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Presidential Documents

Title 3—

The President

Executive Order 13603 of March 16, 2012

National Defense Resources Preparedness

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

PART I—PURPOSE, POLICY, AND IMPLEMENTATION

Section 101. *Purpose*. This order delegates authorities and addresses national defense resource policies and programs under the Defense Production Act of 1950, as amended (the ''Act'').

Sec. 102. *Policy*. The United States must have an industrial and technological base capable of meeting national defense requirements and capable of contributing to the technological superiority of its national defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to the national defense needs of the United States.

Sec. 103. *General Functions*. Executive departments and agencies (agencies) responsible for plans and programs relating to national defense (as defined in section 801(j) of this order), or for resources and services needed to support such plans and programs, shall:

(a) identify requirements for the full spectrum of emergencies, including essential military and civilian demand;

(b) assess on an ongoing basis the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of the most critical resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(c) be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate resources and production capability, including services and critical technology, for national defense requirements;

(d) improve the efficiency and responsiveness of the domestic industrial base to support national defense requirements; and

(e) foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, services, components, and equipment to enhance industrial base efficiency and responsiveness.

Sec. 104. *Implementation*. (a) The National Security Council and Homeland Security Council, in conjunction with the National Economic Council, shall serve as the integrated policymaking forum for consideration and formulation of national defense resource preparedness policy and shall make recommendations to the President on the use of authorities under the Act.

(b) The Secretary of Homeland Security shall:

(1) advise the President on issues of national defense resource preparedness and on the use of the authorities and functions delegated by this order;

(2) provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance to agencies assigned functions under this order, developed in consultation with such agencies; and

(3) report to the President periodically concerning all program activities conducted pursuant to this order.

(c) The Defense Production Act Committee, described in section 701 of this order, shall:

(1) in a manner consistent with section 2(b) of the Act, 50 U.S.C. App. 2062(b), advise the President through the Assistant to the President and National Security Advisor, the Assistant to the President for Homeland Security and Counterterrorism, and the Assistant to the President for Economic Policy on the effective use of the authorities under the Act; and

(2) prepare and coordinate an annual report to the Congress pursuant to section 722(d) of the Act, 50 U.S.C. App. 2171(d).

(d) The Secretary of Commerce, in cooperation with the Secretary of Defense, the Secretary of Homeland Security, and other agencies, shall:

(1) analyze potential effects of national emergencies on actual production capability, taking into account the entire production system, including shortages of resources, and develop recommended preparedness measures to strengthen capabilities for production increases in national emergencies; and

(2) perform industry analyses to assess capabilities of the industrial base to support the national defense, and develop policy recommendations to improve the international competitiveness of specific domestic industries and their abilities to meet national defense program needs.

PART II—PRIORITIES AND ALLOCATIONS

Sec. 201. *Priorities and Allocations Authorities*. (a) The authority of the President conferred by section 101 of the Act, 50 U.S.C. App. 2071, to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

(1) the Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;

(2) the Secretary of Energy with respect to all forms of energy;

(3) the Secretary of Health and Human Services with respect to health resources;

(4) the Secretary of Transportation with respect to all forms of civil transportation;

(5) the Secretary of Defense with respect to water resources; and

(6) the Secretary of Commerce with respect to all other materials, services, and facilities, including construction materials.

(b) The Secretary of each agency delegated authority under subsection (a) of this section (resource departments) shall plan for and issue regulations to prioritize and allocate resources and establish standards and procedures by which the authority shall be used to promote the national defense, under both emergency and non-emergency conditions. Each Secretary shall authorize the heads of other agencies, as appropriate, to place priority ratings on contracts and orders for materials, services, and facilities needed in support of programs approved under section 202 of this order.

(c) Each resource department shall act, as necessary and appropriate, upon requests for special priorities assistance, as defined by section 801(l)

of this order, in a time frame consistent with the urgency of the need at hand. In situations where there are competing program requirements for limited resources, the resource department shall consult with the Secretary who made the required determination under section 202 of this order. Such Secretary shall coordinate with and identify for the resource department which program requirements to prioritize on the basis of operational urgency. In situations involving more than one Secretary making such a required determination under section 202 of this order, the Secretaries shall coordinate with and identify for the resource department which program requirements should receive priority on the basis of operational urgency.

(d) If agreement cannot be reached between two such Secretaries, then the issue shall be referred to the President through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism.

(e) The Secretary of each resource department, when necessary, shall make the finding required under section 101(b) of the Act, 50 U.S.C. App. 2071(b). This finding shall be submitted for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism. Upon such approval, the Secretary of the resource department that made the finding may use the authority of section 101(a) of the Act, 50 U.S.C. App. 2071(a), to control the general distribution of any material (including applicable services) in the civilian market.

Sec. 202. *Determinations*. Except as provided in section 201(e) of this order, the authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(a) by the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities;

(b) by the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(c) by the Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of Government.

Sec. 203. *Maximizing Domestic Energy Supplies*. The authorities of the President under section 101(c)(1)–(2) of the Act, 50 U.S.C. App. 2071(c)(1)–(2), are delegated to the Secretary of Commerce, with the exception that the authority to make findings that materials (including equipment), services, and facilities are critical and essential, as described in section 101(c)(2)(A) of the Act, 50 U.S.C. App. 2071(c)(2)(A), is delegated to the Secretary of Energy.

Sec. 204. *Chemical and Biological Warfare*. The authority of the President conferred by section 104(b) of the Act, 50 U.S.C. App. 2074(b), is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

PART III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. *Loan Guarantees*. (a) To reduce current or projected shortfalls of resources, critical technology items, or materials essential for the national defense, the head of each agency engaged in procurement for the national defense, as defined in section 801(h) of this order, is authorized pursuant to section 301 of the Act, 50 U.S.C. App. 2091, to guarantee loans by private institutions.

(b) Each guaranteeing agency is designated and authorized to: (1) act as fiscal agent in the making of its own guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act; and (2) contract with any Federal Reserve Bank to assist the agency in serving as fiscal agent.

(c) Terms and conditions of guarantees under this authority shall be determined in consultation with the Secretary of the Treasury and the Director of the Office of Management and Budget (OMB). The guaranteeing agency is authorized, following such consultation, to prescribe: (1) either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with such guarantee contracts; and (2) regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection therewith.

Sec. 302. *Loans*. To reduce current or projected shortfalls of resources, critical technology items, or materials essential for the national defense, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 302 of the Act, 50 U.S.C. App. 2092, to make loans thereunder. Terms and conditions of loans under this authority shall be determined in consultation with the Secretary of the Treasury and the Director of OMB.

Sec. 303. *Additional Authorities*. (a) To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303 of the Act, 50 U.S.C. App. 2093, to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for Government use or resale, and to make provision for the development of production capabilities, and for the increased use of emerging technologies in security program applications, and to enable rapid transition of emerging technologies.

(b) Materials acquired under section 303 of the Act, 50 U.S.C. App. 2093, that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if, in the judgment of the Secretary of Defense as the National Defense Stockpile Manager, such transfers are in the public interest.

Sec. 304. *Subsidy Payments*. To ensure the supply of raw or nonprocessed materials from high-cost sources, or to ensure maximum production or supply in any area at stable prices of any materials in light of a temporary increase in transportation cost, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303(c) of the Act, 50 U.S.C. App. 2093(c), to make subsidy payments, after consultation with the Secretary of the Treasury and the Director of OMB.

Sec. 305. *Determinations and Findings*. (a) Pursuant to budget authority provided by an appropriations act in advance for credit assistance under section 301 or 302 of the Act, 50 U.S.C. App. 2091, 2092, and consistent with the Federal Credit Reform Act of 1990, as amended (FCRA), 2 U.S.C. 661 *et seq*., the head of each agency engaged in procurement for the national defense is delegated the authority to make the determinations set forth in sections 301(a)(2) and 302(b)(2) of the Act, in consultation with the Secretary making the required determination under section 202 of this order; provided, that such determinations shall be made after due consideration of the provisions of OMB Circular A–129 and the credit subsidy score for the relevant loan or loan guarantee as approved by OMB pursuant to FCRA.

(b) Other than any determination by the President under section 303(a)(7)(b) of the Act, the head of each agency engaged in procurement for the national defense is delegated the authority to make the required determinations, judgments, certifications, findings, and notifications defined under section 303 of the Act, 50 U.S.C. App. 2093, in consultation with the Secretary making the required determination under section 202 of this order.

Sec. 306. *Strategic and Critical Materials*. The Secretary of Defense, and the Secretary of the Interior in consultation with the Secretary of Defense as the National Defense Stockpile Manager, are each delegated the authority of the President under section 303(a)(1)(B) of the Act, 50 U.S.C. App.

2093(a)(1)(B), to encourage the exploration, development, and mining of strategic and critical materials and other materials.

Sec. 307. *Substitutes*. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303(g) of the Act, 50 U.S.C. App. 2093(g), to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other resources to aid the national defense.

Sec. 308. *Government-Owned Equipment*. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303(e) of the Act, 50 U.S.C. App. 2093(e), to:

(a) procure and install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the Federal Government and to procure and install Government-owned equipment in plants, factories, or other industrial facilities owned by private persons;

(b) provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under sections 301, 302, or 303 of the Act, 50 U.S.C. App. 2091, 2092, 2093; and

(c) sell or otherwise transfer equipment owned by the Federal Government and installed under section 303(e) of the Act, 50 U.S.C. App. 2093(e), to the owners of such plants, factories, or other industrial facilities.

Sec. 309. *Defense Production Act Fund*. The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act, 50 U.S.C. App. 2094(f), and shall carry out the duties specified in section 304 of the Act, in consultation with the agency heads having approved, and appropriated funds for, projects under title III of the Act.

Sec. 310. *Critical Items*. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 107(b)(1) of the Act, 50 U.S.C. App. 2077(b)(1), to take appropriate action to ensure that critical components, critical technology items, essential materials, and industrial resources are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. Appropriate action may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

Sec. 311. *Strengthening Domestic Capability*. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 107(a) of the Act, 50 U.S.C. App. 2077(a), to utilize the authority of title III of the Act or any other provision of law to provide appropriate incentives to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States.

Sec. 312. *Modernization of Equipment*. The head of each agency engaged in procurement for the national defense, in accordance with section 108(b) of the Act, 50 U.S.C. App. 2078(b), may utilize the authority of title III of the Act to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of the Act. In considering title III projects, the head of each agency engaged in procurement for the national defense shall provide a strong preference for proposals submitted by a small business supplier or subcontractor in accordance with section 108(b)(2) of the Act, 50 U.S.C. App. 2078(b)(2).

PART IV—VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

Sec. 401. *Delegations*. The authority of the President under sections 708(c) and (d) of the Act, 50 U.S.C. App. 2158(c), (d), is delegated to the heads of agencies otherwise delegated authority under this order. The status of the use of such delegations shall be furnished to the Secretary of Homeland Security.

Sec. 402. *Advisory Committees*. The authority of the President under section 708(d) of the Act, 50 U.S.C. App. 2158(d), and delegated in section 401 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

Sec. 403. *Regulations*. The Secretary of Homeland Security, after approval of the Attorney General, and after consultation by the Attorney General with the Chairman of the Federal Trade Commission, shall promulgate rules pursuant to section 708(e) of the Act, 50 U.S.C. App. 2158(e), incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out. Such rules may be adopted by other agencies to fulfill the rulemaking requirement of section 708(e) of the Act, 50 U.S.C. App. 2158(e).

PART V—EMPLOYMENT OF PERSONNEL

Sec. 501. *National Defense Executive Reserve*. (a) In accordance with section 710(e) of the Act, 50 U.S.C. App. 2160(e), there is established in the executive branch a National Defense Executive Reserve (NDER) composed of persons of recognized expertise from various segments of the private sector and from Government (except full-time Federal employees) for training for employment in executive positions in the Federal Government in the event of a national defense emergency.

(b) The Secretary of Homeland Security shall issue necessary guidance for the NDER program, including appropriate guidance for establishment, recruitment, training, monitoring, and activation of NDER units and shall be responsible for the overall coordination of the NDER program. The authority of the President under section 710(e) of the Act, 50 U.S.C. App. 2160(e), to determine periods of national defense emergency is delegated to the Secretary of Homeland Security.

(c) The head of any agency may implement section 501(a) of this order with respect to NDER operations in such agency.

(d) The head of each agency with an NDER unit may exercise the authority under section 703 of the Act, 50 U.S.C. App. 2153, to employ civilian personnel when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of sections 501(e) and (f) of this order and shall not be redelegated.

(e) The head of an agency may activate an NDER unit, in whole or in part, upon the written determination of the Secretary of Homeland Security that an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency.

(f) Prior to activating the NDER unit, the head of the agency shall notify, in writing, the Assistant to the President for Homeland Security and Counterterrorism of the impending activation.

Sec. 502. *Consultants*. The head of each agency otherwise delegated functions under this order is delegated the authority of the President under sections 710(b) and (c) of the Act, 50 U.S.C. App. 2160(b), (c), to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section may not be redelegated.

PART VI—LABOR REQUIREMENTS

Sec. 601. *Secretary of Labor*. (a) The Secretary of Labor, in coordination with the Secretary of Defense and the heads of other agencies, as deemed appropriate by the Secretary of Labor, shall:

(1) collect and maintain data necessary to make a continuing appraisal of the Nation's workforce needs for purposes of national defense;

(2) upon request by the Director of Selective Service, and in coordination with the Secretary of Defense, assist the Director of Selective Service in development of policies regulating the induction and deferment of persons for duty in the armed services;

(3) upon request from the head of an agency with authority under this order, consult with that agency with respect to: (i) the effect of contemplated actions on labor demand and utilization; (ii) the relation of labor demand to materials and facilities requirements; and (iii) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;

(4) upon request from the head of an agency with authority under this order: (i) formulate plans, programs, and policies for meeting the labor requirements of actions to be taken for national defense purposes; and (ii) estimate training needs to help address national defense requirements and promote necessary and appropriate training programs; and

(5) develop and implement an effective labor-management relations policy to support the activities and programs under this order, with the cooperation of other agencies as deemed appropriate by the Secretary of Labor, including the National Labor Relations Board, the Federal Labor Relations Authority, the National Mediation Board, and the Federal Mediation and Conciliation Service.

(b) All agencies shall cooperate with the Secretary of Labor, upon request, for the purposes of this section, to the extent permitted by law.

PART VII—DEFENSE PRODUCTION ACT COMMITTEE

Sec. 701. *The Defense Production Act Committee*. (a) The Defense Production Act Committee (Committee) shall be composed of the following members, in accordance with section 722(b) of the Act, 50 U.S.C. App. 2171(b):

(1) The Secretary of State;

(2) The Secretary of the Treasury;

(3) The Secretary of Defense;

(4) The Attorney General;

(5) The Secretary of the Interior;

(6) The Secretary of Agriculture;

(7) The Secretary of Commerce;

(8) The Secretary of Labor;

(9) The Secretary of Health and Human Services;

(10) The Secretary of Transportation;

(11) The Secretary of Energy;

(12) The Secretary of Homeland Security;

(13) The Director of National Intelligence;

(14) The Director of the Central Intelligence Agency;

(15) The Chair of the Council of Economic Advisers;

(16) The Administrator of the National Aeronautics and Space Administration; and

(17) The Administrator of General Services.

(b) The Director of OMB and the Director of the Office of Science and Technology Policy shall be invited to participate in all Committee meetings and activities in an advisory role. The Chairperson, as designated by the President pursuant to section 722 of the Act, 50 U.S.C. App. 2171, may invite the heads of other agencies or offices to participate in Committee meetings and activities in an advisory role, as appropriate.

Sec. 702. *Offsets*. The Secretary of Commerce shall prepare and submit to the Congress the annual report required by section 723 of the Act, 50 U.S.C. App. 2172, in consultation with the Secretaries of State, the Treasury, Defense, and Labor, the United States Trade Representative, the Director of National Intelligence, and the heads of other agencies as appropriate. The heads of agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function.

PART VIII—GENERAL PROVISIONS

Sec. 801. *Definitions*. In addition to the definitions in section 702 of the Act, 50 U.S.C. App. 2152, the following definitions apply throughout this order:

(a) ''Civil transportation'' includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. ''Civil transportation'' also shall include direction, control, and coordination of civil transportation capacity regardless of ownership. ''Civil transportation'' shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly.

(b) ''Energy'' means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), solar, wind, other types of renewable energy, atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

(c) ''Farm equipment'' means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) ''Fertilizer'' means any product or combination of products that contain one or more of the elements nitrogen, phosphorus, and potassium for use as a plant nutrient.

(e) ''Food resources'' means all commodities and products, (simple, mixed, or compound), or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. ''Food resources'' also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

(f) ''Food resource facilities'' means plants, machinery, vehicles (including on farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) ''Functions'' include powers, duties, authority, responsibilities, and discretion.

(h) ''Head of each agency engaged in procurement for the national defense'' means the heads of the Departments of State, Justice, the Interior, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Aeronautics and Space Administration, the General Services Administration, and all other agencies with authority delegated under section 201 of this order.

(i) ''Health resources'' means drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

(j) ''National defense'' means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5195 *et seq.*, and critical infrastructure protection and restoration.

(k) ''Offsets'' means compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act, 22 U.S.C. 2751 *et seq.*, and the International Traffic in Arms Regulations, 22 C.F.R. 120.1–130.17.

(l) ''Special priorities assistance'' means action by resource departments to assist with expediting deliveries, placing rated orders, locating suppliers, resolving production or delivery conflicts between various rated orders, addressing problems that arise in the fulfillment of a rated order or other action authorized by a delegated agency, and determining the validity of rated orders.

(m) ''Strategic and critical materials'' means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material.

(n) ''Water resources'' means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except ''water resources'' does not include usable water that qualifies as ''food resources.''

Sec. 802. *General*. (a) Except as otherwise provided in section 802(c) of this order, the authorities vested in the President by title VII of the Act, 50 U.S.C. App. 2151 *et seq.*, are delegated to the head of each agency in carrying out the delegated authorities under the Act and this order, by the Secretary of Labor in carrying out part VI of this order, and by the Secretary of the Treasury in exercising the functions assigned in Executive Order 11858, as amended.

(b) The authorities that may be exercised and performed pursuant to section 802(a) of this order shall include:

(1) the power to redelegate authorities, and to authorize the successive redelegation of authorities to agencies, officers, and employees of the Government; and

(2) the power of subpoena under section 705 of the Act, 50 U.S.C. App. 2155, with respect to (i) authorities delegated in parts II, III, and section 702 of this order, and (ii) the functions assigned to the Secretary of the Treasury in Executive Order 11858, as amended, provided that the subpoena power referenced in subsections (i) and (ii) shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in section 802(a) of this order or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by section 802(a) of this order are authorities delegated by parts IV and V of this order, authorities in section 721 and 722 of the Act, 50 U.S.C. App. 2170–2171, and the authority with respect to fixing compensation under section 703 of the Act, 50 U.S.C. App. 2153.

Sec. 803. *Authority*. (a) Executive Order 12919 of June 3, 1994, and sections 401(3)–(4) of Executive Order 12656 of November 18, 1988, are revoked. All other previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

(b) Nothing in this order shall affect the authorities assigned under Executive Order 11858 of May 7, 1975, as amended, except as provided in section 802 of this order.

(c) Nothing in this order shall affect the authorities assigned under Executive Order 12472 of April 3, 1984, as amended.

Sec. 804. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
March 16, 2012.

[FR Doc. 2012–7019
Filed 3–21–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 56
Thursday, March 22, 2012

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2008–0124]

Tuberculosis in Cattle and Bison; State and Zone Designations; NM; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correcting amendment.

SUMMARY: We are correcting an error in the regulatory text of an interim rule that amended the bovine tuberculosis regulations by establishing two separate zones with different tuberculosis risk classifications for the State of New Mexico. The interim rule was published in the **Federal Register** on March 23, 2009 (74 FR 12055–12058, Docket No. APHIS–2008–0124).

DATES: *Effective Date:* March 22, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave, Bldg B, MSC 3E20, Ft. Collins, CO 80526; (970) 494–7378.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on March 23, 2009 (74 FR 12055–12058, Docket No. APHIS–2008–0124), we amended the bovine tuberculosis regulations by establishing two separate zones with different tuberculosis risk classifications for the State of New Mexico. (Please note, however, that the State of New Mexico, in a subsequent rule, was declared an accredited-free State and still holds that status). In our March 2009 rule, when we removed New Mexico from the list of modified accredited advanced States, we revised § 77.9(a) and introduced an error by referring to ''modified accredited States'' when we should have referred to ''modified accredited advanced States.'' This document corrects that error.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is corrected by making the following correcting amendment:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

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

■ 2. In § 77.9, paragraph (a) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: California.

* * * * *

Done in Washington, DC, this 16th day of March 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–6904 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0273; Directorate Identifier 2011–NM–149–AD; Amendment 39–16988; AD 2012–06–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports of loose pneumatic quick-disconnect unions on Goodrich pitot probes that might be the result of mis-torque of the affected unions at equipment manufacturing level. This AD adds airplanes to the AD applicability. We are issuing this AD to detect and correct loose unions on the pitot probes, which could lead to an air leak, resulting in incorrect total pressure measurement and consequent erroneous calibrated airspeed (CAS)/MACH parameters delivered to the flightcrew by the air data computer.

DATES: This AD becomes effective April 6, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of September 22, 2010 (75 FR 50871, August 18, 2010).

We must receive comments on this AD by May 7, 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.

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 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, FAA, Transport Airplane Directorate, 1601

Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On July 30, 2010, we issued AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010). That AD required actions intended to address an unsafe condition on certain Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes.

Since we issued AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010), we have certified two new models: Model A330–223F and –243F airplanes. We are issuing this AD to include them in the requirements of that earlier AD. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0138, dated July 20, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several reports have recently been received of loose pneumatic quick-disconnect unions on Goodrich pitot probes [part number] P/N 0851HL. These may be the result of mis-torque of the affected unions at equipment manufacturing level. Investigations are still on-going to determine the root cause(s).
>
> This condition, if not corrected, could lead to an air leak, resulting in incorrect total pressure measurement and consequent erroneous Calibrated Airspeed (CAS)/MACH parameters delivered by the Air Data Computer (ADC).
>
> As a precautionary measure, EASA issued Emergency AD 2009–0202 to require a torque check of the pneumatic quick-disconnect union on certain Goodrich P/N 0851HL pitot probes and corrective action, depending on findings.
>
> EASA AD 2009–0202–E was subsequently republished to remove an erroneous reference to Appendix A from the Reason section, as no Appendix was attached to this [EASA] AD. [EASA] AD 2009–0202 was later revised to exclude pitot probes marked with a red torque check-mark from the torque-check required by paragraph (2.1) of this [EASA] AD.
>
> This [EASA] AD retains the requirements of EASA AD 2009–0202R1 [which corresponds to FAA AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010)], which is superseded, and expands the Applicability to include the newly certified Model A330–223F and Model A330–243F aeroplanes.

Loss or fluctuation of indicated airspeed could result in misleading information provided to the flightcrew. If the quick-disconnect union fitted on the pitot probe is not adequately torqued, the corrective action includes applying torque. You may obtain further information by examining the MCAI in the AD docket.

Change to AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010)

We have revised certain headers throughout this AD. We have also revised the wording in paragraph (g)(3) of this AD. This revision does not change the intent of paragraph (g)(3) of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010).

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0273; Directorate Identifier 2011–NM–149–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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 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 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010), and adding the following new AD:

2012–06–07 Airbus: Amendment 39–16988. Docket No. FAA–2012–0273; Directorate Identifier 2011–NM–149–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 6, 2012.

(b) Affected ADs

This AD supersedes AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD; certificated in any category; all manufacturer serial numbers; with pitot probes having Goodrich part number (P/N) 0851HL, serial numbers 267328 through 270714 inclusive.

