating from for-hire trips in the Atlantic was approximately $369,000 (nominal dollars, i.e., dollars not adjusted for inflation), or approximately $184 per for-hire vessel with a Federal dolphin-wahoo for-hire permit (2,012 vessels). If the practice of selling dolphin harvested on for-hire trips is limited to charterboats, the number of potentially affected vessels is reduced to 1,927 (an estimated 85 headboat vessels participate in the Federal logbook program, though it is unknown how many of these vessels have a Federal dolphin-wahoo for-hire permit) and the average revenue associated with dolphin sales increases to approximately $192 per vessel. Because these data represent average results, some vessels would be expected to depend more on dolphin sales, and other vessels less. No information is available, however, to demonstrate that a substantial number of entities are significantly dependent on these revenues.

The commenter stated that in the Florida Keys alone there are 278 for-hire vessels that sell dolphin from for-hire trips. As an example of potential significant dependency, if all the identified revenues potentially originating from legal dolphin sales by for-hire vessels during 2005–2009 (approximately $369,000) were attributed to only these 278 entities, the average effect per entity would be a reduction in ex-vessel revenue of approximately $1,330, or less than 3 percent of average annual gross revenue from 2005–2009, estimated to range from approximately $51,000 to $69,000. In summary, although the new analysis of dolphin sales from the for-hire industry produced an estimate of the total potential economic effects that is much greater than the effect reported in the proposed rule (76 FR 74757, December 1, 2011), approximately $369,000 versus $71,000, the effects remain below the required threshold for significance when evaluated at the individual vessel level.

Comment 17: Twelve commenters opposed the management measure for dolphin that prohibits bag limit sales from for-hire vessels, citing financial hardship. The commenters also stated that the sales of dolphin harvested under the bag limit are vital to the survival of charter fishing operations.

Response: Currently, for-hire fishermen who possess the necessary state and Federal permits can sell bag limit quantities of dolphin, and NMFS acknowledges that a prohibition of such sales could have negative economic effects on some entities. During 2005–2009, the average annual revenue from dolphin identified as legal sales potentially originating from for-hire trips in the Atlantic was approximately $369,000 (nominal dollars), or approximately $184 per for-hire vessel with a Federal dolphin-wahoo for-hire permit (2,012 vessels). As a result of the new catch limits for dolphin, the Council determined that when for-hire fishermen sell their catch to dealers, catch is counted toward the commercial quota resulting in the commercial ACL being reached sooner. The Council decided that prohibiting the sale would help to improve the accuracy of total landings and benefit both sectors. Therefore, this final rule prohibits the sale of dolphin harvested under the recreational bag limit in the for-hire sector.

Comment 18: One commenter cited all the actions addressing the Dolphin and Wahoo FMP in the Comprehensive ACL Amendment as being inconsistent with National Standard Guidelines under the Magnuson-Stevens Act. Specific concerns were: The MSY and ACL were below a reasonable level that would achieve OY; the allocation formula for these should not have used data from MRFSS because of data uncertainty; stocks of dolphin are not restricted to the Atlantic east coast but also occur in the Caribbean and Gulf of Mexico; and sector allocations will lead to unnecessary discards by commercial fishermen.

Response: The Comprehensive ACL Amendment does not revise the MSY for dolphin, and prior to this amendment, the value for OY was unknown. By setting the OY equal to the ACL, which is the catch level that ensures overfishing does not occur, there would be greater assurance that OY could be achieved without overfishing. The Council's preferred

approach for establishing sector allocations divides allocations between the recreational and commercial sectors based on landings information from 1986–2008 and 2006–2008, and therefore, considers past and present participation. The Council decided to establish allocations based on balancing long-term catch history with recent catch history, and believes it to be the most fair and equitable way to allocate fishery resources. The Council determined an additional benefit of this alternative was its inclusion of a transparent formula to specify allocations.