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(3) Model A340–541 and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports of loose pneumatic quick-disconnect unions on Goodrich pitot probes that might be the result of mis-torque of the affected unions at equipment manufacturing level. We are issuing this AD to detect and correct loose unions on the pitot probes, which could lead to an air leak, resulting in incorrect total pressure measurement and consequent erroneous calibrated airspeed (CAS)/MACH parameters delivered to the flightcrew by the air data computer (ADC).

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Restatement of Requirements of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010): Actions for Airplanes Other Than Models A330–223F and –243F

For all airplanes except Model A330–223F and –243F airplanes: At the time specified, do the following actions.

(1) Within 14 days after September 22, 2010 (the effective date of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010)): Perform a torque check of the pneumatic quick-disconnect union of each pitot probe having Goodrich P/N 0851HL, serial numbers 267328 through 270714 inclusive, to determine if the torque is adequate, in accordance with the instructions of the applicable service information specified in table 1 of this AD. Before further flight, do all applicable corrective actions in accordance with the instructions of the applicable service information specified in table 1 of this AD.

TABLE 1—AIRBUS SERVICE INFORMATION

Airbus all operators telex—	Revision—	Dated—
A330–34A3235 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321,–322, –323, –341, –342, and –343 airplanes).	02	March 1, 2010.
A340-34A4241 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes)	02	March 1, 2010.
A340–34A5074 (for Model A340–541 and –642 airplanes)	02	March 1, 2010.

(2) Within 30 days after performing the torque check required by paragraph (g)(1) of this AD, or within 30 days after September 22, 2010 (the effective date of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010), whichever occurs later: Report the torque check results to Airbus, including no findings, as specified in the instructions of the applicable service information listed in table 1 of this AD.

(3) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were done before September 22, 2010 (the effective date of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010), using the applicable service information listed in table 2 of this AD.

TABLE 2—AIRBUS CREDIT SERVICE INFORMATION

Airbus all operators telex—	Revision—	Dated—
A330–34A3235		September 10, 2009.
A330–34A3235	1	September 21, 2009.
A340–34A4241		September 10, 2009.
A340–34A4241	1	September 21, 2009.
A340–34A5074		September 10, 2009.
A340–34A5074	1	September 21, 2009.

(4) As of September 22, 2010 (the effective date of AD 2010–17–02, Amendment 39–16392 (75 FR 50871, August 18, 2010), no person may install a pitot probe having Goodrich P/N 0851HL, serial numbers 267328 through 270714 inclusive, on any airplane, unless the actions required by paragraph (g)(1) of this AD have been done; or an intact red torque check mark is visible on the interface of the pneumatic quick disconnect union and the union mount.

(h) New Requirements of This AD: Actions for Model A330–223F and –243F Airplanes

For Model A330–223F and –243F airplanes: At the time specified, do the following actions.

(1) Within 14 days after the effective date of this AD: Perform a torque check of the pneumatic quick-disconnect union of each pitot probe having Goodrich P/N 0851HL, serial numbers 267328 through 270714 inclusive, to determine if the torque is adequate, in accordance with the instructions of Airbus All Operators Telex A330–34A3235, Revision 02, dated March 1, 2010. Before further flight, do all applicable corrective actions, in accordance with Airbus All Operators Telex A330–34A3235, Revision 02, dated March 1, 2010.

(2) Within 30 days after performing the torque check required by paragraph (g)(1) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Report the torque check results to Airbus, including no findings, as specified in the instructions of Airbus All Operators Telex A330–34A3235, Revision 02, dated March 1, 2010.

(3) This paragraph provides credit for the actions required by paragraph (h)(1) of this AD, if those actions were done before the effective date of this AD using Airbus All Operators Telex A330–34A3235, dated September 10, 2009; or Airbus All Operators Telex A330–34A3235, Revision 1, dated September 21, 2009.

(4) As of the effective date of this AD, no person may install a pitot probe having Goodrich P/N 0851HL, serial numbers 267328 through 270714 inclusive, on any airplane, unless the actions required by paragraph (h)(1) of this AD have been done; or an intact red torque check mark is visible on the interface of the pneumatic quick disconnect union and the union mount.

(i) 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, FAA, Transport Airplane Directorate, 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.

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

(j) Related Information

Refer to European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0138, dated July 20, 2011, and the service information specified in table 1 of this AD, for related information.

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on September 22, 2010 (75 FR 50871, August 18, 2010):

(i) Airbus All Operators Telex A330–34A3235, Revision 02, dated March 1, 2010.

(ii) Airbus All Operators Telex A340–34A4241, Revision 02, dated March 1, 2010.

(iii) Airbus All Operators Telex A340–34A5074, Revision 02, dated March 1, 2010.

(2) For service information identified in this 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.*

(3) You may review copies of the 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.

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6773 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. FAA–2012–0056; Amdt. No. 67–21]

RIN 2120–AK00

Removal of the Requirement for Individuals Granted the Special Issuance of a Medical Certificate To Carry Their Letter of Authorization While Exercising Pilot Privileges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This rule removes a regulatory provision under Federal Aviation Administration (FAA) medical certification standards intended, in part, to require that individuals granted the Special Issuance of a Medical Certificate (Authorization) have their letter of Authorization in their physical possession or readily accessible on the aircraft while exercising pilot privileges. The FAA imposed this regulatory provision in 2008 to respond to a 2007 International Civil Aviation Organization (ICAO) adverse audit finding regarding endorsement of FAA certificates. The FAA is not aware of any individuals affected by the standard who have had to produce their letter of Authorization for any civil aviation authorities during the 3-year period the rule has been in effect. For this reason, and because affected individuals find the standard burdensome given that other longstanding FAA operational requirements already mandate that pilots carry their medical certificate when exercising pilot privileges, the FAA has identified this regulation as one that can be removed under Executive Order 13563 of January 18, 2011: ''Improving Regulation and Regulatory Review.'' While this action removes the burden for affected individuals to carry their medical letter of Authorization, long-standing requirements under FAA operational standards requiring individuals to carry FAA certificates while exercising pilot privileges remain unchanged.

DATES: Effective July 20, 2012.

Submit comments on or before May 21, 2012. If adverse comment is received, the FAA will publish a timely withdrawal in the **Federal Register**.

ADDRESSES: You may send comments identified by docket number FAA–2012–0056 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change,

to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Ms. Judi Citrenbaum, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9689; email *Judi.M.Citrenbaum@faa.gov*.

For legal questions concerning this action, contact Sabrina Jawed, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Sabrina.Jawed@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Chapter 447, Sections 44701, 44702 and 44703. Under Section 44701 the Administrator has the authority to prescribe regulations and minimum standards for practices, methods and procedures necessary for safety in air commerce and national security. Under Section 44702 the Administrator has the authority to issue certificates. More specifically, under Section 44703(b)(C) the Administrator has the authority to decide terms necessary to ensure safety in air commerce, including terms on the duration of certificates and tests of physical fitness. This rule removes a regulatory provision that requires individuals granted the Special Issuance of a Medical Certificate to have their letter of Authorization in their physical possession or readily accessible on the aircraft while exercising pilot privileges. For this reason, the proposed change is within the scope of the FAA's authority and is a reasonable and necessary exercise of the FAA's statutory obligations.

The Direct Final Rule Procedure

The FAA is adopting this action without prior notice and prior public comment as a direct final rule. Individuals granted the Special Issuance of a Medical Certificate are required to carry sufficient documentation validating their medical fitness to fly, but should not have the additional burden of carrying their letter of Authorization. The FAA has identified this action as burden-relieving under Executive Order 13563 of January 18, 2011, entitled ''Improving Regulation and Regulatory Review,'' because affected individuals no longer will have to carry their letter of Authorization with them when exercising pilot privileges. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received, and confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

See the ''Additional Information'' section for information on how to comment on this direct final rule and how the FAA will handle comments received. The **ADDRESSES** section contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Overview of Final Rule

As discussed in greater detail throughout this document, this final rule relieves individuals vetted through the FAA special-issuance medical certification process from having to carry their FAA-issued letter of Authorization with them when exercising pilot privileges. Individuals granted special-issuance medical certification are issued a time-limited FAA medical certificate along with a letter of Authorization. Collectively both documents comprise an individual's Authorization. According to FAA records, the FAA issued 28,423 Authorizations in the 2011 fiscal year. Under Executive Order 13563 of January 18, 2011, the FAA identified this action as burden-relieving for affected individuals. This rule imposes no cost on affected pilots. It imposes only a one-time, minor administrative cost to the FAA associated with removing a reference on the FAA medical certificate (FAA Form 8500–9) to the current standard. This rule removes only the requirement to carry the letter of Authorization. It does not remove or modify longstanding operational requirements under Title 14 of the Code of Federal Regulations, Part 61, § 61.3, regarding documentation that must be in an individual's personal possession or readily accessible in the aircraft when exercising pilot privileges.

II. Background

In November 2007, ICAO, the aviation wing of the United Nations, audited the civil aviation safety oversight system of the United States as part of the ICAO Universal Safety Oversight Audit Program (USOAP). ICAO USOAP teams assess whether signatory states, such as the United States, meet international civil aviation standards. Civil aviation licensing and credentialing system compliance with international standards is a main focus area of these audits. As a result of the 2007 audit, the United States received a finding specifying that certain U.S. licenses are not ''systematically endorsed as stipulated by Article 39 [1] of the Chicago

[1] Article 39 of the Chicago Convention of 1944 stipulates the following: ''Any person holding a

Continued

Convention, when the holders do not satisfy in full the conditions laid down in the international standard with respect to the class of licence (sic) or certificate of holders.''

U.S. pilots who fly internationally must comply with international aviation standards. In cases where ICAO standards may exceed U.S. standards, U.S. pilots take measures to make sure they conform with ICAO standards for international operations. For example, U.S. pilots serving as second-in-command on a U.S.-registered aircraft must hold an FAA commercial pilot certificate and an FAA second-class medical certificate. ICAO standards require commercial pilots to meet ICAO Class 1 medical assessment standards, which include electrocardiography provisions. While ICAO Class 1 medical assessment standards and FAA first-class medical standards include electrocardiography provisions, FAA second-class medical standards do not. When exercising privileges internationally, therefore, U.S. second-in-command pilots would obtain an FAA first-class medical certificate to compensate for the electrocardiography difference. As specified in this example, U.S. pilots exercising privileges internationally take measures necessary to conform to ICAO standards; therefore, the FAA has not found cause to ''systematically'' endorse medical certificates of U.S. pilots. Explanations provided at the time of the audit in this regard, however, were not sufficient to avoid ICAO's finding for corrective action.

Because Article 39 of the Chicago Convention provides that endorsements may be placed on ''or attached to'' a license, the focus of the corrective action plan was limited to a small population of pilots who, due to special medical considerations, are granted a time-limited, special-issuance medical certificate along with a letter of Authorization. These individuals, the FAA determined, are most likely to be most impacted by the ICAO finding. The letter of Authorization serves as an addendum to the special-issuance medical certificate for affected individuals, and provides information regarding conditions affected individuals must meet in order to exercise pilot privileges. The FAA determined that a corrective action requiring, in part, that individuals carry their Authorization when exercising pilot privileges would be more acceptable than developing and implementing burdensome new licensing procedures for all pilots.

Therefore, on July 24, 2008, the FAA issued a final rule (73 FR 43059) that amended § 67.401 to add new paragraph (j) requiring individuals holding an Authorization to carry it with them when exercising pilot privileges. In addition to this regulatory requirement, the FAA also revised the FAA medical certificate (FAA Form 8500–9) not only to note this requirement for affected medical certificate holders, but also to add more elaborate regulatory references and instructions for all pilots, including instructions to consult the U.S. Aeronautical Information Publication, which contains a listing of U.S. differences with ICAO Standards and Recommended Practices, when flying internationally. By adding several important regulatory references and instructions on the medical certificate, as suggested during the ICAO audit, the FAA met the intent of the ICAO audit finding. The regulatory references and instructions added to the medical certificate will remain as enumerated on FAA medical certificates, only the ''Note'' making reference to the letter of Authorization will be removed by this action.

III. Discussion of the Direct Final Rule

Before an Authorization is granted, applicants must be thoroughly vetted through a lengthy and rigorous FAA medical certification process. As specified under § 67.401, individuals with specifically disqualifying medical conditions are medically certificated only when they can demonstrate to the satisfaction of the Federal Air Surgeon that the duties authorized by the class of medical certificate applied for can be performed without endangering public safety for the period of time the certificate is held. To demonstrate ability, a special medical flight test, practical test, extensive medical evaluation, or any combination of these may be required. An individual's operational experience and any medical facts that may affect the ability of the individual to perform airman duties is taken into consideration before medical certification is granted.

With such a viable and rigorous special-issuance medical certification process, the FAA did not anticipate an ICAO audit finding that would result in further regulatory requirements. As such, adding § 67.401 (j) to require affected individuals to carry their letter of Authorization was not an expected outcome of the ICAO audit, but was put forth as a negotiated compromise in the audit corrective action plan. The § 67.401 (j) requirement has not been well-received by affected U.S. pilots. The FAA continues to receive complaints from affected U.S. pilots that the full force of the requirement is overly burdensome as well as invasive. It was imposed, however, out of concern that traditional enumeration placed on U.S. medical certificates under the FAA's special-issuance medical certification process might not be detailed enough for affected U.S. pilots during a ramp check in a foreign country, for example. Having the letter of Authorization readily available was deemed to be in the affected pilots' best interest. With 3 years of experience under the rule, however, the FAA is not aware that any civil aviation authority has requested any affected U.S. pilot to produce a letter of Authorization.

In August 2010, the FAA informed ICAO that the U.S. would prefer to remove this requirement, and received no objection to this request. In addition, in April 2011, the FAA conducted a briefing on this matter for a member of the ICAO Air Navigation Commission, indicating that, unless objections were raised, the United States would proceed to revise the regulation to make it less burdensome. The series of new regulatory references and instructions added to all U.S. medical certificates provides sufficient information to medical certificate holders regarding the need for compliance with international standards when exercising pilot privileges.

This action, therefore, removes paragraph (j) of § 67.401 and deletes the ''Note'' on FAA medical certificates under the header ''Conditions of Issue,'' which directs affected individuals to carry their letter of Authorization. This action does not affect longstanding FAA operational requirements under § 61.3 regarding FAA certificates that must be carried while exercising pilot privileges, including FAA medical certificates.

Paragraph (j) of § 67.401 no longer will apply once this rule becomes effective. This means that the ''Note'' under the regulatory reference to § 67.401 (j) listed under the ''Conditions of Issue'' on an individual's existing FAA medical certificate no longer will be necessary. This does not mean that the FAA needs or intends to re-issue medical certificates. It will be acceptable for the FAA medical certificate to reference this ''Note'' until an individual's medical certificate is renewed. The FAA will begin using medical certificates with updated ''Conditions of Issue'' that do not include reference to the removed

license who does not satisfy in full the conditions laid down in the international standard relating to the class of license or certificate which he holds shall have endorsed on or attached to his licence (sic) a complete enumeration of the particulars in which he does not satisfy such conditions.''

standard as soon as possible following the effective date of the rule.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this direct final rule. The reasoning for this determination follows:

A. Regulatory Evaluation

Benefit

The benefit of this direct final rule will be that it relieves approximately 28,000 airmen vetted through the FAA special-issuance medical certification process from having to carry their FAA-issued letter of Authorization with them when they fly.

Costs

This rule removes a regulatory provision that requires airmen who have been granted the Special Issuance of a Medical Certificate to have their letter of Authorization in their physical possession or readily accessible on the aircraft while exercising pilot privileges. The only cost associated with this rule is FAA manpower cost associated with making a revision to the FAA medical certificate (FAA Form 8500–9) to remove a reference to the standard that is being removed.

We estimate that it will take an FAA information technology program manager approximately 8 hours to make the revision to the FAA medical certificate. With a burdened labor rate of $115, the total cost is $923 ($863 present value).

The FAA has, therefore, determined that this final rule is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

This rule is burden-relieving; it imposes no cost on affected pilots. Consequently, as the Acting FAA Administrator I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this direct final rule and determined that it will primarily have only a domestic impact and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This rule is burden-relieving. No information collection is associated with the removal of the requirement for affected individuals to carry their letter of Authorization or with the removal of certain notation on medical certificates. The Office of Management and Budget (OMB) has approved the collection of information associated with medical certification in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control Number 2120–0034, valid through August 31, 2014.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Prior to

adopting this action, the FAA consulted with ICAO counterparts in the ICAO Aviation Medicine Section and on the ICAO Air Navigation Commission to inform them this action is being taken. The FAA did not receive any objections to removing this regulatory provision.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The Agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

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

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

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 67

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 67—MEDICAL STANDARDS AND CERTIFICATION

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

§ 67.401 [Amended]

■ 2. Amend § 67.401 by removing paragraph (j).

Issued in Washington, DC, on March 8, 2012.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–6886 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0013; Airspace Docket No. 12–ASO–13]

Amendment of Class D and E Airspace; Brooksville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D and E airspace at Hernando County Airport, Brooksville, FL. The geographic coordinates of the airport are being adjusted to coincide with the FAA's aeronautical database, which shows the correct coordinates. This does not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC March 22, 2012.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA is adjusting the geographic location of Hernando County Airport, Brooksville, FL, to be in concert with the FAAs aeronautical database, which shows the correct coordinates. This is an administrative change and does not affect the boundaries or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the geographic coordinates in the legal description of Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, for Hernando County Airport, Brooksville, FL. This update brings the geographic coordinates of the airport in concert

with the FAA's Aeronautical Products database.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that 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 United States Code. 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.

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 Hernando County Airport, Brooksville, FL.

Lists 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 Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of 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 5000 Class D airspace.

* * * * *

ASO FL D Brooksville, FL [Amended]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending upward from the surface up to and including 1,500 feet MSL within a 5.1-mile radius of the Hernando County Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO FL E2 Brooksville, FL [Amended]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending from the surface within a 5.1-mile radius of Hernando County Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO FL E5 Brooksville, FL [Amended]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Hernando County Airport.

Issued in College Park, Georgia, on March 14, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–6840 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1337; Airspace Docket No. 11–AEA–23]

Establishment of Class E Airspace; Bellefonte, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bellefonte, PA, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Bellefonte Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On December 22, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace 700 feet above the surface at Bellefonte, PA (76 FR 79564). 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 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Bellefonte Airport, Bellefonte, PA. This enhances the safety and management of IFR operations at the airport.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that 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 United States Code. 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.

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 establishes Class E airspace at Bellefonte Airport, Bellefonte, PA.

Lists 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 Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Bellefonte, PA [New]

Bellefonte Airport, PA
(Lat. 40°53′08″ N., long. 77°48′59″ W.)

That airspace extending upward from 700 feet above the surface within a 15-mile radius of Bellefonte Airport.

Issued in College Park, Georgia, on March 14, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–6844 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 7829]

RIN 1400–AD10

Amendment to the International Traffic in Arms Regulations: Sri Lanka

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to add another exception to the license denial policy toward Sri Lanka. This change allows for exports to Sri Lanka for assistance for aerial and maritime surveillance.

DATES: *Effective date:* This rule is effective March 22, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Part 126, Sri Lanka.

SUPPLEMENTARY INFORMATION: Section 126.1(n) is amended to implement section 7046(d) of Public Law 112–74, which provides that the policy of denial for defense export licenses for Sri Lanka will not apply to assistance for aerial and maritime surveillance.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Sri Lanka, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately. *See* 5 U.S.C. 808(2).

Regulatory Flexibility Act

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize

litigation, establish clear legal standards, and reduce burden.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Sections 7045 and 7046, Pub. L. 112–74.

■ 2. Section 126.1 is amended by revising paragraph (n) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(n) *Sri Lanka.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Sri Lanka, except that a license or other approval may be issued, on a case-by-case basis, for humanitarian demining and aerial or maritime surveillance.

* * * * *

Dated: March 13, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–6822 Filed 3–21–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2010–0007; T.D. TTB–101; Re: Notice No. 110]

RIN 1513–AB58

Labeling Imported Wines With Multistate Appellations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is amending the wine labeling regulations to allow the labeling of imported wines with multistate appellations of origin. This amendment provides treatment for imported wines similar to that currently available to domestic wines bearing multistate appellations. It also provides consumers with additional information regarding the origin of these wines.

DATES: *Effective Date:* This final rule is effective April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone (202) 453–1039 ext. 275, or email *WineRegs@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Use of Appellations of Origin on Wine Labels

Part 4 of the TTB regulations (27 CFR part 4) sets forth standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.25 of the TTB regulations (27 CFR 4.25) sets forth rules regarding the use of appellations of origin. An appellation of origin for an American wine is defined in § 4.25(a)(1) as:

- The United States;
- A State;
- Two or no more than three States which are all contiguous;
- A county;
- Two or no more than three counties in the same State; or
- A viticultural area as defined in § 4.25(e).

Section 4.25(b)(1) states that an American wine is entitled to an appellation of origin other than a multicounty or multistate appellation, or a viticultural area, if, among other requirements, at least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated. Use of an appellation of origin comprising two or no more than three States which are all contiguous is allowed under § 4.25(d) if:

- All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;
- The wine has been fully finished (except for cellar treatment pursuant to 27 CFR 4.22(c) and blending that does not result in an alteration of class or type under 27 CFR 4.22(b)) in one of the labeled appellation States; and
- The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

An appellation of origin for imported wine is defined in § 4.25(a)(2) as:

- A country;
- A state, province, territory, or similar political subdivision of a country equivalent to a state or county; or
- A viticultural area (which is defined in § 4.25(e)(1)(ii) in the case of imported wine).

Section 4.25(b)(2) states that an imported wine is entitled to an appellation of origin other than a viticultural area if: ''(1) At least 75 percent of the wine is derived from fruit or agricultural products grown in the area indicated by the appellation of origin; and (2) the wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.'' There is no provision in the current TTB regulations for the use of multistate appellations on imported wines.

The existing regulations regarding appellations of origin, including the provisions permitting multistate appellations for American wines, were

promulgated by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), in T.D. ATF–53 (43 FR 37672), published August 23, 1978. The preamble of T.D. ATF–53 stated that the regulations provided ''a comprehensive scheme for appellation of origin labeling'' resulting in ''more accurate information being provided to consumers about wine origin.'' According to T.D. ATF–53, multistate appellations were suggested by domestic wine industry members. ATF decided to allow multistate appellations ''in order to permit greater flexibility in appellation of origin labeling,'' provided that all the grapes come from the named States, that the percentage of grapes from each State be shown on the label, and that the wine conform to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation. There was no discussion in T.D. ATF–53 regarding multistate appellations for foreign wines, including why multistate appellations were limited to American wines.

Australian Petition

The Australian Wine and Brandy Corporation (AWBC), a quasi-governmental authority responsible for, among other activities, regulating the exportation of Australian wine, submitted a petition to TTB to amend § 4.25(a)(2) to permit the labeling of Australian wines with multistate appellations. This proposal would allow an Australian wine imported into the United States to bear an appellation comprised of two or three Australian States, such as ''Victoria-New South Wales-South Australia.'' According to the AWBC petition, Australian regulations allow wines to be labeled with up to three Geographical Indications (officially defined wine regions) provided that 95 percent of the product is from the listed regions, the regions are listed in descending order of their proportions in the blend, and a minimum of 5 percent of the wine is from each listed region. Australian Geographical Indications include Australian States, which are roughly equivalent to American States.

Notice of Proposed Rulemaking and Comments Received

On November 3, 2010, TTB published Notice No. 110 in the **Federal Register** at 75 FR 67663 proposing to amend § 4.25 to permit the use of multistate appellations for imported wines. The notice proposed, among other requirements, that the regions named in multistate appellations be contiguous and that 100 percent of the wine be derived from fruit or other agricultural products grown in those regions. These requirements mirror the current requirements, discussed above, for multistate appellations on American wines.

TTB received four comments in response to Notice No. 110. The commenters were: (1) An Australian winery; (2) the Australian Department of Foreign Affairs and Trade; (3) New Zealand Winegrowers, a trade organization; and (4) the Government of New Zealand. All four commenters generally support the proposal to allow multistate appellation labeling on imported wines. However, three of the commenters express concerns about certain aspects of the proposal.

The Australian Department of Foreign Affairs and Trade expresses concern about the requirement that all the named areas be contiguous, a requirement that duplicates that for American wine contained in 27 CFR 4.25(d). The commenter states that this requirement would preclude Tasmania, an island, from being included in a multistate appellation. Further, in contrast to the 100 percent rule proposed by TTB, the commenter notes that Australian regulations allow up to three Australian States and Territories to be included on a label so long as 95 percent of the product is from the listed regions and at least 5 percent of the wine is from each listed region. This commenter suggests that the United States engage in further discussion on this issue.

The New Zealander Winegrowers states that contiguity would be a difficult requirement for them due to their geography because large islands constitute most of the country.

Finally, the Government of New Zealand notes the absence of a ''contiguous'' requirement in New Zealand law and also points out that its rules for appellations of more than one region require that only 85 percent of the wine be from the named regions rather than 100 percent as proposed by TTB. The commenter states that their preferred approach is that foreign wines with multistate appellations be labeled according to the rules of the country of origin.

TTB Analysis

In Notice 110, TTB stated its intention to provide treatment for imported wines bearing multistate appellations similar to that which is currently available for domestic wines bearing multistate appellations. The Bureau believes that the proposed regulatory amendments would achieve that goal and provide for fair and equitable treatment of imported and domestic wines, including the requirement questioned by some commenters that multistate appellations be contiguous for foreign wines. Contiguity is already required for domestic wines; therefore TTB is requiring it for foreign wines in this rule as well.

The Bureau and its predecessor have long interpreted the term ''contiguous,'' as it appears in 27 CFR 4.25(a)(1)(iii), to include two States which actually touch at a point along a common boundary, or three States which are connected throughout in an unbroken sequence. See ATF Ruling 91–1 (1991), *http://www.ttb.gov/rulings/2001-2.htm.* For example, North Dakota and South Dakota are contiguous, as are South Dakota and Nebraska. North Dakota, South Dakota and Nebraska are also contiguous for the purpose of using three States in a multistate appellation on a wine label, even though North Dakota and Nebraska, without South Dakota, are not contiguous with one another and could not be used together on a wine label. A similar interpretation of the term contiguous will be applied to foreign appellations, where two states, territories or other applicable political subdivisions should actually touch at a point along a common boundary and where three such subdivisions are connected throughout in an unbroken sequence.

For land boundaries, TTB expects the contiguous requirement to operate equally for foreign and domestic wines. However, as some commenters point out, island geography and maritime borders present additional considerations for determining whether or not two states, territories or other applicable political subdivisions are contiguous.

In the domestic context under existing regulations, TTB still looks for the two States separated by water to actually touch at a point along their common maritime border. For example, the States of Rhode Island and New York are considered contiguous (although separated by water and sharing no common land boundary), because they actually touch at a point along a common maritime border in Block Island Sound; whereas the States of Indiana and Wisconsin are not considered contiguous, even though also separated by a body of water common to both (Lake Michigan). In the latter example, Indiana and Wisconsin are not contiguous because they do not actually touch at a point along a common maritime border within Lake Michigan, as the maritime borders of the

States of Illinois and Michigan intervene instead.

In the international context, after consultation with the U.S. Department of State, TTB recognizes that maritime borders within the territorial seas of a nation are determined by the domestic laws of that nation and that subnational (e.g., state) borders are delineated by other nations in myriad ways or for a variety of purposes that may differ from how maritime borders are delineated in the United States. (The United States grants to its coastal States a right to the territorial seas of the United States to a certain limit, thereby establishing common maritime borders between States similar to those on land). TTB believes it would be inappropriate to strictly apply its interpretation of the term contiguous for domestic wines, particularly as to the issue as to what constitutes a common maritime border, to foreign wines without considering the position of the foreign nation concerning its own subnational maritime borders. Therefore, foreign states, territories, or other applicable political subdivisions may be considered contiguous, for purposes of this rule, so long as the label applicant, in conjunction with the government of the country of origin, can demonstrate to TTB that the political subdivisions sharing a common maritime border actually touch at a point along such border for a nationally- and/or internationally-recognized purpose (e.g., a common maritime border for fishing or mineral rights jurisdiction).

TTB will consider the facts and evidence submitted by the label applicant and government of the country of origin on a case-by-case basis to establish whether the multiple appellations are contiguous. Foreign governments are also encouraged to provide TTB with information demonstrating the contiguity of their various states, territories, or other applicable political subdivisions, in order to assist TTB with its label review in advance of TTB's receipt of label applications that would be subject to this requirement. Lack of information supporting the contiguity of a multistate appellation could result in TTB having to reject a label application.

TTB Finding

For the reasons set forth above, TTB believes it would be appropriate to adopt the proposed regulatory changes contained in Notice 110. In addition, TTB has noted a technical error in § 4.25(a)(1)(v): The word ''States'' should be singular, not plural. Accordingly, this document removes the second ''s'' from ''States'' to correct the error.

Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. The amendments merely provide optional, additional flexibility in wine labeling decisions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR part 4, Labeling and Advertising of Wine, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. Section 4.25 is amended:

■ a. In paragraph (a)(1)(v), by removing the word ''States'' and adding in its place the word ''State'';

■ b. By revising paragraph (a)(2), the introductory text of paragraph (b)(2), and paragraph (d); and

■ c. In paragraph (e)(1)(ii), by removing the words ''(other than an appellation defined in paragraph (a)(2)(i) or (a)(2)(ii))'' and adding, in their place, the words ''(other than an appellation defined in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii))''.

The revisions read as follows:

§ 4.25 Appellations of origin.

(a) * * *

(2) *Imported wine.* An appellation of origin for imported wine is:

(i) A country;

(ii) A state, province, territory, or similar political subdivision of a country equivalent to a state or county;

(iii) Two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a state which are all contiguous; or

(iv) A viticultural area (as defined in paragraph (e) of this section).

(b) * * *

(2) *Imported wine.* An imported wine is entitled to an appellation of origin other than a multistate appellation, or a viticultural area, if:

* * * * *

(d) *Multistate appellations.* (1) *American wine.* An appellation of origin comprising two or no more than three States which are all contiguous may be used, if:

(i) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;

(ii) The wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and

(iii) The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(2) *Imported wine.* An appellation of origin comprising two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a state which are all contiguous may be used if:

(i) All of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or political subdivision equivalent to a state is shown on the label with a tolerance of plus or minus 2 percent; and

(ii) The wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

* * * * *

Signed: July 27, 2011.

John J. Manfreda,

Administrator.

Approved: September 29, 2011.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2012–6930 Filed 3–21–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0007; T.D. TTB–102; Re: Notice No. 121]

RIN 1513–AB82

Establishment of the Wisconsin Ledge Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau establishes the approximately 3,800 square-mile ''Wisconsin Ledge'' viticultural area in northeast Wisconsin. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Wisconsin Ledge Petition

TTB received a petition from Steven J. DeBaker of Trout Springs Winery in Green Leaf, Wisconsin, to establish the ''Wisconsin Ledge'' American viticultural area. The proposed viticultural area contains approximately 3,800 square miles, with approximately 320 acres of vineyards in at least 14 commercially-producing vineyards and wineries, and an additional 70 acres projected to be planted within the next two years. A map that was submitted with the petition shows that the commercial vineyards and wineries are geographically dispersed throughout the proposed viticultural area. The proposed Wisconsin Ledge viticultural area lies in Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Dodge, Fond du Lac, Calumet, Outagamie, and Brown Counties of northeast Wisconsin and does not overlap, or otherwise involve, any existing or proposed viticultural area.

The proposed Wisconsin Ledge viticultural area is largely surrounded by water, including Lake Winnebago, the Fox River, Green Bay, and Lake Michigan. According to the petition, the region is heavily affected by the lasting effects of ancient glacial activity and the moderating marine influence of the surrounding bodies of water.

TTB published Notice No. 121 in the **Federal Register** on October 14, 2011 (76 FR 63852), proposing to establish the Wisconsin Ledge viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed area are its geology, geography, climate, hydrology, and soils. The notice also included a comparison of the distinguishing features to the surrounding area. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, see Notice No. 121.

Notice of Proposed Rulemaking and Comments Received

In Notice No. 121, TTB solicited comments on the accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. The comment period closed on December 13, 2011.

TTB received 29 comments in response to Notice No. 121. The commenters included 12 self-identified wine industry members, 2 Wisconsin wine industry associations, a Wisconsin State representative, 2 local planning commissions, a local environmental group, a local science museum, and 10 commenters who did not list any affiliation. All of the comments expressed support for the proposed Wisconsin Ledge viticultural area.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 121, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 3,800 square mile Wisconsin Ledge viticultural area, as proposed in Notice No. 121. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of the TTB regulations, TTB establishes the ''Wisconsin Ledge'' viticultural area in Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Dodge, Fond du Lac, Calumet, Outagamie, and Brown Counties of northeast Wisconsin, effective 30 days from the publication date of this document.

Boundary Description

In this final rule, TTB made minor editorial changes to clarify some of the language in the written boundary description published as part of Notice No. 121. See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and TTB lists them below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Wisconsin Ledge,'' is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the new regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Wisconsin Ledge'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use ''Wisconsin Ledge'' as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.224 to read as follows:

§ 9.224 Wisconsin Ledge.

(a) *Name.* The name of the viticultural area described in this section is ''Wisconsin Ledge''. For purposes of part 4 of this chapter, ''Wisconsin Ledge'' is a term of viticultural significance.

(b) *Approved maps.* The 11 United States Geological Survey 1:100,000 scale topographic maps used to determine the boundary of the Wisconsin Ledge viticultural area are titled:

(1) Door County, Wisconsin, 1986;

(2) Kewaunee County, Wisconsin, 1985;

(3) Manitowoc County, Wisconsin, 1986;

(4) Sheboygan County, Wisconsin, 1986;

(5) Ozaukee County, Wisconsin, 1986;

(6) Washington County, Wisconsin, 1986;

(7) Dodge County, Wisconsin, 1986;

(8) Fond du Lac County, Wisconsin, 1986;

(9) Calumet County, Wisconsin, 1986;

(10) Outagamie County, Wisconsin, 1985; and

(11) Brown County, Wisconsin, 1984.

(c) *Boundary.* The Wisconsin Ledge viticultural area is located in northeast Wisconsin in Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Dodge, Fond du Lac, Calumet, Outagamie, and Brown Counties. The boundary of the Wisconsin Ledge viticultural area is as described below:

(1) The beginning point is shown on the Door County map and is located at the northern end of the Door Peninsula at the point where the R28E and R29E common boundary line intersects with the Lake Michigan shoreline at Gills Rock in Hedgehog Harbor. From the beginning point, proceed easterly along the Lake Michigan shoreline to Northport and then continue southerly along the meandering shoreline, passing in succession over the Kewaunee, Manitowoc, and Sheboygan County maps and onto the Ozaukee County map to the intersection of the Lake Michigan

shoreline with a line drawn as an easterly extension of County Highway T (locally known as Lakefield Road), east of Cedarburg; then

(2) Proceed west on County Highway T through Cedarburg, crossing onto the Washington County map, passing over the North Western railroad single track, and continuing to the intersection of County Highway T with U.S. Route 45; then

(3) Proceed north on U.S. Route 45 to the intersection of U.S. Route 45 with State Road 60, south of Hasmer Lake; then

(4) Proceed westerly on State Road 60, crossing onto the Dodge County map, to the intersection of State Road 60 with State Road 26 at Casper Creek, north-northwest of Clyman Junction; then

(5) Proceed northerly on State Road 26 to the intersection of State Road 26 with U.S. Route 151, north of Plum Creek in Chester Township; then

(6) Proceed northerly on U.S. Route 151, passing through Waupun onto the Fond du Lac County map, and continue northeasterly into the City of Fond du Lac to the point where U.S. Route 151 turns east, and, from that point, continue north in a straight line to the south shore of Lake Winnebago in Lakeside Park; then

(7) Proceed easterly along the southern shoreline of Lake Winnebago, then northerly along the eastern shoreline, crossing onto the Calumet County map, to the intersection of the shoreline with a line drawn as a southerly extension of County Highway N at Highland Beach in Harrison Township; then

(8) Proceed north on County Highway N, crossing onto the Outagamie County map, to the intersection of County Highway N with the Fox River; then

(9) Proceed northeasterly (downstream) along the Fox River, crossing onto the Brown County map, until the Fox River meets the southern shoreline of Green Bay; and then

(10) Proceed northeasterly along the eastern shoreline of Green Bay, passing over the Kewaunee County map and onto the Door County map, to Sister Bay, where the eastern shoreline of Green Bay becomes the shoreline of Lake Michigan, and then continue northeasterly along the shoreline of Lake Michigan, returning to the beginning point.

Signed: February 8, 2012.

John J. Manfreda,

Administrator.

Approved: March 5, 2012.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2012–6927 Filed 3–21–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Docket ID DOD–2012–OS–0027]

Privacy Act of 1974; Implementation; Correction

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments; correction.

SUMMARY: On March 16, 2012, the Department of Defense published a direct final rule titled Privacy Act of 1974; Implementation. This rule corrects a system identifier error in the amended text.

DATES: Effective May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, (571) 372–0485.

SUPPLEMENTARY INFORMATION: On March 16, 2012, the Department of Defense published a direct final rule titled Privacy Act of 1974; Implementation. Subsequent to the publication of that direct final rule, Department of Defense discovered that the system identifier ''DMDC 13'' in § 311.8(c)(17) should have read ''DMDC 11''.

Correction

In the final rule (FR Doc. 2012–6167) published on March 16, 2012 (77 FR 15587–15588), make the following correction:

§ 311.8 [Corrected]

■ On page 15588, in § 311.8, in the first column, in paragraph (c)(17), ''DMDC 13, Investigative Records Repository'' should read ''DMDC 11, Investigative Records Repository''.

Dated: March 19, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6925 Filed 3–21–12; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R02–OAR–2012–0032, FRL–9645–8]

Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution, submitted to EPA by the Puerto Rico Environmental Quality Board on July 13, 2011. This action approves revisions to Rules 102, 111, 115, 116, 609 and Appendix A. Generally the revisions to the regulations involve administrative changes which improve the clarity of the rules contained in the Commonwealth's Implementation Plan and Operating Permits Program. They do not change the emission limitations nor add significant new requirements.

DATES: This direct final rule is effective on May 21, 2012 without further notice, unless EPA receives adverse comment by April 23, 2012. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2012–0032, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Werner.Raymond@epa.gov.*
- *Fax:* (212) 637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2012–0032. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Region 2 Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION: On July 13, 2011, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP). In the context of the Clean Air Act (CAA or Act), the Commonwealth of Puerto Rico is regarded as a state. Generally the changes to the PRRCAP involve administrative changes which improve the clarity of the rules. They do not change the emission limitations nor add significant new requirements.

I. Revisions to the PRRCAP

Most of the revisions consist of clarification type changes such as public law or code cites or word changes. A summary of the various revisions is given below. EPA has determined that the revisions improve the effectiveness of the PRRCAP and will have no negative effect on maintaining the national ambient air quality standards.

A. General Provisions

Rule 102, ''Definitions'' and Appendix A, ''Hazardous Air Pollutants—Section 112(b) of the Clean Air Act''

PREQB revised two definitions in the revised Rule 102. They include the definition for ''Volatile Organic Compounds (VOC)'' and the definition for ''Applicable Rule and Regulation.'' PREQB revised the VOC definition to make it consistent with EPA's definition for VOC found in 40 CFR section 51.100. The revision to the ''Applicable Rule and Regulation'' definition includes a change to the citation of Puerto Rico's Environmental Public Policy Act. It was previously referenced in the definition as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

PREQB also revised Appendix A to the PRRCAP. PREQB revised Appendix A to make it consistent with EPA's amended list of hazardous air pollutants in CAA section 112. Appendix A is referenced in the federally approved definition of Rule 102—''Hazardous Air Pollutant'' of the PRRCAP.

Rule 111, ''Applications, Hearings, Public Notice'' and Rule 115, ''Punishment''

PREQB revised Rules 111 and 115 in order to change the citation to Puerto Rico's Environmental Public Policy Act. It was previously referenced in Rules 111 and 115 as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

Rule 116, ''Public Nuisance''

PREQB revised Rule 116 in order to revise the citation of the applicable Puerto Rico code. Rule 116 previously referenced Article 329 of the Penal Code of Puerto Rico and this reference was replaced with Article 277 of the Civil Prosecution Code of Puerto Rico.

None of the revisions to Rules 102, 111, 115, 116 or Appendix A of the PRRCAP involve changing the stringency of these provisions. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements; therefore, EPA is approving these revised rules. However, with regard to the revisions to the definition of VOC in Rule 102 and Appendix A, which are intended to achieve consistency with the CAA Section 112 list of chemicals, it is important to note that the CAA Section 112 list could potentially be revised by EPA and, for federal enforcement purposes, EPA will rely on the federally issued CAA Section 112 list.

B. Other Provisions

Rule 609, ''Permit Review''

PREQB also submitted a revision to Rule 609(g), ''Confidential information'' of the PRRCAP on July 13, 2011. The revisions to Rule 609 include the citation for Puerto Rico's Environmental Public Policy Act. It was previously referenced as Law No. 9 of June 18, 1970. That Law has subsequently been replaced by Law No. 416 of September 22, 2004. Rule 609 was never approved into the federally enforceable SIP for Puerto Rico since the provisions of Rule 609 are relevant to the Title V of the Act requirements. The federally approved SIP reflects only Title I of the Act requirements and not Title V. Therefore, EPA is not approving the revisions to Rule 609 into the federally enforceable Puerto Rico SIP. However, EPA is approving the revision to Rule 609 as part of the federally approved Puerto Rico Title V operating permits program. Rule 609 and the Puerto Rico Title V program were previously approved by EPA on February 26, 1996 (61 FR 7073).

II. Conclusion

The revisions to Rules 102, 111, 115, 116 and Appendix A of the PRRCAP, effective February 18, 2011, are generally administrative changes, which improve the clarity of the rules. They do not change emission limitations nor add significant new requirements. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements. EPA is therefore approving revised PRRCAP Rules 102, 111, 115, 116 and Appendix A into the SIP. In addition, EPA is approving revised Rule 609 of the PRRCAP, effective February 18, 2011, as part of the federally approved Puerto Rico Title V operating permits program.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 21, 2012 without further notice unless the Agency receives adverse comments by April 23, 2012.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 30, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

Parts 52 and 70, 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. 7401–7671q.

Subpart BBB—Puerto Rico

■ 2. Section 52.2720 is amended by revising paragraphs (c)(27)(ii), (c)(36)(i)(A)(*1*) and (c)(37)(i)(A) and adding paragraph (c)(38) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

* * * * *

(27) * * *

(ii) July 24, 1980, providing a comprehensive set of adopted regulations, entitled ''Regulation for the Control of Atmospheric Pollution.'' Rules 115 and 116 revised in 2011; see paragraph 38 of this section.

* * * * *

(36) * * *

(i) * * *

(A) * * *

(*1*) Amendments to Part I, ''General Provisions'', Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, and 121, effective September 28, 1995. Rule 111 revised in 2011; see paragraph 38 of this section.

* * * * *

(37) * * *

(i) * * *

(A) Rule 102 Definitions, Guaynabo PM_{10} Maintenance Area; filed with the Secretary of State April 28, 2009; effective May 28, 2009. Rule 102 revised in 2011; see paragraph 38 of this section.

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(38) Revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution submitted on July 13, 2011 by the Puerto Rico Environmental Quality Board.

(i) Rule 102, Definitions, filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 37.

(ii) Rule 111, Applications, Public Hearings and Public Notice; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 36.

(iii) Rule 115, Penalties; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 27.

(iv) Rule 116, Public Nuisance; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 27.

(v) Appendix A, Hazardous Air Pollutants—Section 112(b) of the Clean Air Act; filed with the Secretary of State January 19, 2011; effective February 18, 2011.

■ 3. Section 52.2723 is amended by revising the entries for Rules 102, 103, 111, 113, 115 through 117 and adding a category for appendices and an entry for Appendix A to read as follows:

§ 52.2723 EPA-approved Puerto Rico regulations.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
* * *		* *	* *
Rule 102—Definitions	2/18/11	3/22/12, [Insert page number where the document begins].	Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.
Rule 103—Source Monitoring, Recordkeeping, Reporting, Sampling and Testing Methods.	9/28/95	1/22/97, 62 FR 3213.	
* * *		* *	* *
Rule 111—Applications, Public Hearings and Public Notice.	2/18/11	3/22/12, [Insert page number where the document begins].	Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.
Rule 113—Closure of a Source	9/28/95	1/22/97, 62 FR 3213.	
* * *		* *	* *
Rule 115—Penalties	2/18/11	3/22/12, [Insert page number where the document begins].	Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.
Rule 116—Public Nuisance	2/18/11	3/22/12, [Insert page number where the document begins].	Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.
Rule 117—Overlapping or Contradictory Provisions.	9/28/95	1/22/97, 62 FR 3213.	
* * *		* *	* *
APPENDICES			
Appendix A, Hazardous Air Pollutants—Section 112(b) of the Clean Air Act.	2/18/11	3/22/12, [Insert page number where the document begins].	

PART 70—[AMENDED]

■ 4. The authority citation for part 70 continues to read as follows:

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

■ 5. Appendix A to part 70 is amended by adding paragraph (c) to the entry for Puerto Rico to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Puerto Rico

* * * * *

(c) The Puerto Rico Environmental Quality Board submitted a revision to its operating permits program on July 13, 2011. The revision includes a change to the Puerto Regulations for the Control of Atmospheric Pollution, Rule 609(g), ''Confidential Information,'' effective on February 18, 2011. The reference to Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.

* * * * *

[FR Doc. 2012–6922 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[EPA–HQ–SFUND–2010–0586; FRL–9651–1]

RIN 2050–AF08

Emergency Planning and Notification; Emergency Planning and List of Extremely Hazardous Substances and Threshold Planning Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is taking final action to revise the manner for applying the threshold planning quantities (TPQs) for those

extremely hazardous substances (EHSs) that are non-reactive solid chemicals in solution. This revision allows facilities subject to the Emergency Planning requirements that have a non-reactive solid EHS in solution, to first multiply the amount of the solid chemical in solution on-site by 0.2 before determining if this quantity equals or exceeds the lower published TPQ. This change is based on data that shows less potential for non-reactive solid chemicals in solution to remain airborne and dispersed beyond a facility's fence line in the event of an accidental release. Previously, EPA assumed that 100% of non-reactive solid chemicals in solution could become airborne and dispersed beyond the fenceline in the event of an accidental release.

DATES: This rule is effective April 23, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2010–0586. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically *http://www.regulations.gov/* or in hard copy at the Superfund 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, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Kathy Franklin, Office of Emergency Management, Mail Code 5104A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002; telephone number: (202) 564–7987; fax number: (202) 564–2625; email address: *franklin.kathy@epa.gov*. You may also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington, DC metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC metropolitan area). You may wish to visit the Office of Emergency Management (OEM) Internet Web site at *www.epa.gov/emergencies/content/epcra*.

SUPPLEMENTARY INFORMATION: Here are the contents of today's preamble.

I. General Information
A. Who is affected by this final rule?
B. What is the statutory authority for this final rule?
C. List of Abbreviations and Acronyms
D. What is the background for this final rule?
E. Summary of Proposed Rule of April 15, 2011
II. Summary of This Action
A. What is the scope of this final rule?
B. Applying a TPQ for an EHS Solid in Solution
III. Response to Comments on April 15, 2011 Proposed Rule
A. Comments Supporting Changes
B. Comments Supporting Changes With Reservations
C. Comments Opposing Changes
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Energy Effects
I. National Technology Transfer and Advancement Act (''NTAA'')
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Who is affected by this final rule?