While dolphin may be genetically similar in the Gulf of Mexico, Caribbean, and South Atlantic, the Dolphin and Wahoo FMP only addresses dolphin that occur in the Atlantic and the Magnuson-Stevens Act requires the Council to specify ACLs and AMs for all species in their FMPs.

Comment 19: Commercial fishermen will have to make longer trips to target other species after a dolphin closure occurs, possibly affecting safety at sea.

Response: The ABC and ACL for dolphin are set above recent average catch levels. Therefore, a closure of the dolphin commercial sector is not anticipated based on recent catch history, and NMFS does not foresee any new safety at sea issues arising for dolphin fishers that will be imposed by the actions contained in this final rule.

Comment 20: One commenter recommended that dolphin and wahoo should be managed under the NMFS Highly Migratory Species program to avoid duplication by Councils and allow for international management.

Response: The Manguons-Stevens Act's definition of the phrase ''highly migratory species'' explicitly lists which species are to be included, and Congress did not include dolphin in the definition (16 U.S.C. 1802(21)). In 2004, the Council, in cooperation with the Mid-Atlantic and New England Councils, and with the approval of the Secretary of Commerce, developed the Dolphin and Wahoo FMP for the Atlantic. The Magnuson-Stevens Act requires that a fishery management council specify ACLs for species in its FMPs at a level that may not exceed the fishing level recommendation of its SSC, and that the ACLs prevent overfishing. Therefore, the Council was required to specify an ACL for dolphin.

Comment 21: Several commenters opposed the harvest of *Sargassum,* and there were no comments supporting its harvest.

Response: There has not been any commercial harvest of *Sargassum* since 1998, and there are no known data indicating *Sargassum* is a significant bycatch in any other fishery in the South Atlantic Region. Existing FMPs may use terms and values that are similar to, associated with, or may be equivalent to ACL and AM in many fisheries for which annual specifications are set for different stocks or stock complexes. In these situations, NMFS suggests that as fishery management councils revise their FMPs, they use the same terms as set forth in the NS 1 Guidelines. Therefore, this final rule does not specifically set an ACL for *Sargassum,* because there is currently a commercial quota in place which serves as a functional ACL. When the quota is reached, the fishery would close, which serves as a functional AM.

Measures Contained in the Comprehensive ACL Amendment That Are Not in This Final Rule

The Comprehensive ACL Amendment also contains actions that are not specifically addressed through this rulemaking. These items include specifying ABC control rules, allocations for the commercial and recreational sectors, and jurisdictional allocations between the South Atlantic Council and the Gulf of Mexico Fishery Management Council (Gulf Council) for three species.

The Comprehensive ACL Amendment established ABC control rules for the Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and Sargassum FMPs, which were used to establish ABC. These standard methods for determining the appropriate ABC allow the Council's SSC to determine an objective and efficient assignment of ABC that takes into account scientific uncertainty regarding the harvest levels that would lead to overfishing. Additionally, the amendment establishes allocations for the commercial and recreational sectors for snapper-grouper species and dolphin and wahoo that do not currently have allocations specified.