Entities that would be affected by this final rule are those organizations and facilities subject to section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations found in 40 CFR part 355, subpart B—Emergency Planning. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 355. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the statutory authority for this final rule?

This final rule is being issued under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), (SARA). The Agency relies on EPCRA section 328 for general rulemaking authority.

C. List of Abbreviations and Acronyms

ARF—Airborne Release Fraction
CAS—Chemical Abstracts Service
CBI—Confidential Business Information
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CFR—Code of Federal Regulations
EHS—Extremely Hazardous Substance
EO—Executive Order
EPA—Environmental Protection Agency
EMA—Emergency Management Agency
EPCRA—Emergency Planning and Community Right-to-Know Act of 1986
FR—Federal Register
HCS—Hazard Communication Standard
ICR—Information Collection Request
LEPC—Local Emergency Planning Committee
LOC—Level of Concern
MSDS—Material Safety Data Sheet
NFPA—National Fire Protection Association
NRC—National Response Center
NTTAA—National Technology Transfer and Advancement Act of 1995
OMB—Office of Management and Budget
OEM—Office of Emergency Management (within EPA)

D. What is the background of this final rule?

Title III of SARA (EPCRA) establishes authorities for emergency planning and preparedness, emergency release notification reporting, community right-to-know reporting, and toxic chemical release reporting. It is intended to encourage state and local planning for, and response to releases of hazardous substances and to provide the public, local governments, fire departments, and other emergency officials with information concerning potential chemical hazards present in their communities. The implementing regulations for emergency planning, emergency release notification, and the chemicals subject to these regulations are codified in 40 CFR part 355. The implementing regulations for community right-to-know reporting (or hazardous chemical reporting) are codified in 40 CFR part 370.

Subtitle A of EPCRA establishes the framework for local emergency planning. The statute requires that EPA publish a list of extremely hazardous substances (EHSs). The EHS list was established by EPA to identify chemical substances that could cause serious irreversible health effects from accidental releases (52 FR 13378, April 22, 1987). The Agency was also directed to establish a threshold planning quantity (TPQ) for each extremely hazardous substance.

Under EPCRA section 302, a facility that has an EHS on-site in excess of its TPQ must notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC), as well as participate in local emergency planning activities. Under EPCRA section 304, the facility owner or operator must report accidental releases of EHSs and hazardous substances listed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 40 CFR 302.4 in excess of the reportable quantity (RQ) to their LEPC and SERC, and to the National Response Center if the chemical is a CERCLA hazardous substance.

Under ECPRA sections 311 and 312, facilities that have either (1) a hazardous chemical present at or above 10,000 pounds or (2) an EHS present at or above its TPQ or 500 pounds—whichever is the lesser, are required to submit an Emergency and Hazardous Chemical Inventory form and a Material Safety Data Sheet (MSDS) for that chemical to their SERC, LEPC and local fire department. A chemical is hazardous as defined under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Act (OSHA).

In a July 26, 1990 **Federal Register** notice (55 FR 30632), EPA added definitions necessary to designate Indian Tribes as the implementing authority of the emergency planning reporting and notification requirements and hazardous inventory reporting requirements. Under 40 CFR 355.61 and 40 CFR 370.66, when a facility is located in Indian Country, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the tribe is located. Such a Tribal Emergency Response Commission is known as a TERC.

The purpose of the EHSs list is to focus initial efforts in the development of state and local contingency plans. Inclusion of a chemical on the EHSs list does not mean state or local communities should ban or otherwise restrict use of a listed chemical. Rather, such identification indicates a need for the community to undertake a program to investigate and evaluate the potential for accidental exposure associated with the production, storage or handling of the chemical at a particular site and develop a chemical emergency response plan around those risks.

1. Regulatory Background

The list of EHSs and their TPQs are codified in 40 CFR part 355, Appendices A and B. EPA first published the EHSs list and corresponding TPQs along with the methodology for determining the TPQs as an interim final rule on November 17, 1986 (51 FR 41570). In the final rule of April 22, 1987 (52 FR 13378), EPA made a number of revisions. Among other things, the final rule republished the EHSs list, added four new chemicals, and revised the methodology for some TPQs. The final rule also defined TPQs for EHS solids in solution, based on comments on the interim final rule. Details of the methodology used in determining whether to list a substance as an EHS and deriving the TPQs are found in the November 1986 and April 1987 **Federal Register** notices and in the technical support documents,[1] all found in the docket for this rulemaking.

2. Development of Existing TPQs

The TPQs were initially assigned based on a ranking scheme using a Level of Concern (LOC) based on acute toxicity and the potential for airborne dispersion. The TPQ methodology is described in detail in the ''Threshold Planning Quantities Technical Support Document'' dated April 7, 1987, which can be found in the docket for this rulemaking. For each chemical, a ranking index was calculated which equaled the LOC divided by an air dispersion factor (V). Chemicals were assigned TPQs of 1, 10, 100, 500, 1000 or 10,000 pounds based on the order of magnitude ranges of the index values. For gases, V = 1, while for liquids, V was based on a volatilization model using the molecular weight and boiling point of the chemical.

Solid EHS chemicals with a particle size less than 100 microns in diameter, molten solids, solids in solution, and solids with a National Fire Protection Association (NFPA) reactivity rating of 2, 3, or 4 were assigned a V equal to 1. If the EHS solid did not have a particle size less than 100 microns, was not molten or handled in solution form, and did not have an NFPA reactivity rating of 2, 3, or 4, then the EHS chemical was assigned a TPQ of 10,000 pounds, which corresponds to the highest index value. Solids with a NFPA reactivity rating of 2, 3, or 4 are denoted with an ''a'' in the Notes column of the EHSs list. For solids in molten form, before applying the TPQ, the amount of chemical on-site at any time is multiplied by an adjustment factor of 0.3 to conservatively account for the maximum volatilization of the spilled molten substance that is likely to take place.

3. Changes to EHS List and TPQs

EPA has since amended the EHSs list and deleted 51 chemicals. Ten chemicals were deleted based on the request of petitioners and the remaining 41 chemicals were deleted as a result of Agency review. The chemicals were deleted because they did not meet the toxicity criteria for the list and/or were originally listed in error. Petitions requesting the deletion of two chemicals, paraquat dichloride (which is discussed below) and isophorone diisocyante have been denied. Isophorone diisocyanate was not deleted from the EHSs list because its inhalation toxicity met the EHSs listing criteria.

EPA has also changed the TPQs for some of the EHSs. In the April 22, 1987 final rule, EPA reduced the TPQs for 36 substances, while it raised the TPQs for 12 substances based on updated acute toxicity data. Since then, EPA has lowered the TPQ for muscimol because of a typographical error in a prior rulemaking; EPA has raised the TPQ for isophorone diisocyanate because it was mistakenly based on a physical state of reactive solid, when it is actually a liquid; and EPA has denied a petition to raise the TPQs for azinphos methyl and fenamiphos.

4. Petition for Paraquat Dichloride

Paraquat dichloride was originally listed as paraquat with a CAS No. 1910–42–5 on the final EHSs list. ICI Americas submitted a petition in October 1989 that requested the Agency to remove paraquat from the EHSs list or alternatively, revise the TPQ. On October 12, 1994 (59 FR 51816), EPA changed the listed chemical name from paraquat to paraquat dichloride to match the CAS Number and denied the petition to delete paraquat or modify the TPQ, because the inhalation toxicity of paraquat dichloride met the EHS listing criteria. Further explanation of EPA's rationale for denying the petition can be found in the October 12, 1994 final rule (59 FR 51816) and in the April 15, 2011 proposed rule (76 FR 21299) for modifying the application of TPQs for EHS solids in solution.

5. Zeneca's Request To Reconsider the Paraquat Dichloride Petition

In November 1999, Zeneca (formerly ICI Americas) requested that EPA reconsider either removing paraquat dichloride from the EHSs list or raising

[1] *Threshold Planning Quantities Technical Support Document,* 4–7–87. *Chemicals That Were Assigned Threshold Planning Quantities Different From the Calculated Index Value,* 4–7–87. *Reactive Solids Whose Threshold Planning Quantities Should Be Less than 10,000 Pounds,* 4–7–87. *Changes Made to Threshold Planning Quantities Between Proposed Rule and Final Rule,* 4–7–87. *Technical Support Document for Determination of Levels of Concern,* 11–11–86.

its TPQ. Zeneca claimed that the form of the chemical used in inhalation toxicity tests (temporarily atomized powder under laboratory conditions) is not relevant data to use for listing paraquat dichloride. Zeneca believed that it was highly unlikely that inhalable particles or vapors of paraquat dichloride could become airborne during an accidental release. Zeneca did not agree with the rationale EPA used to assign a TPQ of 10 pounds to paraquat dichloride, which is only manufactured, processed and used in solution form. Zeneca claimed that EPA did not explain why a greater potential for airborne dispersion for solids in solution exists as opposed to liquid chemicals.

On October 11, 2000, Syngenta (formerly Zeneca) filed an action in U.S. District Court for the District of Columbia under the Administrative Procedures Act seeking judicial review of EPA's decisions regarding paraquat dichloride. In this complaint, Syngenta requested EPA to either delete paraquat dichloride from the EHSs list or raise its TPQ. In their complaint, Syngenta did not agree with EPA's rationale to assign a lower TPQ of 10 pounds to paraquat dichloride, which is only manufactured, processed and used in solution form. Syngenta also claimed that EPA did not explain why it assumed a greater potential for airborne dispersion for solids in solution, as opposed to liquid chemicals. In addition, Syngenta argued that paraquat dichloride solution is basically a non-volatile salt dissolved in water, and that the physical and chemical characteristics of many solids like paraquat dichloride limit their capacity to become airborne.

On January 23, 2003, EPA filed a Motion for Voluntary Remand in order to reconsider the petition. The court granted EPA's motion and dismissed Syngenta's complaint on January 31, 2003. By order of February 24, 2003, the court denied Syngenta's Motion to Amend Judgment. EPA again reviewed the request to delete paraquat dichloride and/or to raise its TPQ. In a November 21, 2003, letter to the petitioner, EPA reaffirmed its denial to delete paraquat dichloride from the EHSs list. EPA concluded that the acute toxicity of paraquat dichloride meets the criteria for listing it as an EHS chemical. In the same letter to the petitioner (available in the docket), however, EPA agreed to consider a revision to the TPQ for paraquat dichloride in the context of a proposed rule to amend the TPQ for all EHS chemicals handled as solids in solution.

E. Summary of Proposed Rule of April 15, 2011

In the proposed rule of April 15, 2011 (76 FR 21299), EPA proposed that facilities who are subject to the emergency planning notification requirements under section 302 of EPCRA, and who have a non-reactive solid EHS in solution on-site, should multiply the amount of the non-reactive solid chemical (in solution form) by 0.2 before determining if this reduced quantity equals or exceeds the lower published TPQ. This change was proposed based on data in the literature that shows less potential for non-reactive solid chemicals in solution to remain airborne beyond a facility's fenceline in the event of an accidental release. This change affects not just paraquat dichloride solution, but all EHS solid chemicals in solution, except reactive solids. The application of a reducing factor to the amount of non-reactive EHS solids in solution before comparison to its TPQ is similar to how facilities apply the TPQs for EHSs that are molten solids, except that for molten solids the factor is 0.3.[2] EPA also defined *solution* to be any aqueous or organic solutions, slurries, viscous solutions, suspensions, emulsions, or pastes.

However, this change will not apply to the 12 solid EHS chemicals that are reactive solids (denoted with ''a'' in the ''Notes'' column in Appendix A or B of 40 CFR part 355). Reactive solids are more likely than other solids to be dispersed into the air due to the energy or heat created from their reactivity with water or air. The explanation for not assigning a 10,000 pounds TPQ to each of the reactive solids is discussed in the document, ''Reactive Solids Whose Threshold Planning Quantities Should Be Less Than 10,000 Pounds,'' April 7, 1987, which can be found in the docket to this rulemaking.

Previously, EPA had assumed that 100% of non-reactive EHS solid chemicals in solution could become airborne in the event of an accidental release. Review of the literature data for accidental releases of liquid aerosols shows that no more than 20% of the release is expected to remain airborne. The data is from a 1994 U.S. Department of Energy (USDOE) report[3] (available in the docket) on the airborne release fraction (ARF) from experimental liquid aerosol releases involving metal salt solutions for a wide variety of release scenarios. EPA based the 0.2 factor on the scenario with the highest release potential in order best to serve the purposes of emergency planning. A summary of the USDOE aerosol release scenarios with the highest ARFs are listed in a table in the April 15, 2011 proposed rule (76 FR 21299). A more detailed discussion, along with the alternative approaches considered, can be found in the April 15, 2011 proposed rule and in the ''Technical Support Document for Revised TPQ Method for EHS Solids in Solution'' in the docket for this rule.

EPA's revised TPQ methodology for non-reactive EHS solids in solution and supporting data was peer reviewed and the technical support document was revised based on peer review comments. The results of the peer review and response to peer review comments are found in a separate document, ''Peer Review of Technical Support Document for Revised TPQ Method for EHS Solids in Solution,'' which is available in the docket to this rulemaking. A summary of the peer reviewer's comments and EPA responses to them are presented in the April 15, 2011 proposed rule (76 FR 21299).

II. Summary of This Action

A. What is the scope of this final rule?

This final rule revises the manner for applying the TPQ for the 157 non-reactive EHS chemicals that are handled as solids in solution. These 157 chemicals appear with two TPQs, (the higher TPQ is 10,000 pounds) in Appendix A and B of 40 CFR part 355. The 12 solid EHS chemicals that are reactive solids are noted by footnote ''a'' in Appendix A and B of 40 CFR part 355, and are not affected by this final rule. Definitions of reactive and non-reactive solids, which were explained in the preamble of the proposed rule, have also been added to the regulations in 40 CFR 355.61 for greater clarity.

Solid EHSs (except reactive solids) have a TPQ of 10,000 pounds or a specified lower TPQ, for particular forms. For purposes of complying with the emergency planning notification requirements of section 302 of EPCRA, facilities should multiply the amount of EHS chemical handled as a non-reactive solid in solution on-site by 0.2 before determining if this amount equals or exceeds the established lower TPQ. If the amount of the non-reactive EHS solids in solution on-site multiplied by 0.2 does not equal or exceed the lower

[2] The amount present on-site for EHSs that are in a molten form is calculated by multiplying the weight of the chemical by 0.3 to determine if the lower TPQ is met or exceeded.

[3] *DOE Handbook, Airborne Release Fractions/Rates and Respirable Fractions for Nonreactor Nuclear Facilities.* December 1994. U.S. Department of Energy, Washington, DC 20585. DOE–HDBK–3010–94. Volume I—Analysis of Experimental Data and Volume II—Appendices.

TPQ for that solid EHS, then the facility is not subject to the EPCRA section 302 emergency planning notification requirements for that substance. This amount includes only the weight of the chemical and not the solvent or other chemicals in solution. The amount of non-reactive EHS solids in solution may be determined by multiplying the weight percent of the EHS solids in solution in a particular container by the weight of the total solution. Solutions include aqueous or organic solutions, slurries, viscous solutions, suspensions, emulsions, and pastes.

Additionally, EPA has also revised the regulations for 40 CFR 355.16(c) to be applicable only to molten *non-reactive* solids. That is, the factor of 0.3 to be multiplied by the amount of a molten solid on-site before comparing to the lower TPQ should only be used for non-reactive solids in molten form, not reactive solids in molten form. Reactive solids are more likely to be dispersed into the air due to the energy or heat created from their reactivity with water or air and their TPQs were developed taking these factors into account.

Additionally, the methodology of applying TPQs for non-reactive EHS solids in solution or non-reactive molten solids does not affect the reporting requirements for sections 311 and 312 of EPCRA (40 CFR part 370). Regulations under 40 CFR 370.10 state that an EHS is present at a facility if the ''amount of EHS present at any one time'' is equal or greater than 500 pounds or the TPQ, whichever is lower. The reducing factor of 0.2 for non-reactive EHS solids in solution or (0.3 for non-reactive EHS molten solids) is not to be used for compliance with hazardous chemical reporting. Therefore, EPA has amended the text of 40 CFR 355.16 (b) and (c) to clarify that the reduction in quantity for the amount of non-reactive EHS solids in solution and for the amount of non-reactive EHS solid in molten form present at a facility does not apply for reporting requirements under 40 CFR 370.10, which covers MSDS and hazardous chemical inventory reporting. That is, facilities must not use the reduction in quantity on-site to determine the ''amount present at one time'' for reporting under 40 CFR 370.10.

The reason why the reducing factors are to be used for emergency planning notification under 40 CFR part 355 and not under hazardous chemical reporting under 40 CFR part 370 are explained below. Emergency planning notification under section 302 helps LEPCs identify those facilities whose accidental releases pose risks to the surrounding community so they can develop emergency plans that identify the location and number of affected populations, evacuation or shelter-in-place procedures, etc. On the other hand, sections 311 and 312 of EPCRA require submission of MSDSs and an on-site inventory of hazardous chemicals to help emergency responders assess how to respond to an emergency release or fire. In particular, responders need the amounts, manner of storage and locations of the chemical on-site, the chemical and physical properties, hazard ratings, toxicity information and incompatibilities of the chemical, as well as measures needed to contain the spill or fire at the facility in order to know how to respond to an emergency. In addition, they need to know what type of protective equipment is needed to protect them from exposure, not only airborne, but also dermal exposure.

Emergency release notification requirements under EPCRA section 304 also are not affected by this final action. Section 304 requires facilities to notify the community emergency coordinator for the LEPC of any area likely to be affected by the release and the SERC of any area likely to be affected by the release (defined in 40 CFR 355.61) at or above the reportable quantity (RQ) of any EHS or CERCLA hazardous substance. If the chemical released is a CERCLA hazardous substance, the release must also be reported to the National Response Center (NRC). The RQ is not the same as the TPQ. TPQs are based on acute mammalian toxicity and potential for airborne dispersion. RQs, on the other hand, are developed using several criteria, including aquatic toxicity, mammalian toxicity, ignitability, reactivity, chronic toxicity, potential carcinogenicity, biodegradation, hydrolysis, and photolysis (50 FR 13468, April 4, 1985).

B. Applying a TPQ for an Non-Reactive EHS Solid in Solution

Facilities with a non-reactive EHS solid in solution should apply the 0.2 factor only to the amount of EHS solid present, not the total weight of the solution. As an example, a facility has 4,000 pounds of a solution of 37% by weight paraquat dichloride on-site. Therefore, this solution contains 1,480 pounds of paraquat dichloride (0.37 × 4,000 pounds). The facility would multiply 1,480 pounds by 0.2, which equals 296 pounds. This amount is then compared to the TPQ for paraquat dichloride, which is 10 pounds. Because this amount exceeds the 10 pounds TPQ, the facility is required to comply with the emergency notification requirements of section 302 of EPCRA. As another example, a facility has 10 gallons (gal) of a solution of 37% by weight paraquat dichloride on-site. The density of the solution is 9.33 pounds per gallon. Therefore, this solution contains 34.5 pounds of paraquat dichloride (10 gal × 9.33 lb/gal × 0.37). The facility would multiply 34.5 pounds by 0.2, which equals 6.9 pounds. This amount is then compared to the TPQ for paraquat dichloride, which is 10 pounds. Because this amount is less than the 10 pounds TPQ, the facility is not required to comply with the emergency notification requirements of section 302 of EPCRA.

Facilities that handle both the powdered and solution forms of a particular non-reactive solid EHS will have to consider the quantities of each form and the particle size to determine whether they exceed a TPQ. Below are several examples of how to apply the revised TPQ methods in various cases.[4]

Non-reactive solid in solution exceeds lower TPQ, powder below 10,000 pounds. A facility has on-site 5,000 pounds of a pure EHS powder with a particle size equal to or greater than 100 microns, which is less than the 10,000 pounds TPQ. However, they also have 1,000 gallons of a 35% by weight non-reactive EHS solid in solution with a density of 9 pounds per gallon. The amount of solids in solution on-site is 3,150 pounds (1000 gallons × 9 pounds per gallon × 0.35). Multiplying the 3,150 pounds of solid in solution by 0.2 equates to 630 pounds, which exceeds the lower TPQ of 500 pounds. Thus, the facility must report under section 302 of EPCRA based on exceeding the lower TPQ for the non-reactive solid in solution form.

Non-reactive solid in solution below lower TPQ, powder exceeds 10,000 pounds. A facility has on-site 11,000 pounds of a pure EHS solid powder with a particle size equal to or greater than 100 microns, which is more than the 10,000 pounds TPQ. They also have 2,000 gallons of a 10% by weight non-reactive EHS solid in solution with a density of 9 pounds per gallon. The amount of solids in solution on-site is 1,800 pounds (2,000 gallons × 9 pounds per gallon × 0.10). Multiplying the 1,800 pounds of solid in solution by 0.2 equates to 360 pounds, which is less than the lower TPQ of 500 pounds. Thus, the facility must report under section 302 of EPCRA based on exceeding the 10,000 pounds TPQ for the solid in powder form.

[4] For these examples, the EHS is not paraquat dichloride, but an unspecified non-reactive solid EHS that has a lower TPQ of 500 pounds and a higher TPQ of 10,000 pounds.

Non-reactive solid in solution below lower TPQ, powder below 10,000 pounds. A facility has 5,000 pounds of a pure EHS solid powder with a particle size equal or greater than 100 microns, which is less than the 10,000 pounds TPQ. They also have 1,500 gallons of a 15% by weight non-reactive EHS solid in solution with a density of 9 pounds per gallon. The amount of solids in solution on-site is 2,025 pounds (1.500 gallons × 9 pounds per gallon × 0.15). Multiplying the 2,025 pounds of solid in solution by 0.2 equates to 405 pounds, which is less than the lower TPQ of 500 pounds. Thus, the facility is not required to report under section 302 of EPCRA because it does not exceed the lower 500 pounds TPQ for the non-reactive solids in solution form or the 10,000 pounds TPQ for the powder with a particle size greater than 100 microns.

Powdered product less than 100 microns, processed into solution. If the same amount of solid EHS powder were involved as the same scenarios above, except the powder has a particle size less than 100 microns, then the lower 500 pounds TPQ would apply to the powder instead of 10,000 pounds. If either the amount of powder or non-reactive solids in solution exceeds the lower TPQ, the facility would be required to report under section 302 of EPCRA.

III. Response to Comments on April 15, 2011 Proposed Rule

EPA received comments from three organizations. The number of commenters in each group is as follows: Industry, 1 comment; and LEPCs, SERCs (or TERCs) and Emergency Management Agencies (EMAs), 2 comments. A complete summary of all comments and EPA's response to them is presented in ''Response to Comments for Emergency Planning and Community Right-to-Know Act; Emergency Planning and List of Extremely Hazardous Substances and Threshold Planning Quantities,'' which is available in the docket. The major issues and the Agency's responses to them are described below.

A. Comments Supporting the Changes

Comment: One commenter believed that the proposed method better reflects the ability of a solid substance becoming airborne. They also support not changing the EPCRA section 304 reportable quantities for EHSs.

EPA's Response: We agree with the commenter, as it relates to non-reactive solids in solution. However, EPA emphasizes that the changes proposed (and finalized today) apply only to non-reactive EHS solids in solution, not other solid forms, such as powdered solids. EHSs that are powdered solids with a particle size of less than 100 microns diameter are considered to be as dispersable in air as a gas and are subject to the lower listed TPQ in Appendix A or B of 40 CFR part 355. On the other hand, EHSs that are powdered solids with a particle size equaling or exceeding 100 microns in diameter are subject to the higher TPQ of 10,000 pounds.

Comment: Another commenter supported the proposed method because they believe the changes can benefit SERCs and LEPCs to allow them to better focus their limited resources on those amounts of EHSs that will potentially cause the greatest harm. The commenter also thought the proposal was consistent with Executive Order 13563, which promotes that ''analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned'' (76 FR 3822, January 21, 2011).