The Comprehensive ACL Amendment also defines the apportionment for black grouper, yellowtail snapper, and mutton snapper across the jurisdictional boundary between the South Atlantic Council and the Gulf Council. These three species are managed separately by both the Gulf and South Atlantic Councils, but each has a stock assessment and ABC that covers both Councils areas of jurisdiction. Therefore, based on historical landings and recommendations from their respective SSCs, the two councils have agreed to apportion those overarching ABCs between them, and the amendment establishes ABC limits for the South Atlantic Council's area of jurisdiction.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within the Comprehensive ACL Amendment and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the statutory basis for this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and the amended proposed rule and is not repeated here. Two comments were received on the analysis of the estimated economic effect of the prohibition of the sale of dolphin harvested under the bag limit by for-hire vessels provided in the proposed rule (76 FR 74757, December 1, 2011). The first comment asserted the estimated effects provided in the proposed rule (76 FR 74757, December 1, 2011) were incomplete and inaccurate and the second comment stated that the revenue from these sales is vital to the survival of charter fishing operations. In preparing the economic analysis conducted for this action NMFS utilized the best scientific information available, including data recorded in the Federal logbook program. In addition to the requirement that for-hire vessels possess a Federal dolphin-wahoo for-hire permit to harvest dolphin in the EEZ, with the exception of vessels fishing north of 39° N. lat., for-hire vessels must also possess a Federal commercial dolphin-wahoo permit to legally sell dolphin harvested when operating under hire. All vessels with a Federal commercial dolphin-wahoo permit are annually provided with a Federal logbook. A logbook record, including information pertaining to any sale of fish, must be completed for each commercial fishing trip taken by the permitted vessel and reported to NMFS. Therefore, analysis of logbook data is the appropriate method of analyzing the expected economic effects of this action and the analysis provided in the proposed rule (76 FR 74757, December 1, 2011) should be accurate and sufficient. As discussed in the proposed rule (76 FR 74757, December

1, 2011), based on analysis of logbook data, the prohibition on the sale of dolphin harvested under the bag limit by for-hire vessels is expected to result in an annual loss of approximately $71,000 in gross revenue to the for-hire sector.

However, proper reporting through the Federal logbook system may not occur in all instances. In that case, then the estimates of the economic effects of the prohibition of the sale of dolphin harvested under the bag limit provided in the proposed rule (76 FR 74757, December 1, 2011) could constitute a lower bound of the actual potential economic effects. In order to estimate an upper bound accounting for reporting discrepancies, NMFS re-analyzed the potential economic effects of the prohibition of the sale of dolphin harvested under the bag limit by for-hire vessels using an alternative methodology and data, as described below. Regardless of whether fish are harvested on a commercial or for-hire trip, or Federal reporting requirements are followed, all legal fish sales in the Atlantic are captured by state-managed data programs. Each state provides these data to NMFS in aggregate-form by species and harvest gear-type. Because the data are aggregated by species, identification of the fishing entity (vessel), trip type (commercial or for-hire), or possession of any Federal permit is not possible. However, the aggregation and inclusion of harvest by gear in the data provided to NMFS allows partitioning of the data into sector categories that reasonably represent commercial fishing versus for-hire fishing. Specifically, in the new analysis, NMFS assumes all harvest using trawl, pot, longline, dredge, and electric or hydraulic reel gear comes from commercial vessels. NMFS assumes all harvest using hand line, rod and reel, manual reel, or troll line gear comes from vessels under hire. The rationale for this categorization, beyond the assertion that certain gear types are logically commercial gear, is the understanding that a key motivation of recreational fishing is sport and the challenge of landing fish. As a result, any gear, even electric or hydraulic reels, which reduces this experience, is logically inappropriate as for-hire gear. NMFS notes, however, that minimal harvest was recorded with electric or hydraulic reels, so the inclusion of harvest by these gear with for-hire harvest would not substantially affect the following results. NMFS also notes that, the assumption that all hand line, rod and reel, manual reel, or troll line harvest originates from a for-hire trip may overestimate the actual harvest and sale by the for-hire sector because it is possible that some commercial vessels also harvest dolphin with this gear.