EPA's Response: We agree with the commenter that the revised methodology better aligns the regulatory requirements with the best available science. That is, the additional experimental data on aerosol releases refines the applicability and development of TPQs for non-reactive EHS solids in solution because it provides a sounder scientific basis for assigning TPQs, and thereby, more accurately identifies the forms of solid chemicals that would pose the greatest risks if accidently released. We also agree with the commenter that the EHSs list and assigned TPQs are intended to help communities focus on the substances and facilities of most immediate concern for emergency planning and response.

With respect to E.O. 13563: Improving Regulation and Regulatory Review, EPA did not address the application of this Executive Order in the proposed rule because OMB review of this action had just been completed before the Executive Order was issued in January 2011. However, the Agency did include the revisions for the application of TPQs for EHS non-reactive solids in solution in its report to OMB, ''Final Plan for Periodic Retrospective Reviews of Existing Regulations'' (the Plan) in response to President Obama's charge in Executive Order 13563 for each federal agency to develop a plan for reviewing existing regulations. EO 13563 requires the agency to ''periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

B. Comments Supporting the Changes With Questions

Comment: The commenter notes that the proposed rule states that a facility determines the quantity of EHSs ''present'' for solids in solution by multiplying the weight percent of non-reactive solids in solution in a particular container by the total weight of solution in the container, multiplied by 0.2. Under 40 CFR 370.30, a facility must submit an MSDS for each hazardous chemical ''present'' at the facility that meets or exceeds the applicable threshold level. Under the new proposal, it appears the facility may report on the calculated amount under the proposed regulation, thus changing the Tier II threshold without any discussion or analysis. The commenter strongly urges that the language of the proposed regulation address this ambiguity directly and clarify its relationship to EPCRA section 312. The commenter suggests the following language be added to the proposal in 40 CFR 355.16(b): This reduction in quantity does not apply to determining the threshold for reporting under 40 CFR 370.10.

EPA's Response: EPA agrees with the commenter that application of TPQs for emergency planning and for hazardous chemical reporting should be clarified in the regulations to make it clear that the reducing factor is not used for compliance with the hazardous chemical reporting requirements under 40 CFR 370.10. (See Section II.A of the preamble to today's final rule for further discussion on this point.) However, rather than say the reduction in quantity does not apply in determining the TPQ (''the threshold'' as stated by commenter), EPA has amended 40 CFR 355.16(b) by stating that this reduction in quantity must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.10. That is, EPA sets the TPQs, but facilities must determine the amount present to compare to the threshold.

EHS solids in molten form also have a reducing factor (0.3) applied to the amount on-site before comparing with the TPQ. Therefore, EPA has revised the regulation in 40 CFR 355.16(c) to also clarify that this reducing factor must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.10, which covers hazardous chemical reporting. EPA has also revised 40 CFR 355.16(c) to limit the application of the 0.3

reducing factor to be used only for non-reactive solids in molten form, not for reactive solids in molten form. Definitions of reactive and non-reactive solids, while explained in the preamble of the proposed rule, have also been be added to the regulations in 40 CFR 355.61 for greater clarity.

C. Comments Opposing the Changes

Comment: One commenter was concerned with the effect that the proposed rule will have on a community's ability to know if a hazardous substance is present and prepare for a possible emergency. The proposed regulation only considers a release scenario where a non-reactive EHS solid in solution form is released via an airborne release. However, LEPCs and Fire Departments have to look at all possible scenarios, including a possible fire or spill to water. If there is any type of emergency, the Fire Department will have to react to the total quantity on hand. While there is a great deal of information in the administrative record regarding the behavior of airborne releases of the subject materials, none of that information suggests that these materials are harmless in other accident scenarios.

EPA's Response: EPA recognizes that the manner in which the TPQs for non-reactive EHS solids in solution are being applied does not address all environmental media that could be affected by an accident release and EPA agrees that materials released via other accident scenarios are not harmless. However, the development of TPQs for emergency planning purposes under section 302 of EPCRA addresses the air release scenario because EPA believes an air release is most likely to involve potential exposures to the surrounding community. This air release scenario was used to develop TPQs for all EHSs whether they were gases, liquids, or solids. EPA is only modifying the approach for non-reactive EHS solids in solution to reflect the scientific information now available, which shows that an assumption of 100% dispersion into the air beyond a facility's fence line affecting the surrounding community is overly conservative.

The TPQs are designed to help State and local officials identify those sites where there is a greater potential for harm to the surrounding community if a release were to occur, thereby focusing resources on priority emergency planning problems (51 FR 41577, November 17, 1986.) The approach used for setting TPQs under section 302 of EPCRA ranks chemicals based on ambient physical state, form and the extent to which the material can become airborne and dispersed. This approach provides a relative measure of concern rather than absolute values and EPA acknowledged when developing the TPQs that there is no precision associated with the numbers and they should not be construed as ''safe'' (51 FR 41577, November 17, 1986). When the TPQs were initially developed, EPA considered an approach based on ranking the chemicals on toxicity alone without considering the potential for them to become airborne, but this approach was rejected because it might distort local planning priorities (see 51 FR 41577, November 17, 1986 for further discussion on this point). The Agency believes that limited state and local resources should be focused on those substances that potentially cause the greatest harm should an accidental release occur (52 FR 13390, April 22, 1987).

Nevertheless, EPA recognizes that Fire departments will need to react to the entire quantity on-site. Therefore, the reduction of the amount on-site of a non-reactive EHS solid in solution is only allowed for emergency planning purposes under section 302 of EPCRA and is not to be used for reporting under sections 311 and 312 of EPCRA. Accordingly, fire departments will have all the same information as before for planning and responding to an accidental release. LEPCs also have access to the same information for planning purposes.

Comment: One commenter was concerned that the proposed change is a unique approach to evaluating EHS chemicals and is foreign to LEPCs, fire departments and SERCs. For other EHSs, it is not necessary to carry around a calculator to evaluate whether the visually obvious quantity being stored is actually in excess of the TPQ. For all other EHS chemicals, looking at the MSDS and knowing the quantity on hand suffices.

EPA's Response: The approach being finalized today, which revises the manner for applying TPQs for non-reactive EHS solids in solution is not ''unique''; rather, EPA has already used a similar approach for determining the manner for applying TPQs for molten solids (except that the amount on-site is multiplied by 0.3). When proposing such an approach for molten solids, the Agency received no feedback from LEPCs, fire departments or SERCs (or TERCs) that applying this approach is problematic. In addition, we would note that quantities of EHSs that are stored as mixtures (such as solutions) already require some calculation of the total quantity of mixture multiplied by the concentration to determine the pounds of pure EHS (see 40 CFR 355.13). Adding up various containers and sources of the stored EHSs within a facility requires calculation and is already required (see 40 CFR 355.14). Some calculations for emergency planning should be expected and EPA does not believe a further calculation for comparison to a TPQ is unnecessarily burdensome. In addition, as noted elsewhere in this preamble, the Hazardous Chemical Inventory reports provide the total quantities and locations for use by emergency planning and response groups, and thus, we believe the information that LEPCs and Fire Departments need will still be available to them for emergency planning purposes.

Comment: One commenter was concerned about the burden being balanced in this situation: a one-time notice versus the annual or even more frequent effort by the LEPC and fire department to evaluate risks present in the community. The commenter believes that a release of these chemicals is hazardous and undoing 25 years of information collection and emergency planning just so a one-time notice can be avoided, seems absurd.

EPA's Response: EPA believes that because most facilities have (or should have) already reported the presence of EHSs exceeding relevant TPQs to their LEPCs, it is not apparent how this change in requirements will require more frequent effort by LEPCs and fire departments to evaluate risks. The data already collected by LEPCs, fire departments and SERCs (or TERCs) is still available and reporting on hazardous chemicals ''aids in the development of state and local emergency plans'' (40 CFR 370.1). If an LEPC believes that unreasonable risks are still posed for an EHS present at a facility, section 302(b)(2) of EPCRA allows a Governor or SERC to designate additional facilities after public notice and comment to be subject to the emergency planning and notification requirements of section 302 of EPCRA. In addition, facilities are still subject to emergency planning notification if they handle other EHSs that exceed their TPQs.

We would also note that EPA did not make this change in reporting just so a one-time notice could be avoided. The issue was initially addressed due to a lawsuit that challenged, among other things, that EPA did not adequately explain the basis for setting the TPQs for non-reactive EHS solids in solution and did not adequately explain why it thought that such solids in solution could be expected to be completely

dispersed into the air, as compared to gases or powdered solids. EPA now believes, based on the studies cited in its technical analysis, that the previous assumption that a release of a non-reactive EHS solid in solution would be as readily dispersed to air as a gaseous EHS, for example, was overly conservative and without a good basis.

Finally, for all practical purposes, changing the notification requirement affects only those facilities who have not yet reported a non-reactive EHS solid in solution. Thus, EPA believes that this change will allow those planning agencies with limited resources to better focus their efforts on those forms of EHSs that are more likely to cause the greatest harm. EPA also acknowledges that non-reactive EHS solids in solution can be hazardous, but notes that the requirements of EPCRA section 302 do not apply to all hazardous chemicals, only a subset, such as the limited listing of EHS.

Comment: One commenter noted that EPA suggested in the proposed rule that Tier II reports will still provide adequate information to LEPCs and fire departments. The commenter stated that the authority of EPCRA section 303(d)(3) does not apply to Tier II reports, which will immediately deprive LEPCs of perhaps their greatest asset in emergency planning.

EPA's Response: EPA agrees that the authority of EPCRA section 303(d)(3) [42 U.S.C. 11003(d)(3)] does not apply to Tier II reports. Section 303(d)(3) requires that for each facility subject to the requirements of *Subchapter I—Emergency Planning and Notification,* the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan, upon request from the emergency planning committee. Tier II Inventory reporting requirements are covered under *Subchapter II—Reporting Requirements* of EPCRA [42 U.S.C. 11021–11023].

EPA believes that less priority can be given for these forms of chemicals—that is, a non-reactive EHS solid in solution, based on the data that indicates they are not expected to be as dispersed into the air in the event of an accident. Other EHSs (such as gases and volatile liquids) are in a physical state and form more likely to cause potential risks to off-site communities when released. Facilities are still covered under section 302 of EPCRA if they have other EHSs that exceed the TPQs and thus, may still be required to provide some information relevant for emergency planning. Also, for purposes of emergency planning, section 302(b)(2) of EPCRA does allow a governor or a SERC to designate additional facilities to be subject to emergency planning and notification requirements, if such designation is made after public notice and opportunity for comment.

IV. 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 any new information collection burden. Rather, this final rule raises the amount of chemical on-site required before triggering emergency planning reporting under 40 CFR part 355 for non-reactive EHS solids in solution. Facilities with this form of EHS chemical would have already (or should have already) reported their presence to their SERC (or TERC) and LEPC and identified a Facility Emergency Coordinator and necessary information for development of a local emergency plan to their LEPC. If, as a result of this rulemaking, facilities find that they have a non-reactive EHS solid in solution on-site which no longer equals or exceeds the TPQ, the facility should notify their LEPC. Section 303(d)(2) of EPCRA requires facilities to promptly provide to their LEPC any changes relevant to emergency planning. Regulations at 40 CFR 355.20 clarify that relevant changes to emergency planning should be reported within 30 days. EPA expects that this notification will be a minimal burden. The emergency planning notification requirement is not required annually. There may be a slight burden reduction for facilities that are reporting non-reactive EHS solids in solution for the first time under the EPCRA section 302 requirements.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 355 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0092, EPA ICR number 1395.07. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 today's final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule changes the manner by which facilities apply the TPQs for those non-reactive EHSs that are solid chemicals in solution form. Specifically, facilities with a non-reactive EHS solid in solution would be subject to the Emergency Planning requirements of 40 CFR part 355, subpart B—Emergency Planning only if the amount of non-reactive EHS solids in solution on-site, multiplied by 0.2 equals or exceeds the lower published TPQ. We have therefore concluded that today's final rule will relieve regulatory burden for some affected small entities and will have no economic impact on the rest of the affected small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532–1538 for state, local, or tribal governments or the private sector. This action does not impose any new requirements on state, local or tribal governments. Facilities currently with non-reactive EHS solids in solution on-site have already (or should have already) reported these chemicals to their SERC (or TERC) and LEPC and identified a Facility Emergency Coordinator and the necessary information for developing an emergency plan to their LEPC. We expect that this action will neither increase nor decrease the requirements for SERCs (or TERCs) or LEPCs. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new requirements on state, local or tribal governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action reduces the reporting burden on any facilities that would have a non-reactive EHS solid in solution on-site for the first time and could be subject to the emergency planning requirements for that chemical under 40 CFR part 355, subpart B—Emergency Planning. We also expect that this action will neither increase nor decrease the requirements for SERCs (or TERCs) or LEPCs. This rule does not impose any requirements on state or local governments. Thus, Executive Order 13132 does not apply to this action.

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). This action reduces reporting burden on any facilities that would have a non-reactive EHS solid in solution on-site for the first time and could be subject to the emergency planning requirements for that chemical under 40 CFR part 355, subpart B—Emergency Planning. This action also does not impose any new requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This 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 present a disproportionate risk to children. This action reduces the reporting burden on any facilities that would have a non-reactive EHS solid in solution on-site for the first time and could be subject to the emergency planning requirements for that chemical under 40 CFR part 355, subpart B—Emergency Planning.

H. Executive Order 13211: Energy Effects

This action is not a ''significant energy action,'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Rather, this final rule would reduce reporting burden on any facilities that would have a non-reactive EHS solid in solution on-site for the first time and could be subject to the emergency planning requirements for that chemical under 40 CFR part 355, subpart B—Emergency Planning.

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 doing so would be inconsistent with applicable law or would otherwise be impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations of 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 (EO) 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. That is, based on new information and data, the Agency believes that the amount of non-reactive EHS solids in solution that would remain airborne from an accidental release into the environment will be lower than previously considered, and thus, would have less impact on the local community. This in turn will allow SERCs (or TERCs) and LEPCs to better focus their attention and limited resources on the amounts of EHS chemicals that can potentially cause the greatest harm, including those affecting minority or low-income populations, and to spend less time and fewer resources on those that pose less harm, when released.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. 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 will be effective April 23, 2012.

List of Subjects in 40 CFR Part 355

Environmental protection, Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 15, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 1. The authority citation for part 355 continues to read as follows:

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

■ 2. Section 355.16 is amended by revising paragraphs (b) and (c) to read as follows:

§ 355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

* * * * *

(b) *Solid in solution.* Multiply the weight percent of the non-reactive solid in solution in a particular container by the total weight of solution in that container. Then multiply by 0.2.

Note to paragraph (b): This reduction in quantity must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.10.

(c) *Solid in molten form.* Multiply the weight of the non-reactive solid in molten form by 0.3.

Note to paragraph (c): This reduction in quantity must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.10.

■ 3. Section 355.61 is amended by adding in alphabetical order the definitions of ''Non-reactive Solid'', ''Reactive solid'' and ''Solution'' to read as follows:

§ 355.61 How are key words in this part defined?

* * * * *

Non-reactive solid means any substance listed in Appendix A or B of this part with two threshold planning quantity values, the higher TPQ being 10,000 pounds.

* * * * *

Reactive solid means any extremely hazardous substance denoted with ''a'' in the ''Notes'' column in Appendix A or B of this part.

* * * * *

Solution means any aqueous or organic solutions, slurries, viscous solutions, suspensions, emulsions, or pastes.

* * * * *

[FR Doc. 2012–6910 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 12–7]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules governing the Emergency Alert System (EAS) to codify the obligation to process alert messages formatted in the Common Alerting Protocol (CAP) and to streamline and clarify these rules generally to enhance their effectiveness.

DATES: Effective April 23, 2012, except for 47 CFR 11.21(a), 11.33(a)(4), 11.41(b), 11.42, 11.54(b)(13), and 11.55, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 23, 2012. The Commission will publish a document in the **Federal Register** announcing the effective date of those paragraphs and rule amendments.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Lisa.Fowlkes@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judy Boley Hermann at (202) 418–0214 or send an email to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order (*Fifth Report and Order*) in EB Docket No. 04–296, FCC 12–7, adopted on January 9, 2012, and released on January 10, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also 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 full text may also be downloaded at: *www.fcc.gov*.

Synopsis of the Fifth Report and Order

1. In the *Fifth Report and Order,* the Commission adopts several changes to its Part 11 Emergency Alert System (EAS) rules to more fully codify the Common Alerting Protocol (CAP)-related obligations initially adopted in the Second Report and Order (*Second Report and Order*) in EB Docket No. 04–296, 72 FR 62123 (Nov. 2, 2007), and to eliminate outdated rules to improve Part 11's overall effectiveness. The rule amendments and other decisions taken in this *Fifth Report and Order* are predicated upon the Third Further Notice of Proposed Rulemaking (*Third FNPRM*) in EB Docket No. 04–296, 76 FR 35810 (June 20, 2011), adopted by the Commission on May 25, 2011.

I. Background

2. The present-day EAS is a hierarchical alert message distribution system that utilizes radio and television broadcasters, cable service providers, and other regulated entities (collectively known as EAS Participants) to transmit audio and/or visual emergency alert messages to the public. To initiate an EAS message, whether at the national, state, or local levels, the message originator must format a message in the EAS Protocol, which is identical to the Specific Area Message Encoding (SAME) digital protocol utilized by National Weather Service (NWS) (hereinafter, ''EAS Protocol'' and ''SAME'' are used interchangeably), and send the formatted alert to a designated entry point within the EAS network for delivery to specialized equipment maintained and operated by EAS Participants that can receive (and decode) the alert for transmission over the EAS Participants' facilities to their end users.

3. In 2007, the Commission adopted the *Second Report and Order* in this docket, which revised the Commission's Part 11 EAS rules to lay the foundation for a state-of-the-art, next-generation national EAS (Next Generation EAS). First, to ensure the efficient, rapid, and

secure transmission of EAS alerts in a variety of formats (including text, audio, and video) and via different means (broadcast, cable, satellite, and other networks), the Commission required that EAS Participants be capable of receiving CAP-formatted alert messages no later than 180 days after the Federal Emergency Management Agency (FEMA) publicly publishes its adoption of the CAP standard. Second, the Commission required EAS Participants to adopt Next Generation EAS delivery systems no later than 180 days after FEMA publicly releases standards for those systems. Third, the Commission required EAS Participants to transmit state and local EAS alerts that are originated by governors or their designees no later than 180 days after FEMA publishes its adoption of the CAP standard, provided that the state has a Commission-approved State Area EAS Plan that provides for delivery of such alerts.

4. CAP is an open, interoperable XML-based standard, developed within the Organization for the Advancement of Structured Information Standards (OASIS) standards process, which permits links to voice, audio or data files, images, multilingual translations of alerts, and links providing further information. Although CAP and SAME both convey data, the two protocols function in entirely different ways. CAP essentially represents an envelope into which data is packaged according to predetermined fields and packetized for transmission over various IP-based mediums, such as the Internet. The SAME protocol is designed to combine specific codes that identify alert data (e.g., type, origin, and area affected) with an audio message, which are modulated onto an RF signal using the audio frequency-shift keying (AFSK) modulation scheme (this process is referred to as ''encoding'').

5. On March 25, 2010, in anticipation of FEMA's adoption of CAP, the Commission's Public Safety and Homeland Security Bureau (Bureau) released a Public Notice (*Part 11 Public Notice*) in EB Docket No. 04–296, DA 10–500, released on March 25, 2010, that sought informal comment regarding what, if any, Part 11 changes might be necessitated by the introduction of CAP. On October 7, 2010, the Communications Security, Reliability, and Interoperability Council (CSRIC), which had been established by the Commission to, among other things, recommend revisions to the Part 11 rules in light of FEMA's then-pending adoption of CAP, adopted a Final Report, which included a number of recommendations for revisions to the Part 11 rules related to the obligation to accept CAP-formatted messages.

6. On September 30, 2010, FEMA announced its adoption of technical standards and requirements for CAP-formatted EAS alerts. Specifically, FEMA identified three documents as defining the FEMA Integrated Public Alert and Warning System (IPAWS) technical standards and requirements for CAP and its implementation: (1) The OASIS CAP Standard v1.2; (2) an IPAWS Specification to the CAP Standard (CAP v1.2 IPAWS USA Profile v1.0); and (3) the EAS–CAP Industry Group's (ECIG) Recommendations for a CAP–EAS Implementation Guide, Version 1.0 (May 17, 2010) (ECIG Implementation Guide). FEMA's announced adoption of CAP v1.2 triggered an initial deadline for EAS Participants to be able to receive CAP alerts by March 29, 2011.

7. On November 18, 2010, in response to the recommendations in CSRIC's Final Report, as well as to comments submitted in response to the *Part 11 Public Notice,* the Commission adopted an order in EB Docket No. 04–296, FCC 01–191, that extended the 180-day deadline for meeting the CAP-related obligations until September 30, 2011 (the *Waiver Order*). On May 25, 2011, the Commission adopted the *Third FNPRM,* which sought comment on several proposed changes to the EAS rules to more fully codify the CAP-related obligations adopted in the *Second Report and Order,* and to eliminate outdated rules to improve Part 11's overall effectiveness, and is the basis for the decisions taken in the *Fifth Report and Order.* On September 15, 2011, the Commission adopted the Fourth Report and Order (*Fourth Report and Order*) in EB Docket No. 04–296, 76 FR 80780 (Dec. 27, 2011), which amended section 11.56 of the EAS rules to require EAS Participants to be able to receive CAP-formatted EAS alerts no later than June 30, 2012.

II. Discussion

8. The *Fifth Report and Order* adopts changes to the Part 11 rules to fully effectuate the CAP-related obligations adopted in the *Second Report and Order,* as well as other rule changes and clarifications intended to streamline Part 11 and generally enhance the overall effectiveness of the EAS, based upon the rule changes and clarifications proposed in the *Third FNPRM.* The specific rule changes adopted in the *Fifth Report and Order* are included in the rules section.

9. The rule changes and other decisions taken in the *Fifth Report and Order* in response to the *Third FNPRM* are summarized below. Because the *Fifth Report and Order* does not impose new obligations but primarily details the manner in which EAS Participants must implement the CAP requirement, the rules and other decisions adopted in the *Fifth Report and Order* impose minimal new costs, particularly as many EAS Participants have already purchased and installed CAP-compatible EAS equipment. In many cases, these rule changes will result in decreased costs.

A. Scope of CAP-Related Part 11 Revisions

10. The Commission adopts the transitional approach for implementing CAP within the EAS set forth in the *Third FNPRM.* Specifically, the Commission explains that the CAP-related changes to Part 11 it adopts in the *Fifth Report and Order* are limited to ensuring that EAS Participants' EAS equipment will be capable of receiving and converting CAP-formatted messages into a SAME-compliant message. The Commission clarifies that EAS Participant stations that are generally charged with encoding (or regenerating) the EAS Protocol codes (as AFSK tones) for the benefit of downstream stations monitoring their transmissions will continue that function with respect to alert messages they receive in the CAP format—just as they would for alert messages they receive in the SAME format. However, the Commission explains, they will be generating the AFSK tones based upon the relevant EAS Protocol codes contained within the CAP message, in conformance with the ECIG Implementation Guide, including the audio message contained in the CAP message, to the extent required under the Part 11 rules. As part of this transitional approach, the Commission also requires EAS Participants to create video crawls based upon the enhanced text contained within the CAP message to the extent that such text files are provided by the alert initiator, in conformance with the relevant procedures set forth in the ECIG Implementation Guide.