Based on these assumptions, over the period of 2005–2009, the average annual revenue from dolphin identified as legal sales potentially originating from for-hire trips in the Atlantic was approximately $369,000 (nominal dollars), or approximately $184 per for-hire vessel with a Federal dolphin-wahoo for-hire permit (2,012 vessels). If the practice of selling dolphin harvested on for-hire trips is limited to charterboats, the number of potentially affected vessels is reduced to 1,927 (an estimated 85 headboat vessels participate in the Federal logbook program, though it is unknown how many of these vessels have a Federal for-hire dolphin-wahoo permit) and the average revenue associated with dolphin sales increases to approximately $192 per vessel. Because these estimated economic effects represent average results, some vessels would be expected to receive higher losses in revenue, and other vessels lower losses. Information has not been identified, however, to demonstrate that a substantial number of entities are significantly dependent on these revenues. The first economic specific comment to the proposed rule stated that in the Florida Keys alone there are 278 for-hire vessels that sell dolphin from for-hire trips. If the sale of dolphin harvested under the bag limit is limited to these 278 vessels, which is not expected to be the case, and all the identified revenues potentially originating from legal dolphin sales by for-hire vessels (approximately $369,000 annually) were attributed to only these 278 entities, the average effect per entity would be an annual reduction in ex-vessel revenue of approximately $1,330, or less than 3 percent of average annual gross revenue, estimated to range from approximately $51,000 to $69,000 per for-hire vessel.

In summary, although the new analysis of dolphin sales from the for-hire industry produced an estimate of the total potential economic effects that is much greater than the effect reported in the proposed rule (76 FR 74757, December 1, 2012), approximately $369,000 versus $71,000, the effects remain below the required threshold for significance when evaluated at the individual vessel level.

With respect to the second comment that the sales of dolphin harvested under the bag limit are vital to the survival of charter fishing operations, the results provided in the new analysis above are relevant to consideration of this comment. While some for-hire vessels are likely more dependent on the sale of dolphin harvested under the bag limit than other vessels, available data does not substantiate any claim that these sales are vital to charter fishing operations in general.

No other substantive comments were received on the certification provided in the proposed rule (76 FR 74757, December 1, 2011). No changes were made to the proposed rule as a result of the public comments. The analysis of potential economic effects provided above does not impact the certification made by the Chief Counsel for Regulation of the Department of Commerce to the Chief Counsel for Advocacy of the Small Business Administration that this rulemaking is not expected to have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 13, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, paragraph (b), Table 1, footnote 2 is revised to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(b) * * *

Table 1.—FMPs Implemented Under Part 622

* * * * *

[2] Black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.9′ N. lat., the latitude of Cape Hatteras Light, NC.

* * * * *

■ 3. In § 622.2, the definition for ''South Atlantic shallow-water grouper (SASWG)'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

South Atlantic shallow-water grouper (SASWG) means, in the South Atlantic, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney.

* * * * *

■ 4. In § 622.4, the first sentence in paragraph (a)(2)(vii) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(vii) *Wreckfish.* For a person aboard a vessel to be eligible for exemption from the bag limit for wreckfish in or from the South Atlantic EEZ, to fish under a quota for wreckfish in or from the South Atlantic EEZ, or to sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish and a commercial permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. * * *

* * * * *

■ 5. In § 622.5, paragraphs (a)(1)(iv)(C)(*2*) and (c)(5)(iii) are revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(iv) * * *

(C) * * *

(*2*) Make available to an authorized officer upon request all records of commercial offloadings, purchases, or sales of wreckfish.

* * * * *

(c) * * *

(5) * * *

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of commercial offloadings, purchases, or sales of wreckfish.

* * * * *

■ 6. In § 622.15, paragraphs (c)(4) and (d)(3) and (4) are revised to read as follows:

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

* * * * *

(c) * * *

(4) Wreckfish may not be possessed on board a fishing vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel; or

(ii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(C)(*1*).

* * * * *

(d) * * *

(3) A wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344), of the location not less than 24 hours prior to offloading.

■ 7. In § 622.35, paragraph (g)(1)(i) is revised, the first sentence in paragraph (j) is revised, and paragraph (p) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * *

(i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°33′01.0″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

* * * * *

(j) * * * During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any SASWG (gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney). * * *

* * * * *

(p) *Closures of the recreational sector for wreckfish.* The recreational sector for wreckfish in or from the South Atlantic EEZ is closed from January 1 through June 30, and September 1 through December 31, each year. During a closure, the bag and possession limit for wreckfish in or from the South Atlantic EEZ is zero.