11. The Commission concludes that this transitional approach is warranted, primarily because switching over to a fully CAP-centric EAS system—where EAS messages are inputted and outputted in CAP format rather than SAME format—at this time is technically infeasible and premature, because no such CAP-centric system has been developed. The Commission further concludes that this transitional approach makes sense because the many benefits of maintaining the legacy EAS previously outlined by the Commission

in the *Second Report and Order* continue to be relevant today. In addition, the Commission observes that FEMA has indicated that the legacy EAS will continue to provide a nationwide alerting mechanism as part of its IPAWS system, and FEMA's adoption of the standards necessary for formatting alert messages into CAP and translating such CAP-formatted messages into SAME-compliant messages establishes the groundwork for implementing CAP-formatted alert initiation within the existing EAS system. The Commission further observes that the record indicates that EAS equipment manufacturers have designed and have been marketing CAP-enabled equipment that conforms to these FEMA-adopted standards, and a significant percentage of EAS Participants already have procured or contracted for such equipment, making this transitional approach both practical and cost-efficient.

B. Obligation To Accept CAP Messages

12. *CAP-Formatted Message Conversion to SAME.* The Commission adopts its tentative conclusion in the *Third FNPRM* to amend § 11.56 to require EAS Participants to convert CAP-formatted EAS messages into SAME-compliant EAS messages in accordance with the ECIG Implementation Guide, except for its provisions on text-to-speech and gubernatorial CAP messages. The Commission observes that adopting the ECIG Implementation Guide as the standard for translating CAP-formatted messages into SAME-compliant messages will harmonize CAP elements with the Part 11 rules, thus ensuring that CAP-formatted EAS messages are converted into SAME-compliant messages in a consistent, cost-efficient manner across devices and delivery platforms. The Commission also observes that adoption of this requirement has broad support in the record.

13. The Commission notes that FEMA has adopted the ECIG Implementation Guide as its benchmark for processing IPAWS-distributed CAP-formatted messages to the EAS, and many manufacturers have already designed EAS equipment that conforms to the ECIG Implementation Guide, as demonstrated by their having completing requirements of FEMA's IPAWS Conformity Assessment Program. The Commission also observes that successful completion of FEMA's IPAWS Conformity Assessment Program can be used to demonstrate ECIG Implementation Guide compliance for purposes of obtaining FCC certification. Accordingly, the Commission finds that the costs of complying with the ECIG Implementation Guide are minimal.

14. The Commission clarifies that it will not permit EAS Participants to adhere to the ECIG Implementation Guide's provisions on text-to-speech. The Commission finds that, although use of text-to-speech technology has some support in the record, there are also concerns in the record about whether text-to-speech software is sufficiently accurate and reliable to deliver consistently accurate and timely alerts to the public. The Commission also observes that allowing the text-to-speech conversion to be resolved by EAS equipment software, as opposed to text-to-speech software that the alert message originator might employ, could result in differing audio messages being broadcast for the same EAS message, depending upon which software brand and version a given equipment manufacturer elected to incorporate into its EAS equipment. The Commission concludes that discussion of text-to-speech and speech-to-text software is best reserved for a separate proceeding, and therefore defers these issues at this time. Finally, the Commission notes that because it is eliminating the mandate to process CAP-formatted messages initiated by state governors, the issue of conformance with the provisions in the ECIG Implementation Guide to effect that mandate are moot.

15. *CAP-Related Monitoring Requirements.* The Commission amends § 11.52 of its rules to include a requirement that EAS Participants' EAS equipment must interface with and monitor (whether through ''pull'' interface technologies, such as Really Simple Syndication (RSS) and Atom Syndication Format (ATOM), or ''push'' interface technologies, such as instant messaging and email) the IPAWS system to enable distribution of Federal CAP-formatted alert messages from IPAWS to the EAS Participants' EAS equipment. Whereas the Commission had initially proposed in the *Third FNPRM* to require that EAS Participants monitor FEMA's IPAWS RSS feed(s) for Federal CAP-formatted messages, it concludes that it is unrealistic to require that EAS Participants adhere to a specific technical standard for CAP monitoring. The Commission also observes that the technical parameters of the IPAWS system are still evolving—and the digital world in which that system operates is evolving faster still. The Commission finds that trying to keep up with these changes while specifying the technical requirements for Federal CAP monitoring in the Part 11 rules is neither practical nor administratively efficient. In this regard, the Commission observes that FEMA changed the methodology for distributing CAP messages from its IPAWS system to the EAS from RSS to ATOM shortly after the *Third FNPRM's* adoption. The Commission also finds that the flexible approach to monitoring adopted in the *Fifth Report and Order* will benefit equipment manufacturers by allowing them to update their equipment designs as Federal CAP message delivery mechanisms and technology evolve.

16. Because the Commission in the *Fifth Report and Order* eliminates the obligation to receive and process gubernatorial CAP-formatted messages, it does not establish a generally applicable requirement for state CAP message monitoring. The Commission clarifies that the monitoring requirements associated with CAP messages initiated via state (and local) EAS systems will be determined just as the monitoring requirements for SAME-based EAS message transmissions always have been. Specifically, the Commission indicates that state (and local) alerting authorities, working with EAS Participants, will develop state (and local) CAP alert monitoring requirements and set these forth in their State EAS Plans, to be submitted to and approved by the Commission.

17. *Next Generation Distribution Systems.* In the *Second Report and Order,* the Commission stated that ''should FEMA announce technical standards for any Next Generation EAS alert delivery system, EAS Participants must configure their networks to receive CAP-formatted alerts delivered pursuant to such delivery system, whether wireline, Internet, satellite or other, within 180 days after the date that FEMA announces the technical standards for such Next Generation EAS alert delivery.'' In the *Third FNPRM,* the Commission interpreted this language as being intended to put EAS Participants on notice that, should FEMA adopt technical standards covering delivery of CAP-formatted messages to EAS Participants over specific platforms, such as satellite systems, EAS Participants would ultimately need to configure their systems to be able to interface with such systems to meet their existing obligation to process CAP-formatted messages.

18. In the *Fifth Report and Order,* the Commission adopts the interpretation of the language from the *Second Report and Order* regarding receipt of CAP-formatted messages from Next Generation EAS delivery systems that it stated in the *Third FNPRM.* Accordingly, the Commission concludes that if FEMA were to announce

technical standards for any Next Generation EAS alert delivery system for delivering CAP-formatted alerts, the Commission would seek to amend Part 11 to require that EAS Participants be capable of receiving such alerts. The Commission observes that it has no expectations as to how or whether FEMA may adopt standards and requirements for new message and delivery mechanisms that would modify existing requirements. The Commission instead merely clarifies that: (i) Any such standards or requirements cannot be enforced with respect to EAS Participants until the requirements are formally integrated into the Part 11 rules via the rulemaking process, and (ii) it would seek to initiate such a rulemaking process in a timely manner, with the goal of making compliance with such standards or requirements effective within 180 days of their formal adoption.

19. *Equipment Requirements*. The *Fifth Report and Order* contains several CAP-related decisions related to EAS equipment, as summarized below.

20. *Intermediary Devices*. The Commission explains that intermediary devices are stand-alone devices that carry out the functions of monitoring for, receiving, and decoding CAP-formatted messages and converting such messages into a format that can be inputted into a separate, stand-alone legacy EAS device to produce an output that complies with the Part 11 rules. The Commission observes that the record indicates that there are two types of intermediary devices, which may generally be described as ''universal'' intermediary devices and ''component'' intermediary devices. The Commission explains that universal intermediary devices monitor, acquire, and decode CAP messages, using the relevant CAP data to generate (i.e., encode) the EAS codes (FSK audio tones) and, if present, an audio message, which can be inputted into legacy EAS devices. The Commission further explains that because the SAME-formatted message output of the universal intermediary device is functionally equivalent to a SAME-formatted message delivered over the air, it theoretically should be interoperable with all or most legacy EAS decoders. The Commission adds, however, that because the output of the universal intermediary device is limited to the EAS Protocol—which is all that the legacy EAS device can process—the configuration of a universal intermediary device and legacy EAS device can only generate a SAME-compliant message; it cannot, for example, use the enhanced CAP text for generating a visual display.

21. The Commission explains that component intermediary devices, by contrast, are designed to interoperate with specific legacy EAS device models. The Commission observes that component intermediary devices also monitor for, acquire, and decode CAP messages, but are designed to enhance the function of specific legacy EAS devices. As a result, the Commission explains, the output of the combined system configuration of these devices is capable of more than simply generating a SAME-compliant message. The Commission observes that the record indicates that such configurations may permit the use of the enhanced CAP text to meet the visual display requirements in §§ 11.51(d), (g)(3), (h)(3), and (j)(2).

22. The Commission observes that, according to the record, ''integrated CAP-capable EAS devices''—*i.e.,* self-contained, stand-alone devices that combine the CAP-related functions of decoding CAP-formatted messages and converting such messages into a SAME-compliant output and processing SAME-formatted messages as encoders and decoders in accordance with the Part 11 rules—can be updated via software or firmware to comply with any future changes that might be incorporated into the Part 11 rules, the CAP standard, or the ECIG Implementation Guide. The Commission also observes, however, that it is unclear whether or to what extent a combined system configuration of a component intermediary device and its companion legacy EAS device model could be similarly updated.

23. Based on the record and the transitional approach it adopts for this proceeding, the Commission concludes that it will allow EAS Participants to meet the CAP-related obligations adopted in the *Fifth Report and Order* by using intermediary devices in tandem with their existing legacy EAS equipment, provided that such configuration can comply with the revised certification requirements adopted in the *Fifth Report and Order* as well as with any applicable Part 11 requirements we may adopt in the future. The Commission further concludes, however, that because it is requiring that EAS Participants utilize the enhanced text in a CAP message to provide a visual display, as set forth in § 3.6 of the ECIG Implementation Guide, it will require that any intermediary devices provide such functionality by June 30, 2015, which is three years from the June 30, 2012, deadline for overall CAP compliance.

24. The Commission finds that this approach for intermediary devices is consistent with its baseline goal of ensuring that alert messages formatted pursuant to the CAP-related standards adopted by FEMA will be converted into and outputted as SAME-compliant messages. The Commission observes that the record indicates that intermediary devices offer a less costly way to meet the requirements adopted in the *Fifth Report and Order,* and that some percentage of EAS Participants already have purchased and deployed intermediary devices. The Commission observes that not authorizing the use of intermediary devices would result in significant equipment replacement, installation, and training costs for these EAS Participants. The Commission finds that, assuming these intermediary devices can meet the certification and other requirements adopted in the *Fifth Report and Order,* imposition of the costs associated with the purchase of replacement EAS equipment is unnecessary and unjustified. The Commission also observes that intermediary devices will be required to meet the same requirements and provide the same capabilities as integrated CAP-capable EAS devices, thus putting them on an equal footing.

25. With respect to its decision to require intermediary devices to be capable of utilizing the enhanced text in a CAP message to provide a visual display, as set forth in § 3.6 of the ECIG Implementation Guide, by June 30, 2012, the Commission recognizes that it will likely be technically unfeasible for universal intermediary devices (and possibly some component intermediary devices), as well as the legacy EAS devices with which they are configured, to meet this requirement. The Commission acknowledges that, as a result, non-conforming equipment would have to be replaced, but concludes that any costs associated with such replacement are consistent with those that EAS Participants may expect in the normal course of business, particularly as much of the underlying legacy equipment upon which intermediate devices depend is old and will soon need to be replaced. The Commission finds that the approximately three and one half-year window it is providing for intermediary device users is sufficient to allow EAS Participants to finish depreciating and then replace this aging legacy EAS equipment and to allow equipment manufacturers time to develop possible workarounds to allow intermediate devices to become compliant with the revised rules. The Commission also observes that among the benefits that CAP-compliant equipment will bring is an EAS that is more accessible to all

Americans, including Americans with disabilities, who will directly benefit from this new requirement.

26. *Section 11.32(a).* The Commission concludes that it is unnecessary to make any changes to the minimum encoder requirements set forth in § 11.32(a) regarding CAP-to-SAME conversion. The Commission observes that the conversion of CAP-to-SAME is primarily a decoding function that CAP-compliant EAS equipment is designed to perform. The Commission further observes that it is not requiring encoders to encode anything other than the relevant EAS Protocol elements described in § .31 that they have always been required to encode, and that this is the case regardless of whether the relevant EAS Protocol elements are derived from a CAP-formatted message or a SAME-formatted message.

27. *Section 11.32(a)(2) and (a)(3).* The Commission revises the encoder input port configuration requirements in § 11.32(a)(2) to require that encoders be configured with at least one audio input port and at least one data input port. The Commission also deletes as unnecessary references to RS232–C and 1200 baud rate, which manufacturers may continue to make available, if they so desire. The Commission concludes that decisions concerning the total number and types of data input ports configured into encoders are best left to equipment manufacturers, so that they can respond to the monitoring requirements of the CAP systems with which EAS equipment may interface (such as IPAWS and state CAP systems), changes in technology, and costs of compliance. The Commission also finds that, for the sake of consistency with its transitional approach, the input configuration requirements should continue to require audio and data connectivity. Finally, the Commission applies the minimal requirement of at least one audio port and at least one data port to the encoder output port configuration requirements in § 11.32(a)(3), because it finds that the rationale above applies equally to the output ports and the record strongly supports such application.

28. *Section 11.33(a).* The Commission revises the minimum requirements for decoders in § 11.33(a) of the Commission's rules to include the capability to decode CAP-formatted messages and convert them into SAME protocol-compliant messages, as set forth in § 11.56 and clarify that this requirement can be met through the deployment of an intermediary device. The Commission observes that the fundamental purpose of decoders is to ingest and process EAS messages, whether formatted in the SAME or CAP protocols, and adding CAP reception to § 11.33(a) will put CAP on the same footing as SAME. The Commission also finds it appropriate to clarify in § 11.33(a) that intermediary devices may be used to meet the fundamental decoder requirement of converting CAP messages into SAME-compliant messages.

29. *Section 11.33(a)(1) and (a)(7).* For the same reasons described above with respect to encoder input configuration requirements, the Commission revises the decoder input configuration requirements in § 11.33(a)(1) to require at least one data input port (this section already requires the capability to receive ''at least two audio inputs''). The Commission also deletes as unnecessary any references to RS232–C and 1200 baud. The Commission revises the decoder output configuration requirements in § 11.33(a)(7) to reflect these changes.

30. *Section 11.33(a)(4).* The Commission amends § 11.33(a)(4) to include selective display and logging of the text that was compiled from CAP-formatted messages. The Commission finds that this revision is necessary to harmonize CAP-formatted message processing with SAME-formatted message processing. The Commission observes that its decision is supported by EAS equipment manufacturers, the industry affected by the rule revision, and that the revision imposes no additional technical obligations or costs either to these manufacturers or to EAS Participants.

31. *Section 11.33(a)(10).* The Commission adopts its tentative conclusion set forth in the *Third FNPRM* to decline CSRIC's recommendation to revise § 11.33(a)(10) to require use of the CAP-formatted message where a duplicate SAME-formatted message was also received. The Commission observes that the ECIG Implementation Guide includes a process for handling CAP messages where a duplicate SAME-formatted message also has been received, which prefers (but does not require) use of the CAP version. The Commission also observes that it is requiring CAP-to-SAME conversion in conformance with the ECIG Implementation Guide, which should satisfy the underlying thrust of CSRIC's recommendation.

32. *Section 11.33(a)(11).* The Commission revises § 11.33(a)(11) to ensure that EAN messages receive priority over all other EAS messages, regardless of whether the EAN message was received via the audio port or data port, or was formatted in SAME or CAP. The Commission finds that this action is necessary because as currently written, § 11.33(a)(11) could be interpreted to require a preference for SAME-formatted EAN messages received via over-the-air broadcast monitoring over duplicate CAP versions of the same message received via the data input port. The Commission also finds that such action is necessary to ensure that EAS equipment consistently gives EANs priority, regardless of how it receives them.

33. *Miscellaneous Rule Changes Related to Fully Implementing CAP.* The *Fifth Report and Order* contains several CAP-related decisions related to more fully implementing CAP within Part 11, as summarized below.

34. *Section 11.1.* The Commission concludes that the existing language defining the purpose of the EAS in § 11.1, which covers Federal, state, and local government users, and their designees, is broad enough to capture all authorized users of the EAS, whether they initiate SAME-formatted messages or CAP-formatted messages. Accordingly, the Commission declines CSRIC's recommendation to revise § 11.1 to include new CAP-related alert originators.

35. *Section 11.11.* The Commission amends § 11(a) to delete the reference therein to ''analog television broadcast stations'' and to include as a minimum requirement compliance with the CAP-related requirements in § 11.56. The Commission observes that the reference to ''analog television broadcast stations'' is obsolete in light of the fact that since June 13, 2009, all full-power U.S. television stations have broadcast over-the-air signals in digital only. The Commission also finds that incorporating the CAP-related obligations in § 11.56 by reference into section 11.11(a) is necessary to put CAP and SAME on an equal footing in Part 11.

36. *Section 11.11 equipment deployment tables.* The Commission adopts the revisions to the equipment deployment tables in § 11.11 proposed in the *Third FNPRM.* Specifically, the Commission amends the equipment deployment tables in § 11.11 by adding a footnote to the ''EAS decoder'' entries in the tables to clarify that the obligation to receive and translate CAP-formatted messages may be met by deploying an intermediary device. The Commission finds that because the tables in § 11.11 already require deployment of EAS decoders, a reference to intermediary devices (which are stand-alone equipment in their own right) is required for consistency in light of its decision to permit EAS Participants to deploy intermediary devices to meet

their CAP-related obligations. The Commission also deletes the date references in the equipment deployment tables in § 11.11 (as well as cross-references to these dates in other sections of Part 11, such as § 11.51(c) and (d)), along with the entry for two-tone encoders. The Commission finds that this action is required for consistency and has support in the record.

37. The Commission also concludes that incorporating monitoring requirements or references thereto into § 11.11 is unnecessary. The Commission observes that no party filed comments on this issue directly. The Commission further observes that decoders already are required to meet the monitoring requirements in § 11.52, which it is amending to include CAP monitoring. Accordingly, the Commission concludes that the basic requirement to deploy a decoder (or intermediary device) necessarily triggers CAP monitoring obligations.

38. *Section 11.20.* The Commission concludes that § 11.20 of the Commission's rules need not be revised to accommodate the distribution of CAP messages, as recommended by CSRIC, or to incorporate CAP monitoring, as recommended by parties responding to the *Part 11 Public Notice.* Specifically, the Commission concludes that the language in § 11.20 is broad enough to encompass EAS messages originated in CAP format, to the extent that a given state relay network is involved in the distribution of that state's CAP-formatted alert messages. The Commission also observes that it does not know what role the state relay network will or will not play in the distribution of CAP messages in each state (or locality), or whether these will be consistent for all states (and localities). The Commission defers specifying how state and local SAME-formatted and CAP-formatted EAS messages are distributed to state and Local Area EAS Plans.

39. *Section 11.21.* The Commission amends the State Area EAS Plan requirements in section 11.21(a) to make clear that the State EAS Plans specify the monitoring assignments and the specific primary and backup path for SAME-formatted EANs and that the monitoring requirements for CAP-formatted EANs are set forth in § 11.52. The Commission observes that it does not know what role, if any, state alerting systems may play in disseminating CAP-formatted EANs in the future. Accordingly, the Commission also includes language that to the extent a state may distribute CAP-formatted EANs to EAS Participants via its state alerting system, its State EAS Plan must include specific and detailed information describing how such messages will be aggregated and delivered, just as it must for state CAP-formatted non-EAN messages.

40. The Commission observes that its proposal in the *Third FNPRM* to clarify § 11.21(a) (and 11.55(a)) that the mandate to process gubernatorial alerts applies to CAP alerts has become moot in light of its decision to eliminate the obligation that EAS Participants receive and process CAP-formatted gubernatorial alerts. The Commission also observes, however, that detailed information describing how state-originated CAP-formatted messages will be aggregated and distributed to EAS Participants, including applicable monitoring requirements, must be detailed in the State EAS Plans, just as the equivalent information for SAME-formatted alerts always has been, and amends § 11.21(a) to make this clear.

41. *Section 11.21(c).* The Commission defers taking any action regarding the FCC Mapbook, requirements in § 11.21(c) of the Commission's rules, until, at a minimum, it has completed its review of the test data it will be receiving from EAS Participants as a result of the November 9, 2011, Nationwide EAS Test.

42. *Section 11.31(a)(3).* In light of its decisions to require conversion of CAP-formatted messages into the existing EAS Protocol for transmission over the current EAS architecture, the Commission finds that the language in § 11.31(a)(3) limiting the EAS Protocol message to audio, video, or text remains valid and thus declines to revise the language in § 11.31(a) to better reflect CAP's capabilities.

43. *Section 11.35(a).* The Commission amends sections 11.35(a) and (b) to clarify that these sections apply to all equipment used as part of the EAS, including all equipment that performs the functions of decoding and encoding messages formatted in the EAS Protocol and the Common Alerting Protocol. The Commission observes that §§ 11.35(a) and (b) apply to EAS Encoders and Decoders and have terms that are broad enough to capture both integrated CAP-capable EAS devices as well as intermediary devices, but nonetheless clarifies the language in these sections to remove any ambiguity on this issue.

44. *Section 11.45.* The Commission declines to adopt CSRIC's recommendation to revise § 11.45 to prohibit CAP messages lacking ''Actual'' status indicators. The Commission observes that the language in § 11.45 already broadly prohibits the transmission of the EAS codes or attention signal ''in any circumstances other than in an actual National, State or Local area emergency.'' The Commission finds that this language is sufficiently broad to encompass EAS codes and attention signals generated from the receipt of a SAME-formatted or CAP-formatted message. The Commission also observes that the ECIG Implementation Guide, which the Commission adopts as the standard for CAP-to-SAME conversion, already requires that CAP messages have an ''ACTUAL'' status indicator for EAS activation.

45. *Section 11.51.* The Commission adopts the tentative conclusion in the *Third FNPRM* that there is no basis for adopting CSRIC's recommendation to revise the language in section 11.51 of the Commission's rules to state that equipment must be capable of transmitting (or ''rendering'') a CAP-compliant message to EAS. The Commission observes that to the extent CSRIC meant to revise § 11.51 to ensure conversion of CAP messages into SAME-compliant messages, that requirement has been incorporated into section 11.56. The Commission also observes that this is a fundamental requirement that will be cross-referenced in other sections of Part 11.

46. *Section 11.51(d), (g)(3), (h)(3), and (j)(2).* The Commission amends § 11.51(d), (g)(3), (h)(3), and (j)(2) of the Commission's rules to require EAS Participants to derive the visual display elements, including the originator, event, location and the valid time period of the EAS message, from the CAP text data as described in section 3.6 of the ECIG Implementation Guide. The Commission observes that every commenter addressing this issue favored allowing EAS Participants to construct the video crawl from the enhanced text in CAP per the ECIG Implementation Guide. The Commission further observes that the ECIG Implementation Guide provides procedures for deriving the video crawl translation of a CAP-formatted message to include not only the EAS codes required under the Part 11 rules, but also additional text relating to the event, which it believes would provide more visual information to alert message viewers. The Commission observes that the utility of such additional text has never been in question. The Commission explains, for example, that the ability to provide additional descriptive information will make alerts more focused, which could be vitally important for Amber alerts and other alerts that require more specific information than the basic who, what, when and where that EAS codes

provide. The Commission also observes that CAP alert originators will also be able to include in alerts suggested actions to avoid or prepare for the emergency condition; identify URLs and other sources of additional information; or provide a textual translation of the audio portion of a message, which would be particularly beneficial to the deaf and hard of hearing community.

47. The Commission concludes that its concerns expressed in the *Third FNPRM* regarding the potential for confusion that might arise if stations serving the same geographic area displayed differing video crawls (one based on the SAME elements only and the other based on the enhanced CAP text) are outweighed by the benefit that the enhanced text provides. The Commission observes that such scenarios would arise only when one (or more) of the stations in the geographic area affected by the emergency loses its ability to receive CAP messages but continues to receive over-the-air SAME messages. The Commission also observes that the ECIG Implementation Guide procedure for displaying enhanced CAP text has already been adopted by the industry and FEMA. The Commission also finds that requiring display of enhanced CAP text will provide an incentive for state and local alert message originators to deploy and use CAP-based alert systems and integrate such CAP systems with the EAS and FEMA's IPAWS system.

48. The Commission clarifies that it will continue to use the EAS header codes as the baseline requirement for the visual display. The Commission acknowledges that these codes take up some portion of the 1800 characters available for scrolling and that the EAS header codes may not always sufficiently describe the alert. However, the Commission nonetheless finds that some measure of uniformity and consistency in how alert messages are processed over the EAS is necessary. In this regard, the Commission observes that the ECIG Implementation Guide does not specify minimum descriptive information, and thus if the baseline requirement to include the EAS header codes were eliminated, there is no guarantee that such basic information would be included by the CAP message originator, and descriptive information could vary greatly from state to state and locality to locality. The Commission also finds that ensuring that the EAS header codes are included in CAP messages is critical because stations responsible for regenerating (via the AFSK encoding process) a CAP alert message that has been converted into a SAME-compliant message for the benefit of downstream monitoring stations can only encode the EAS header codes.

49. *Section 11.54.* The Commission declines to adopt CSRIC's recommendations to mandate that CAP-formatted messages be broadcast only if the scope of the alert is ''Public,'' and to revise § 11.54(b)(1) to include IPAWS monitoring. The Commission observes that it is only requiring EAS equipment to produce a SAME-compliant output, and there is no requirement in the EAS Protocol, or more broadly, in the Part 11 rules, to broadcast only ''Public'' EAS messages. The Commission also observes that the ECIG Implementation Guide, with which the Commission is requiring conformance, already specifies that EAS Participants must ignore CAP-formatted messages with a value in the ''scope'' field other than ''Public.'' With respect to CSRIC's proposal to revise § 11.54(b)(1) to include IPAWS monitoring, the Commission observes that it is deleting § 11.54(b)(1), and therefore this issue is moot.

50. *Waivers.* The Commission concludes that it would not be appropriate to adopt any form of blanket exemption from the basic obligations of monitoring for, receiving, and processing CAP-formatted messages. The Commission finds that waivers or exemptions from these requirements are best addressed on a case-by-case basis under the waiver standard, where the facts and circumstances of each individual case can be determined on its own merits. The Commission observes, however, that the primary method of distributing CAP messages will be via a broadband Internet connection and concludes that the physical unavailability of broadband Internet service offers a presumption in favor of a waiver. The Commission clarifies that any waiver based on the physical unavailability of broadband Internet access likely would not exceed six months, with the option of renewal if circumstances have not changed. The Commission also clarifies that questions concerning whether the cost of broadband Internet access in a given geographic area (or other potential substitute CAP alert distribution mechanisms) would constitute grounds for a waiver of the basic CAP-related obligations would be relative to the facts and circumstances of an individual case. The Commission observes that to the extent a waiver applies, the affected party would be required to continue to operate its legacy EAS equipment.

51. The Commission rejects the request of the American Cable Association to exempt cable systems of 500 subscribers or less from the Part 11 rules, concluding that there is no evidence that the costs of meeting the CAP-related obligations would jeopardize any class of entities subject to the Part 11 rules or are otherwise unreasonable. The Commission clarifies that noncommercial educational broadcast satellite stations operating pursuant to a ''main studio waiver'' need not deploy CAP-capable EAS equipment, provided that the EAS equipment deployed at the parent (hub) station site meets all applicable CAP-related and other requirements set forth in the *Fifth Report and Order.*

C. EAS Equipment Certification

52. The Commission incorporates conformance with the ECIG Implementation Guide into its existing equipment certification process. The Commission concludes that EAS equipment must be certified as CAP compliant because it is amending Part 11 to require CAP-to-SAME conversion in conformance with the ECIG Implementation Guide, and thus, as part of the required Part 11 functions, it necessarily falls under Part 11's certification requirements.

53. In terms of implementation, the Commission finds that the test procedures developed and utilized in FEMA's IPAWS CA program constitute the most logical basis for demonstrating compliance with the CAP compliance requirements. The Commission further finds that integrated CAP-capable EAS devices that have passed the conformance testing performed under FEMA's IPAWS CA program may use the Supplier's Declaration of Conformity (SDoC) issued under that program to demonstrate CAP-to-SAME conversion in conformance with the ECIG Implementation Guide. The Commission also finds that integrated CAP-capable EAS devices that have not already passed the conformance testing performed under FEMA's IPAWS CA program must independently show conformance with the ECIG Implementation Guide through device testing pursuant to the test procedures developed and utilized in FEMA's IPAWS CA program. The Commission indicates that such testing can be performed by (i) the National Incident Management System (NIMS) Support Center—Supporting Technology Evaluation Project (STEP), which has assumed the role of testing for CAP and IPAWS profile compliance for EAS devices from the IPAWS CA program, or (ii) any other entity. The procedures and time periods for all cases described above are summarized as follows:

○ For integrated CAP-capable EAS devices that already have FCC

certification, the grantee must submit a Class II Permissive Change filing that includes: (i) A cover letter explaining that the purpose of the filing is to apprise the Commission that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order and that the filing is being made to update the device's existing certification file; (ii) a statement signed by the grantee of the device's underlying FCC equipment authorization confirming compliance with section 11.56 of the Commission's rules; and (iii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's program; (b) the NIMS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements. If the integrated CAP-capable EAS device has already been marketed, the Class II Permissive Change filing must be submitted by June 30, 2012, the effective deadline for overall CAP compliance.

○ For integrated CAP-capable EAS devices that do not already have FCC certification, the grantee must include with the FCC certification application materials: (i) A cover letter explaining that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order; (ii) a statement signed by the grantee confirming compliance with section 11.56 of the Commission's rules; and (iii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program, (b) the NIMS SDoC, if tested under the NIMS CAP testing program, or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements.

54. *Intermediary Devices.* As a preliminary matter, the Commission finds that universal intermediary devices and component intermediary devices perform encoder or decoder functions and as such are subject to certification under § 11.34 of the Commission's rules. Specifically, the Commission observes that universal intermediary devices monitor, acquire, and decode CAP messages, using the relevant CAP data to generate (*i.e.,* encode) the EAS codes (FSK audio tones) and if present, an audio message, which can be received by the audio input of a legacy EAS device just as it would receive any other over-the-air SAME-formatted message. Accordingly, the Commission finds that universal intermediary devices are subject to certification both as decoders and encoders under § 11.34(a) and (b) of our rules, respectively.

55. The Commission observes that component intermediary devices also monitor for, acquire, and decode CAP messages, but because they are configured to interface with a specific legacy EAS device model, they may be capable of communicating the extracted data to the companion legacy EAS device model in a non-AFSK format and thus may not themselves be encoding the SAME data. The Commission concludes that under these circumstances, a component intermediary device would not be subject to certification as an encoder under § 11.34(a) in its capacity as a stand-alone device. The Commission also observes, however, that component intermediary devices are designed for and intended to be operated with specific legacy EAS device models. Accordingly, the Commission finds that the output of the combined system configuration of these devices performs encoding functions which subjects such configuration to certification under § 11.34(a). In addition, the Commission observes that component intermediary devices perform decoding functions in their capacity as stand-alone devices that subject them to certification under § 11.34(b).

56. With respect to incorporating conformance with the ECIG Implementation Guide for intermediary devices into the existing certification process, the Commission observes that FEMA's IPAWS CA program tested intermediary devices for conformance with the ECIG Implementation Guide. Given the nature of the two types of intermediary devices, the Commission concludes that the test procedures developed and utilized in FEMA's IPAWS CA program for testing intermediary devices constitute a sufficient basis for demonstrating compliance with the ECIG Implementation Guide in a way that would impose minimal costs on the affected parties. Accordingly, the Commission concludes that the streamlined certification processes outlined above for integrated CAP-capable EAS devices are equally suitable for intermediary devices. However, with respect to certification testing for ECIG Implementation Guide compliance and Part 11 compliance, the Commission concludes that, because component intermediary devices are designed and intended to be operated with specific legacy EAS device models, certification testing for ECIG Implementation Guide compliance and Part 11 compliance of these devices must be performed on the combined system—*i.e.,* the component intermediary device as configured with the specific legacy EAS device model(s) with which it is marketed and intended to be used. The Commission also clarifies that universal type intermediary devices can be tested as stand-alone devices. The procedures and time periods for all cases described above are summarized as follows:

○ For intermediary devices that already have FCC certification, the grantee must submit a Class II Permissive Change filing that includes: (i) A cover letter explaining that the purpose of the filing is to apprise the Commission that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order and that the filing is being made to update the device's existing certification file; and (ii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program; (b) the MINS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements. If the intermediary device has already been marketed, the Class II Permissive Change filing must be submitted by June 30, 2012, the effective deadline for overall CAP compliance.

○ For intermediary devices that do not already have FCC certification, the grantee must include with the FCC certification application materials: (i) A cover letter explaining that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order; and (ii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program; (b) the NIMS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements.

57. *Modified Equipment.* The Commission concludes that the existing requirements governing modifications to certified equipment in section 2.1043 of the Commission's rules are sufficient to cover CAP-enabled equipment. The Commission clarifies that modifications to authorized EAS equipment that are necessary to implement revisions to the EAS event codes, originator codes, or location codes set forth in section 11.31 may be implemented as Class I permissive changes. The Commission also observes that any future revisions to the CAP-related standards adopted by FEMA could not become effective in the Part 11 rules absent a rulemaking proceeding.

E. CAP Messages Originated by State Governors

58. The Commission concludes that the mandate to receive and transmit CAP-formatted messages initiated by state governors is not necessary at this time and is potentially detrimental to effective deployment of CAP-based alerts. Accordingly, the Commission eliminates the mandate from Part 11. In arriving at this determination, the Commission observes that there are a number of practical problems associated with implementing the mandate within the existing EAS system architecture, and overcoming these problems would likely impose significant costs on and disruption to its transitional approach for accommodating CAP within the EAS. The Commission points out as particularly problematic the issue of whether and how the gubernatorial CAP-formatted message could be converted into an EAS Protocol-formatted message for the benefit of downstream monitoring stations. The Commission observes, for example, that the ECIG Implementation Guide procedures for identifying a CAP message as being from a governor only works for an EAS Participant that receives the CAP message, as the CAP-formatted gubernatorial alert cannot be converted and encoded as an existing EAS Protocol-formatted message.

59. The Commission also observes that adding a new originator code to make the gubernatorial CAP mandate operational within the legacy EAS domain presents a range of problems. The Commission points out, for example, that such a revision to the EAS Protocol would require updates to every integrated CAP-capable EAS device, intermediary device, and legacy EAS device, the latter of which may not be capable of being updated and would have to be replaced (along with any intermediary device with which they might be configured). The Commission also points out that implementing the mandatory gubernatorial alert within the revised EAS rules would present other equally troubling issues for which there are no ready or obvious technical solutions. The Commission observes that these problems include implementing priority status within CAP for a gubernatorial alert and mandating broadcast of a category of messages that do not specify an actual emergency. The Commission further observes that such an open ended mandate might, in some cases, allow the issuance of a mandatory message that may be inappropriate for an alert.

60. The Commission also questions whether the mandatory gubernatorial alert requirement would provide any tangible benefit. The Commission observes that while the mandate was adopted in 2007 as an incentive to encourage and facilitate state use of the EAS network, it does not appear that this rationale applies today. In this regard, the Commission observes that approximately twenty-four states (including one territory) have either deployed CAP systems or are in the planning stages of deploying CAP systems, and given the current economic climate, it seems unlikely that states that have not already deployed or begun plans to deploy CAP systems will do so simply because of an enforceable mandate to carry CAP-formatted gubernatorial messages. The Commission further observes that there is near universal voluntary participation by EAS Participants in carrying state and local EAS messages. Accordingly, the Commission concludes that having an enforceable means to guarantee carriage of gubernatorial CAP alert messages seems unnecessary. Finally, the Commission observes that FEMA's IPAWS will provide a means for a State governor, or the governor's authorized representative, to issue targeted CAP-based alerts, not only over the EAS, but over mobile devices.

F. Revising the Procedures for Processing EANs

61. The Commission amends the Part 11 EAS rules so that EANs will be processed on a message-by-message basis, like any other EAS message, only on a mandatory and priority basis. As part of this rule simplification, the Commission eliminates the Emergency Action Termination (EAT) event code. Under the Commission's revised approach, receipt of an EAN will effectively open an audio channel between the originating source and the EAS Participant's facilities until the EAS Participant receives an End of Message (EOM) code. After the EAS Participant receives the EOM, the EAS equipment will return to regular programming until receipt of the next EAS message. If that message is another EAN, then the process would repeat; if that message is a state or local EAS message, then that message would be aired in accordance with the specifications in the State or Local Area EAS Plan. The Commission concludes that revising the rules governing EAN processing is necessary because they were designed to accommodate the EAN Network, which was phased out in 1995, and purely manual operation. The Commission also observes that the current EAN processing rules do not translate well for automated operation, are confusing, and in some cases, inconsistent with other Part 11 rules.

62. With respect to the question raised in the *Third FNPRM* regarding whether to eliminate the option for EAS Participants to manually process EANs (but not state or local EAS messages), the Commission finds that it would be premature to take any action on such matter until after it has reviewed the test data from the November 9, 2011, Nationwide EAS Test. Accordingly, the Commission defers taking any action on this matter at this time.

63. *Revising Section 11.54.* The Commission deletes §§ 11.54(b)(1), (3), (4), (10), and 11.54(c) from the Part 11 rules. The Commission finds that these provisions are superfluous in the context of the message-by-message processing it is adopting for EANs.

64. *Deleting Section 11.42.* The Commission deletes § 11.42 from the Part 11 rules because it no longer serves any purpose.

65. *Eliminating the EAS Operating Handbook.* With respect to the question raised in the *Third FNPRM* regarding whether to eliminate the EAS Operating Handbook, the Commission finds that it would be premature to take any actions on such matter until after it has reviewed the test data from the November 9, 2011, Nationwide EAS Test. Accordingly, the Commission defers taking any action on this issue at this time.

66. However, the Commission is deleting §§ 11.54(a), (b)(2), and (5)–(8) because they serve no purpose under the message-by-message processing approach it adopts for handling EANs. The Commission observes that these provisions all refer to procedures set forth in the EAS Operating Handbook designed to implement the National Emergency Condition, which the Commission is eliminating. The Commission observes that if it elects to retain the EAS Operating Handbook, it will at most serve as an informational document to aid EAS Participant personnel in handling EAS messages manually and will not itself establish any procedures (such as on-air announcements) that must be followed.

67. *Non-Participating National (NN) Sources.* The Commission eliminates NN status on the grounds that it is not necessary. Accordingly, the Commission deletes references to NN status from §§ 11.18, 11.41, 11.54, and 11.55 of the Commission's rules, and deletes § 11.19 altogether. The Commission clarifies that any existing stations operating under NN status must meet the full message-by-message EAN processing requirements, and CAP-related requirements, by the June 30, 2012,

general deadline for processing CAP-formatted messages. The Commission finds that elimination of NN status is warranted because it does not appear to serve any purpose today, as NN entities already are required to deploy a decoder that complies with all EAS message processing requirements and follow all of the EAN processing requirements, except broadcasting the audio message. The Commission also observes that there are relatively few NN stations, and that no entity with or without NN status filed comments objecting to the proposal to eliminate NN status raised in the *Third FNPRM.*

68. *Deleting Section 11.44.* The Commission deletes § 11.44 from the Part 11 rules on grounds that this section is superfluous under the message-by-message approach adopted by the Commission for processing EANs. Although priority for EANs already is provided for in the other sections of Part 11, the Commission also incorporates language on EAN preemption and priority into the definition of the EAN in section 11.2.

69. *Revising Section 11.53.* The Commission deletes § 11.53 from the Part 11 rules as superfluous in light of its decisions to delete almost all of § 11.54 and implement message-by-message processing for EANs. For informational purposes, however, the Commission incorporates the relevant language in § 11.53(a) and (b), describing Federal, State, and local origination of the EAN, into the definition of EAN in § 11.2 and clarifies that such origination applies only to EANs formatted and transmitted in accordance with the EAS Protocol requirements in § 11.31.

70. *Revising Section 11.11(a).* The Commission revises section 11.11(a) to remove the references therein to ''participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels'' on grounds that these references are a holdover from the Emergency Broadcasting System (EBS) rules and serve no purpose under the message-by-message approach adopted by the Commission for processing EANs.

71. *Deleting Section 11.16.* With respect to the question raised in the *Third FNPRM* regarding whether to delete § 11.16, the Commission observes that the test data from the November 9, 2011, Nationwide EAS Test, which is under review, may provide insight on this matter. Accordingly, the Commission defers taking any action on this issue at this time.

72. However, the Commission is deleting § 11.54(b)(12) and incorporating that section's requirement for Primary Entry Point (PEP) stations to follow the National Control Point Procedures into § 11.16.

G. Miscellaneous Part 11 Revisions Not Related to CAP

73. *LP–1 Definition.* The Commission's assessment of State EAS Plans confirms that there are both radio and TV stations serving as LP–1 stations and it therefore revises the definition for LP–1 stations in section 11.2(b) to reflect that these stations can be a radio or a TV station.

74. *PEP Definition.* The Commission deletes section 11.14, which describes PEP stations, from the Part 11 rules because it mirrors the definition of PEP stations in section 11.2(a) and is therefore superfluous. The Commission also revises section 11.2(a) to delete the numerical reference to the actual number of PEP stations in existence, and clarify that the PEP stations distribute EAS messages in accordance with the EAS Protocol requirements in section 11.31.

75. *EAN and EAT Definitions.* The Commission deletes section 11.13 from the Part 11 rules and folds the definition for the EAN currently in section 11.13 into section 11.2. The Commission observes that the proper location in Part 11 for the EAN definition, currently at section 11.13(a), is the definitions section in section 11.2. Because the Commission also is deleting the EAT, the remaining subsection in section 11.13, section 11.13(b), which describes the EAT, is superfluous, leaving no purpose for retaining section 11.13 in Part 11.

76. *Geographic Codes.* The Commission changes the references to the Federal Information Processing Standard (FIPS) numbers (as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication FIPS PUB 6–4.FIPS number codes) in sections 11.31 and 11.34(d) of the Commission's rules to reflect the American National Standards Institute (ANSI) Codes INCITS 31.200x (Formerly FIPS 6–4), Codes for the Identification of Counties and Equivalent Entities of the United States, its Possessions, and Insular Areas standard that superseded it. The Commission observes that the FIPS standard is outdated and requires revision to keep the Part 11 rules current.

77. *LPTV and LPFM.* The Commission revises the analog and digital broadcast station equipment deployment table in section 11.11(a) of the Commission's rules to correctly identify ''LPFM'' (Low Power FM) and ''LPTV'' (Low Power TV) in their respective columns. The Commission also revises sections 11.61(a)(1)(i) and 11.61(a)(2)(ii) to include LPFM stations. The Commission observes that these corrections are necessary to ensure that the rules reflect prior decisions.

78. *Attention Signal.* The Commission concludes that the Attention Signal continues to serve a useful purpose in the EAS framework as an audio notification to the general public that an alert is about to be aired, and therefore will retain the Attention Signal in the Part 11 rules. However, the Commission revises section 11.32(a)(9)(iv) to require that the Attention Signal be set to eight seconds in duration, which reflects what has become common practice and ensures that when the signal is aired, it is done in a consistent manner. In addition, the Commission deletes section 11.33(b), which establishes Attention Signal requirements for decoders, because these requirements were used for demuting and activation functions that do not apply to the EAS. The Commission also deletes section 11.12, which specifies that EBS Attention Signal encoders and decoders can remain in operation until January 1, 1998, because this section is obsolete.

79. *Section 11.33(a)(9).* With respect to the decoder reset requirements specified in section 11.39(a)(9) of the Commission's rules, the Commission finds that EAS Participants should be allowed to relay, for the benefit of downstream monitoring stations, messages they received that did not include an EOM within the reset time limit set on their decoder (presumably, two minutes). More specifically, the Commission finds that when a non-EAN alert exceeds that two minute mark, the EAS Participant's EAS device should be allowed to generate an EOM to make up for the EOM that was not received with the original message. The Commission observes that the record indicates that current EAS equipment already functions in this manner, and that there are many reasons why an EOM might not arrive before the reset value triggers that have nothing to do with the reliability of the message. The Commission further observes that the only way to ensure that an EOM did arrive for a given EAS message prior to the reset value would be to delay relay of that message until the entire message and its EOM has been received, which could take up to two minutes (or more), which it concludes is not in the public interest.

80. *Section 11.33(a)(3)(ii).* The Commission declines to eliminate the

requirement in section 11.33(a)(3)(ii) to delete messages upon expiration of their time periods, as proposed in the *Third FNPRM.* The Commission concludes that the valid time period should continue to be set by the message originator, which is the party most responsible for the public's safety. The Commission also observes that EAS Participants have repeatedly stressed that they do not want the responsibility of alert origination, and allowing them to air expired alerts would effectively put them in that role.

81. *Training.* The Commission reiterates that it lacks the authority to raise or distribute funds for EAS-related purposes and therefore cannot provide training for state and local emergency managers. The Commission observes, however, that it can hold workshops and summits as part of its outreach mission. The Commission also observes that it intends to examine the relative merits of making the FCC Mapbook and EAS Operator Handbook more informative and useful for EAS Participants and their personnel.

82. *Persons with Disabilities.* The Commission observes that its decision to require EAS Participants to meet the video display requirements in sections 11.51(d), (g)(3), (h)(3), and (j)(2) by using the enhanced text in the CAP message will enable CAP alert message originators to provide a transcript of the audio message, which helps harmonize the EAS rules with the requirements of section 79.2 of the Commission's rules. The Commission also observes that requiring display of enhanced CAP text will provide an incentive for state and local alert message originators to deploy and use CAP-based alert systems. The Commission believes that providing state and local alert message originators with a conduit for the transmission of transcripts of the audio portions of their messages should encourage alert originators to craft messages that will provide accessible alerting for persons with hearing and vision disabilities.

83. *Proposals Beyond the Scope of the Fifth Report and Order.* The Commission identifies several issues raised by comments responding to the *Third FNPRM* that were not raised in the *Third FNPRM.* Because these issues were not raised in the *Third FNPRM,* the Commission does not resolve them in the *Fifth Report and Order.*

III. Procedural Matters

A. Regulatory Flexibility Analysis

84. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix A.

B. Paperwork Reduction Act Analysis

85. This *Fifth Report and Order* adopts modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. These modified requirements will be submitted to the Office of Management and Budget (OMB) under an emergency request for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

86. In this present document, the Commission has assessed the effects of revisions to current Part 11 reporting, recordkeeping, or compliance requirements as set forth in this *Fifth Report and Order,* and does not expect these revisions to alter the recordkeeping burden of any EAS Participants to any appreciable degree. There are no results specific to businesses with fewer than 25 employees.

C. Congressional Review Act

87. The Commission will send a copy of this *Fifth Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act (''CRA''), *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

88. Accordingly, *it is ordered* that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this *Fifth Report and Order is adopted.*

89. *It is further ordered* that the rules adopted herein *will become effective* thirty (30) days after the date of their publication in the **Federal Register**, except for any reporting, recordkeeping or third-party collection requirements that contain new or modified information collections. Those rules will become effective on the date specified in a Commission notice published in the **Federal Register** announcing their approval under the Paperwork Reduction Act by the Office of Management and Budget.

90. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fifth Report and Order,* including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 11

Incorporation by reference, Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

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

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Revise § 11.2 to read as follows:

§ 11.2 Definitions.