■ 8. In § 622.37, paragraph (e)(1)(iii) and paragraph (h) are revised to read as follows:

§ 622.37 Size limits.

* * * * *

(e) * * *

(1) * * *

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers—12 inches (30.5 cm), TL.

* * * * *

(h) *Dolphin in the Atlantic off Florida, Georgia, and South Carolina*—20 inches (50.8 cm), fork length.

■ 9. In § 622.39, paragraph (d)(1)(viii) is revised and paragraph (d)(1)(x) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(viii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, ecosystem component species (specified in Table 4 of Appendix A to part 622), and those specified in paragraphs (d)(1)(i) through (vii) and paragraphs (d)(1)(ix) and (x) of this section.

* * * * *

(x) No more than one fish per vessel may be a wreckfish.

* * * * *

■ 10. In § 622.42, the first sentence of paragraph (f) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(f) *Wreckfish.* The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 223,250 lb (101,264 kg), round weight. * * *

* * * * *

■ 11. In § 622.43, paragraph (a)(6) is removed and reserved and the heading of paragraph (a)(5) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(5) *South Atlantic gag, black grouper, red grouper, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish.* * * *

* * * * *

■ 12. In § 622.45, the first sentence in paragraph (d)(8) and paragraphs (i)(2) and (i)(3) are revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the

South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters.

* * *

* * * * *

(i) * * *

(2) In addition to the provisions of paragraph (i)(1) of this section, a person may not sell dolphin or wahoo possessed under the bag limit harvested in the Atlantic EEZ by a vessel while it is operating as a charter vessel or headboat. A dolphin or wahoo harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for Atlantic dolphin and wahoo may not be purchased or sold if harvested from the Atlantic EEZ.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (i)(1) of this section.

■ 13. In § 622.49, paragraphs (b)(7) through (24) and paragraphs (e) through (g) are added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(b) * * *

(7) *Black grouper*—(i) *Commercial sector*—(A) If commercial landings for black grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (b)(7)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of black grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and black grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(C) The applicable commercial ACLs, in round weight, are 90,575 lb (41,084 kg) for 2012, 94,571 lb (42,897 kg) for 2013, and 96,844 lb (43,928 kg) for 2014 and subsequent fishing years.

(ii) *Recreational sector.* If recreational landings for black grouper, as estimated by the SRD, exceed the applicable ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary. The applicable recreational ACLs, in round weight, are 155,020 lb (70,316 kg) for 2012, 161,859 lb (73,418 kg) for 2013, and 165,750 lb (75,183 kg) for 2014 and subsequent fishing years.

(iii) Without regard to overfished status, if the combined commercial and recreational sector ACLs, as estimated by the SRD, are exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register stating that both the commercial and recreational sectors will not have an increase in their respective sector ACLs during that following fishing year. The applicable combined commercial and recreational sector ACLs, in round weight are 245,595 lb (111,400 kg) for 2012, 256,430 lb (116,315 kg) for 2013, and 262,594 lb (119,111 kg) for 2014 and subsequent fishing years.

(8) *Deep-water complex (including yellowedge grouper, blueline tilefish, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)*—(i) *Commercial sector*—(A) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 343,869 lb (155,976 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 332,039 lb (150,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(9) *Scamp*—(i) *Commercial sector*—(A) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 341,636 lb (154,963 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of scamp is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and scamp are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the

beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 150,936 lb (68,463 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(10) *Other SASWG combined (including red hind, rock hind, yellowmouth grouper, yellowfin grouper, coney, and graysby)*—(i) *Commercial sector*—(A) If commercial landings for other SASWG, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,488 lb (22,447 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of other SASWG is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and at least one of the species in the other SASWG complex is overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 48,329 lb (21,922 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(11) *Greater amberjack*—(i) *Commercial sector*—(A) If commercial landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(3), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the ACL, and greater amberjack are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for greater amberjack, as estimated by the SRD, exceed the recreational ACL of 1,167,837 lb (529,722 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(12) *Lesser amberjack, almaco jack, and banded rudderfish complex, combined*—(i) *Commercial sector*—(A) If commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL of 193,999 lb (87,996 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of lesser amberjack, almaco jack, and banded rudderfish is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If the combined commercial landings for the complex exceed the ACL, and at least one of the species in the complex (lesser amberjack, almaco jack, and banded rudderfish) is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for the complex (lesser amberjack, almaco jack, and banded rudderfish), combined, as estimated by the SRD, exceed the recreational ACL of 261,490 lb (118,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(13) *Bar jack*—(i) *Commercial sector*—(A) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 6,686 lb (3,033 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of bar jack is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic

snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and bar jack is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of 13,834 lb (6,275 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(14) *Yellowtail snapper*—(i) *Commercial sector*—(A) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,142,589 lb (518,270 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and yellowtail snapper is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of 1,031,286 lb (467,783 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(15) *Mutton snapper*—(i) *Commercial sector*—(A) If commercial landings for mutton snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 157,743 lb (71,551 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of mutton snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and mutton snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for mutton snapper, as estimated by the SRD, exceed the recreational ACL of 768,857 lb (348,748 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(16) *Other snappers combined (including cubera snapper, gray snapper, lane snapper, dog snapper, and mahogany snapper) complex*—(i) *Commercial sector*—(A) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the combined complex commercial ACL of 204,552 lb (92,783 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of the snappers in this complex is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the other snappers complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If the combined recreational landings for this snappers complex, as estimated by the SRD, exceed the recreational ACL of 882,388 lb (400,244 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL for this complex in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available,

that a reduction in the length of the following fishing season is unnecessary.

(17) *Gray triggerfish*—(i) *Commercial sector*—(A) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 305,262 lb (138,465 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of gray triggerfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 367,303 lb (166,606 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(18) *Wreckfish*—(i) *Commercial sector.* The ITQ program for wreckfish in the South Atlantic serves as the accountability measures for commercial wreckfish. The commercial ACL for wreckfish is equal to the commercial quota specified in § 622.42(f).

(ii) *Recreational sector.* If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL of 11,750 lb (5,330 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(19) *Blue runner*—(i) *Commercial sector*—(A) If commercial landings for blue runner, as estimated by the SRD, reach or are projected to reach the commercial ACL of 188,329 lb (85,425 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blue runner is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and blue runner are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for blue runner, as estimated by the SRD, exceed the recreational ACL of 1,101,612 lb (499,683 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(20) *Atlantic spadefish*—(i) *Commercial sector*—(A) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 36,476 lb (16,545 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic spadefish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and Atlantic spadefish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 246,365 lb (111,749 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(21) *Hogfish*—(i) *Commercial sector*—(A) If commercial landings for hogfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 48,772 lb (22,123 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of hogfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit.

This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If commercial landings exceed the ACL, and hogfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for hogfish, as estimated by the SRD, exceed the recreational ACL of 98,866 lb (44,845 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(22) *Red porgy*—(i) *Commercial sector*—(A) If commercial landings for red porgy, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(6), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the ACL, and red porgy are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for red porgy, as estimated by the SRD, exceed the recreational ACL of 197,652 lb (89,653 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(23) *Jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy complex*—(i) *Commercial sector*—(A) If commercial landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 35,129 lb (15,934 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, exceed the recreational ACL of 112,485 lb (51,022 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(24) *White grunt, sailor's choice, tomtate, and margate complex*—(i) *Commercial sector*—(A) If commercial landings for white grunt, sailor's choice, tomtate, and margate, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 214,624 lb (97,352 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of white grunt, sailor's choice, tomtate, and margate, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector.* If recreational landings for white grunt, sailor's choice, tomtate, and margate, as estimated by the SRD, exceed the recreational ACL of 562,151 lb (254,987 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction

in the length of the following fishing season is unnecessary.

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(e) *Atlantic dolphin*—(1) *Commercial sector.* If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,065,524 lb (483,314 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic dolphin is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(2) *Recreational sector.* If recreational landings for Atlantic dolphin, as estimated by the SRD, exceed the recreational ACL of 13,530,692 lb (6,137,419 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(f) *Atlantic wahoo*—(1) *Commercial sector.* If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 64,147 lb (29,097 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic wahoo is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(2) *Recreational sector.* If recreational landings for Atlantic wahoo, as estimated by the SRD, exceed the recreational ACL of 1,427,638 lb (647,566 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(g) *South Atlantic golden crab*—(1) *Commercial sector*—(i) If commercial landings for golden crab, as estimated by the SRD, reach or are projected to reach the ACL of 2 million lb (907,185 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the golden crab fishery for the remainder of the fishing year. On and after the effective date of such a notification, all harvest, possession, sale or purchase of golden crab in or from the South Atlantic EEZ is prohibited.

(ii) If commercial landings exceed the ACL, and golden crab are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) [Reserved]

* * * * *

■ 14. In Appendix A to part 622, Table 4 is revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes:
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks:
- Blue runner, *Caranx bartholomaei*
- Bar jack, *Caranx ruber*
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER—Continued

- Almaco jack, *Seriola rivoliana*
- Banded rudderfish, *Seriola zonata*

Ephippidae—Spadefishes:
- Spadefish, *Chaetodipterus faber*

Haemulidae—Grunts:
- Margate, *Haemulon album*
- Tomtate, *Haemulon aurolineatum*
- Sailor's choice, *Haemulon parrai*
- White grunt, *Haemulon plumieri*

Labridae—Wrasses:
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers:
- Black snapper, *Apsilus dentatus*
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray snapper, *Lutjanus griseus*
- Mahogany snapper, *Lutjanus mahogoni*
- Dog snapper, *Lutjanus jocu*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes:
- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

Percichthyidae—Temperate basses:
- Wreckfish, *Polyprion americanus*

Serranidae—Groupers:
- Rock hind, *Epinephelus adscensionis*
- Graysby, *Epinephelus cruentatus*
- Speckled hind, *Epinephelus drummondhayi*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Coney, *Epinephelus fulvus*
- Red hind, *Epinephelus guttatus*
- Goliath grouper, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Misty grouper, *Epinephelus mystacinus*
- Warsaw grouper, *Epinephelus nigritus*
- Snowy grouper, *Epinephelus niveatus*
- Nassau grouper, *Epinephelus striatus*
- Black grouper, *Mycteroperca bonaci*
- Yellowmouth grouper, *Mycteroperca interstitialis*
- Gag, *Mycteroperca microlepis*
- Scamp, *Mycteroperca phenax*
- Yellowfin grouper, *Mycteroperca venenosa*

Serranidae—Sea Basses:
- Black sea bass, *Centropristis striata*

Sparidae—Porgies:
- Grass porgy, *Calamus arctifrons*
- Jolthead porgy, *Calamus bajonado*
- Saucereye porgy, *Calamus calamus*
- Whitebone porgy, *Calamus leucosteus*
- Knobbed porgy, *Calamus nodosus*
- Red porgy, *Pagrus pagrus*
- Scup, *Stenotomus chrysops*

The following species are designated as ecosystem component species:
- Cottonwick, *Haemulon melanurum*
- Bank sea bass, *Centropristis ocyurus*
- Rock sea bass, *Centropristis philadelphica*
- Longspine porgy, *Stenotomus caprinus*
- Ocean triggerfish, *Canthidermis sufflamen*
- Schoolmaster, *Lutjanus apodus*

[FR Doc. 2012–6450 Filed 3–15–12; 8:45 am]

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To apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes. (Mar. 13, 2012; 126 Stat. 265)

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