The definitions of terms used in part 11 are:

(a) *Emergency Action Notification (EAN).* The Emergency Action Notification is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency. EAN messages that are formatted in the EAS Protocol (specified in § 11.31) are sent from a government origination point to broadcast stations and other entities participating in the PEP system, and are subsequently disseminated via EAS Participants. Dissemination arrangements for EAN messages that are formatted in the EAS Protocol (specified in § 11.31) at the State and local levels are specified in the State and Local Area plans (defined at § 11.21). A national activation of the EAS for a Presidential message with the Event code EAN as specified in § 11.31 must take priority over any other message and preempt it if it is in progress.

(b) *Primary Entry Point (PEP) System.* The PEP system is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute EAS messages that are formatted in the EAS Protocol (specified in § 11.31), including the EAN and EAS national

test messages. FEMA has designated some of the nation's largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(c) *Local Primary One (LP–1).* The LP–1 is a radio or TV station that acts as a key EAS monitoring source. Each LP–1 station must monitor its regional PEP station and a back-up source for Presidential messages.

(d) *EAS Participants.* Entities required under the Commission's rules to comply with EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(e) *Wireline Video System.* The system of a wireline common carrier used to provide video programming service.

(f) *Participating National (PN).* PN stations are broadcast stations that transmit EAS National, state, or local EAS messages to the public.

(g) *National Primary (NP).* Stations that are the primary entry point for Presidential messages delivered by FEMA. These stations are responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range.

(h) *State Primary (SP).* Stations that are the entry point for State messages, which can originate from the Governor or a designated representative.

(i) *Intermediary Device.* An intermediary device is a stand-alone device that carries out the functions of monitoring for, receiving and/or acquiring, and decoding EAS messages formatted in the Common Alerting Protocol (CAP) in accordance with § 11.56, and converting such messages into a format that can be inputted into a separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, so that the EAS message outputted by such separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, and all other functions attendant to processing such EAS message, comply with the requirements in this part.

■ 3. Amend § 11.11 by revising paragraphs (a) and (d) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in § 25.701(a) of this chapter (including certain Ku-band Fixed-Satellite Service Direct to Home providers); and SDARS, as defined in § 25.201 of this chapter. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts, and comply with the requirements set forth in § 11.56, in accordance with the following tables:

TABLE 1—ANALOG AND DIGITAL BROADCAST STATION EQUIPMENT DEPLOYMENT REQUIREMENTS

EAS equipment requirement	AM & FM	Digital AM & FM	Analog & digital FM class D	Analog & digital LPFM	DTV	Analog & digital class A TV	Analog & digital LPTV
EAS decoder [1]	Y	Y	Y	Y	Y	Y	Y
EAS encoder	Y	Y	N	N	Y	Y	N
Audio message	Y	Y	Y	Y	Y	Y	Y
Video message	N/A	N/A	N/A	N/A	Y	Y	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).

Analog Cable Systems

Analog cable systems are subject to the requirements in Table 2 below. Analog cable systems serving fewer than 5,000 subscribers from a headend may either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 2.

TABLE 2—ANALOG CABLE SYSTEM EQUIPMENT DEPLOYMENT REQUIREMENTS

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder [1]	Y	Y
EAS encoder	Y	Y [2]
Audio and Video EAS Message on all channels	Y	N
Video interrupt and audio alert message on all channels;[3] Audio and Video EAS message on at least one channel	N	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).

[2] Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [**Note:** Programmed channels do not include channels used for the transmission of data such as interactive games.]

Wireless Cable Systems (BRS/EBS Stations)

Wireless cable systems are subject to the requirements in Table 3 below. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 3.

TABLE 3—WIRELESS CABLE SYSTEM EQUIPMENT DEPLOYMENT REQUIREMENTS

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder [1]	Y	Y
EAS encoder	Y	Y [2]
Audio and Video EAS Message on all channels [3]	Y	N
Video interrupt and audio alert message on all channels; [4] Audio and Video EAS message on at least one channel	N	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).
[2] Wireless cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.
[4] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [**Note:** Programmed channels do not include channels used for the transmission of data services such as Internet.]

Digital Cable Systems and Wireline Video Systems

Digital cable systems and Wireline Video Systems must comply with the requirements in Table 4 below. Digital cable systems and Wireline Video Systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 4.

TABLE 4—DIGITAL CABLE SYSTEM AND WIRELINE VIDEO SYSTEM EQUIPMENT DEPLOYMENT REQUIREMENTS

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder [1]	Y	Y
EAS encoder	Y	Y [2]
Audio and Video EAS Message on all channels [3]	Y	N
Video interrupt and audio alert message on all channels; [4] Audio and Video EAS message on at least one channel	N	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).
[2] Digital cable systems and wireline video systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] All digital cable systems and wireline video systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.
[4] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [**Note:** Programmed channels do not include channels used for the transmission of data services such as Internet access.]

SDARS AND DBS

EAS equipment requirement	SDARS	DBS
EAS decoder [1]	Y	Y
EAS encoder	Y	Y
Audio message on all channels [2]	Y	Y
Video message on all channels [2]	N/A	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).
[2] All SDARS and DBS providers may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages or by any other method that ensures that viewers of all channels receive the EAS message.

* * * * *

(d) Local franchise authorities may use any EAS codes authorized by the FCC in any agreements.

* * * * *

§ 11.12 [Removed and Reserved]

■ 4. Remove and reserve § 11.12.

§ 11.13 [Removed and Reserved]

■ 5. Remove and reserve § 11.13.

§ 11.14 [Removed and Reserved]

■ 6. Remove and reserve § 11.14.

§ 11.18 [Amended]

■ 7. Amend § 11.18 by removing paragraph (f).

§ 11.19 [Removed]

■ 8. Remove § 11.19.

■ 9. Amend § 11.21 by revising paragraph (a) to read as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

* * * * *

(a) The State EAS Plan contains procedures for State emergency management and other State officials, the NWS, and EAS Participants' personnel to transmit emergency information to the public during a State emergency using the EAS. State EAS Plans should include a data table, in computer readable form, clearly showing monitoring assignments and the specific primary and backup path for emergency action notification (EAN) messages that are formatted in the EAS Protocol (specified in § 11.31), from the PEP to each station in the plan. If a state's emergency alert system is capable of initiating EAS messages formatted in the Common Alerting Protocol (CAP), its State EAS Plan must include specific and detailed information describing how such messages will be aggregated and distributed to EAS Participants within the state, including the monitoring requirements associated with distributing such messages.

* * * * *

■ 10. Amend § 11.31 by revising paragraphs (c), (e) and (f) to read as follows:

§ 11.31 EAS protocol.

* * * * *

(c) The EAS protocol, including any codes, must not be amended, extended or abridged without FCC authorization. The EAS protocol and message format are specified in the following representation.

Examples are provided in FCC Public Notices.

[PREAMBLE]ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLL-(one second pause)

[PREAMBLE]ZCZC-ORG-EEE-PSSCCC+TTTTpJJJHHMM-LLLLLLLL-(one second pause)

[PREAMBLE]ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLL-(at least a one second pause)

(transmission of 8 to 25 seconds of Attention Signal)

(transmission of audio, video or text messages)

(at least a one second pause)

[PREAMBLE]NNNN (one second pause)

[PREAMBLE]NNNN (one second pause)

[PREAMBLE]NNNN (at least one second pause)

[PREAMBLE] This is a consecutive string of bits (sixteen bytes of AB hexadecimal [8 bit byte 10101011]) sent to clear the system, set AGC and set asynchronous decoder clocking cycles. The preamble must be transmitted before each header and End of Message code.

ZCZC—This is the identifier, sent as ASCII characters ZCZC to indicate the start of ASCII code.

ORG—This is the Originator code and indicates who originally initiated the activation of the EAS. These codes are specified in paragraph (d) of this section.

EEE—This is the Event code and indicates the nature of the EAS activation. The codes are specified in paragraph (e) of this section. The Event codes must be compatible with the codes used by the NWS Weather Radio Specific Area Message Encoder (WRSAME).

PSSCCC—This is the Location code and indicates the geographic area affected by the EAS alert. There may be 31 Location codes in an EAS alert. The Location code uses the codes described in the American National Standards Institute (ANSI) standard, ANSI INCITS 31–2009 (''Information technology—Codes for the Identification of Counties and Equivalent Areas of the United States, Puerto Rico, and the Insular Areas''). Each state is assigned an SS number as specified in paragraph (f) of this section. Each county and some cities are assigned a CCC number. A CCC number of 000 refers to an entire State or Territory. P defines county subdivisions as follows: 0 = all or an unspecified portion of a county, 1 = Northwest, 2 = North, 3 = Northeast, 4 = West, 5 = Central, 6 = East, 7 = Southwest, 8 = South, 9 = Southeast. Other numbers may be designated later for special applications. The use of county subdivisions will probably be rare and generally for oddly shaped or unusually large counties. Any subdivisions must be defined and agreed to by the local officials prior to use.

+TTTT—This indicates the valid time period of a message in 15 minute segments up to one hour and then in 30 minute segments beyond one hour; i.e., +0015, +0030, +0045, +0100, +0430 and +0600.

JJJHHMM—This is the day in Julian Calendar days (JJJ) of the year and the time in hours and minutes (HHMM) when the message was initially released by the originator using 24 hour Universal Coordinated Time (UTC).

LLLLLLLL—This is the identification of the EAS Participant, NWS office, etc., transmitting or retransmitting the message. These codes will be automatically affixed to all outgoing messages by the EAS encoder.

NNNN—This is the End of Message (EOM) code sent as a string of four ASCII N characters.

* * * * *

(e) The following Event (EEE) codes are presently authorized:

Nature of activation	Event codes
National Codes (Required):	
Emergency Action Notification (National only).	EAN.
National Information Center	NIC
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.
Avalanche Warning	AVW [1].
Avalanche Watch	AVA [1].
Blizzard Warning	BZW.
Child Abduction Emergency	CAE [1].
Civil Danger Warning	CDW [1].
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW [1].
Coastal Flood Watch	CFA [1].
Dust Storm Warning	DSW [1].
Earthquake Warning	EQW [1].
Evacuation Immediate	EVI.
Fire Warning	FRW [1].
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.
Hazardous Materials Warning	HMW [1].
High Wind Warning	HWW.
High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW [1].
Local Area Emergency	LAE [1].
Network Message Notification	NMN [1].
911 Telephone Outage Emergency.	TOE [1].
Nuclear Power Plant Warning	NUW [1].
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW [1].
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW [1].
Special Marine Warning	SMW [1].
Special Weather Statement	SPS.
Tornado Warning	TOR.
Tornado Watch	TOA.
Tropical Storm Warning	TRW [1].
Tropical Storm Watch	TRA [1].
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW [1].
Winter Storm Warning	WSW.

Nature of activation	Event codes
Winter Storm Watch	WSA.

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these event codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003 must be capable of receiving and transmitting these event codes. EAS Participants that install or replace their EAS equipment after February 1, 2004 must install equipment that is capable of receiving and transmitting these event codes.

(f) The State, Territory and Offshore (Marine Area) ANSI number codes (SS) are as follows. County ANSI numbers (CCC) are contained in the State EAS Mapbook.

	ANSI No.
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28
MO	29
MT	30
NE	31
NV	32
NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51
WA	53
WV	54
WI	55
WY	56
Terr.:	
AS	60
FM	64
GU	66
MH	68
MH	68

	ANSI No.
PR	72
PW	70
UM	74
VI	78
Offshore (Marine Areas)[1]:	
Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border	57
North Pacific Ocean near Alaska, and along Alaska coastline, including the Bering Sea and the Gulf of Alaska	58
Central Pacific Ocean, including Hawaiian waters	59
South Central Pacific Ocean, including American Samoa waters	61
Western Pacific Ocean, including Mariana Island waters	65
Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C	73
Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL., including the Caribbean	75
Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL	77
Lake Superior	91
Lake Michigan	92
Lake Huron	93
Lake St. Clair	94
Lake Erie	96
Lake Ontario	97
St. Lawrence River above St. Regis	98

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these marine area location codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003, must be capable of receiving and transmitting these marine area location codes. EAS Participants that install or replace their EAS equipment after February 1, 2004, must install equipment that is capable of receiving and transmitting these location codes.

■ 11. Amend § 11.32 by revising paragraphs (a)(2), (a)(3) and (a)(9)(iv) to read as follows:

§ 11.32 EAS Encoder.

(a) * * *

(2) *Inputs.* The encoder shall have at least one input port used for audio messages and at least one input port used for data messages. (3) *Outputs.* The encoder shall have at least one audio output port and at least one data output port.

* * * * *

(9) * * *

(iv) *Time Period for Transmission of Tones.* The encoder shall have timing circuitry that automatically generates the two tones simultaneously for a time period of 8 seconds.

* * * * *

■ 12. Amend § 11.33 by:

■ a. Revising paragraphs (a) introductory text, (a)(1), (a)(4), (a)(7), and (a)(11); and

■ b. Removing paragraph (b) and re-designating paragraph (c) as paragraph (b).

The revisions read as follows:

§ 11.33 EAS Decoder.

(a) An EAS Decoder must at a minimum be capable of providing the EAS monitoring functions described in § 11.52, decoding EAS messages formatted in accordance with the EAS Protocol described in § 11.31, and converting Common Alerting Protocol (CAP)-formatted EAS messages into EAS alert messages that comply with the EAS Protocol, in accordance with § 11.56(a)(2), with the exception that the CAP-related monitoring and conversion requirements set forth in §§ 11.52(d)(2) and 11.56(a)(2) can be satisfied via an Intermediary Device, as specified in § 11.56(b), provided that all other requirements set forth in this part are met. An EAS Decoder also must be capable of the following minimum specifications:

(1) *Inputs.* Decoders must have the capability to receive at least two audio inputs from EAS monitoring assignments, and at least one data input. The data input(s) may be used to monitor other communications modes such as Radio Broadcast Data System (RBDS), NWR, satellite, public switched telephone network, or any other source that uses the EAS protocol.

* * * * *

(4) *Display and logging.* For received alert messages formatted in both the EAS Protocol and Common Alerting Protocol, a visual message shall be developed from any valid header codes for tests and national activations and any preselected header codes received. The message shall at a minimum include the Originator, Event, Location, the valid time period of the message and the local time the message was transmitted. The message shall be in the primary language of the EAS Participant and be fully displayed on the decoder and readable in normal light and darkness. The visual message developed from received alert messages formatted in the Common Alerting Protocol must conform to the requirements in §§ 11.51(d), (g)(3), (h)(3), and (j)(2) of this part. All existing and new models of EAS decoders manufactured after August 1, 2003 must provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events. Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their decoders on an optional basis to include a selective display and logging capability for EAS messages containing header codes for state and local events. EAS Participants that install or replace their decoders after February 1, 2004 must install decoders that provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events.

* * * * *

(7) *Outputs.* Decoders shall have at least one data port where received valid EAS header codes and received preselected header codes are available, at least one audio port that is capable of monitoring each decoder audio input, and an internal speaker to enable personnel to hear audio from each input.

* * * * *

(11) A header code with the EAN Event code specified in § 11.31(c) that is received through any of the audio or data inputs must override all other messages.

* * * * *

■ 13. Amend § 11.34 by revising paragraph (d) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(d) Manufacturers must include instructions and information on how to install, operate and program an EAS Encoder, EAS Decoder, or combined unit and a list of all State and county ANSI numbers with each unit sold or marketed in the U.S.

* * * * *

■ 14. Amend § 11.35 by revising paragraphs (a) and (b) to read as follows:

§ 11.35 Participation in EAS.

(a) EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§ 76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.

(b) If an EAS Encoder, EAS Decoder or Intermediary Device used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol becomes defective, the EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system records, and records of other EAS Participants, as specified in paragraph (a) of this section, showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

* * * * *

■ 15. Revise § 11.41 to read as follows:

§ 11.41 Participation in EAS.

All EAS Participants specified in § 11.11 are categorized as Participating National (PN) sources, and must have immediate access to an EAS Operating Handbook.

§ 11.42 [Removed and Reserved]

■ 16. Remove and reserve § 11.42.

§ 11.44 [Removed and Reserved]

■ 17. Remove and reserve § 11.44.

■ 18. Amend § 11.51 by revising paragraphs (a), (c), (d), (g)(3), (h)(3), (i) introductory text, (j) introductory text, (j)(2), paragraph (m) introductory text, and adding paragraph (p) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. The Attention Signal must precede any emergency audio message.

* * * * *

(c) All analog and digital radio and television stations shall transmit EAS messages in the main audio channel. All DAB stations shall also transmit EAS messages on all audio streams. All DTV broadcast stations shall also transmit EAS messages on all program streams.

(d) Analog and digital television broadcast stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message. Effective June 30, 2012, visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010), except that if the EAS Participant has deployed an Intermediary Device to meet its CAP-related obligations, this requirement shall be effective June 30, 2015, and until such date shall be subject to the general requirement to transmit a visual message containing the Originator, Event, Location and the valid time period of the EAS message. If the message is a video crawl, it shall be displayed at the top of the television screen or where it will not interfere with other visual messages.

* * * * *

(g) * * *

(3) Shall transmit a visual EAS message on at least one channel. The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message. Effective June 30, 2012, visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010), except that if the EAS Participant has deployed an Intermediary Device to meet its CAP-related obligations, this requirement shall be effective June 30, 2015, and until such date shall be subject to the general requirement to transmit a visual message containing the Originator, Event, Location and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

* * * * *

(h) * * *

(3) Shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message. Effective June 30, 2012, visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010), except that if the EAS Participant has deployed an Intermediary Device to meet its CAP-related obligations, this requirement shall be effective June 30, 2015, and until such date shall be subject to the general requirement to transmit a visual message containing the Originator, Event, Location and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

* * * * *

(i) SDARS licensees shall transmit national audio EAS messages on all channels in the same order specified in paragraph (a) of this section.

* * * * *

(j) DBS providers shall transmit national audio and visual EAS messages on all channels in the same order specified in paragraph (a) of this section.

* * * * *

(2) The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message. Effective June 30, 2012, visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010), except that if the EAS Participant has deployed an Intermediary Device to meet its CAP-related obligations, this requirement shall be effective June 30, 2015, and until such date shall be subject to the general requirement to transmit a visual message containing the Originator, Event, Location and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

* * * * *

(m) EAS Participants are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN) and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the EAS Participant retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, EAS Participants shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or system community or city. Other location codes may be included upon approval of station or system management. EAS messages may be transmitted automatically or manually.

* * * * *

(p) The standard required in this section is incorporated by reference into this section with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Federal Communications Commission must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) and is available from the source indicated below. It is also 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.*

(1) The following standard is available from the EAS–CAP Industry Group (ECIG), 21010 Southbank Street, #365, Sterling, VA, 20165, go to http://www.eas-cap.org.

(i) ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

(ii) [Reserved].

■ 19. Amend § 11.52 by revising paragraphs (a) introductory text, (d), (e) introductory text and (e)(2) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) EAS Participants must be capable of receiving the Attention Signal required by § 11.31(a)(2) and emergency messages of other broadcast stations during their hours of operation. EAS Participants must install and operate during their hours of operation, equipment that is capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code, and which complies with the requirements in § 11.56.

* * * * *

(d) EAS Participants must comply with the following monitoring requirements:

(1) With respect to monitoring for EAS messages that are formatted in accordance with the EAS Protocol, EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(2) With respect to monitoring EAS messages formatted in accordance with the specifications set forth in § 11.56(a)(2), EAS Participants' EAS equipment must interface with the Federal Emergency Management Agency's Integrated Public Alert and Warning System (IPAWS) to enable (whether through ''pull'' interface technologies, such as Really Simple Syndication (RSS) and Atom Syndication Format (ATOM), or ''push'' interface technologies, such as instant messaging and email) the distribution of Common Alert Protocol (CAP)-formatted alert messages from the IPAWS system to EAS Participants' EAS equipment.

(3) Monitoring specifications associated with the distribution of CAP-formatted alert messages by state alert message systems are described in the State EAS Plan, as set forth in § 11.21(a).

(4) If the required EAS message sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the Chief, Public Safety and Homeland Security Bureau. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(5) The management of EAS Participants shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) EAS Participants are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN) or the Required Monthly Test (RMT) for their State or State/county location.

* * * * *

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and recorded as specified in §§ 11.35(a) and 11.54(a)(3). Decoders must be programmed for the EAN Event header code and the RMT and RWT Event header codes (for required monthly and weekly tests), with the appropriate accompanying State and State/county location codes.

§ 11.53 [Removed and Reserved]

■ 20. Remove and reserve § 11.53.

■ 21. Revise § 11.54 to read as follows:

§ 11.54 EAS operation during a National Level emergency.

(a) Immediately upon receipt of an EAN message, EAS Participants must comply with the following requirements, as applicable:

(1) Analog and digital broadcast stations may transmit their call letters and analog cable systems, digital cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and Local Area identifications must be given as provided in State and Local Area EAS Plans.

(2) Analog and digital broadcast stations are exempt from complying

with §§ 73.62 and 73.1560 of this chapter (operating power maintenance) while operating under this part.

(3) The time of receipt of the EAN shall be entered by analog and digital broadcast stations in their logs (as specified in §§ 73.1820 and 73.1840 of this chapter), by analog and digital cable systems in their records (as specified in § 76.1711 of this chapter), by subject wireless cable systems in their records (as specified in § 21.304 of this chapter), and by all other EAS Participants in their records as specified in § 11.35(a).

(b) EAS Participants originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, 47 U.S.C. 325(a), to other EAS Participants.

(c) During a national level EAS emergency, EAS Participants may transmit in lieu of the EAS audio feed an audio feed of the President's voice message from an alternative source, such as a broadcast network audio feed.

■ 22. Amend § 11.55 by revising paragraph (a) introductory text, paragraph (c) introductory text, and paragraphs (c)(3), (4), (7), and (8) and add paragraph (d) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a threat to life and property. Examples of natural emergencies which may warrant state EAS activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Man-made emergencies warranting state EAS activation may include: Toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message that has been formatted in the EAS Protocol, EAS Participants participating in the State or Local Area EAS must do the following:

* * * * *

(3) Participating National (PN) sources monitor the Local Area LP sources for instructions.

(4) EAS Participants participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area Plans. Analog and digital television broadcast stations must transmit all EAS announcements visually and aurally as specified in § 11.51(a) through (e) and 73.1250(h) of this chapter, as applicable; analog cable systems, digital cable systems, and wireless cable systems must transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h); and DBS providers must transmit all EAS announcements visually and aurally as specified in § 11.51(j). EAS Participants providing foreign language programming should transmit all EAS announcements in the same language as the primary language of the EAS Participant.

* * * * *

(7) The times of the above EAS actions must be entered in the EAS Participants' records as specified in §§ 11.35(a) and 11.54(a)(3).

(8) Use of the EAS codes or Attention Signal automatically grants rebroadcast authority as specified in § 11.54(b).

(d) Immediately upon receipt of a State or Local Area EAS message that has been formatted in the Common Alerting Protocol, EAS Participants must do the following:

(1) EAS Participants participating in the State or Local Area EAS must follow the procedures for processing such messages in the State and Local Area Plans.

(2) Analog and digital television broadcast stations must transmit all EAS announcements visually and aurally as specified in § 11.51(a) through (e) and 73.1250(h) of this chapter, as applicable; analog cable systems, digital cable systems, and wireless cable systems must transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h); and DBS providers must transmit all EAS announcements visually and aurally as specified in § 11.51(j). EAS Participants providing foreign language programming should transmit all EAS announcements in the same language as the primary language of the EAS Participant.

(3) Resume normal operations upon conclusion of the message.

(4) The times of the above EAS actions must be entered in the EAS Participants' records as specified in §§ 11.35(a) and 11.54(a)(3).

■ 23. Revise § 11.56 to read as follows:

§ 11.56 Obligation to Process CAP-Formatted EAS Messages.

(a) On or by June 30, 2012, EAS Participants must have deployed operational equipment that is capable of the following:

(1) Acquiring EAS alert messages in accordance with the monitoring requirements in § 11.52(d)(2);

(2) Converting EAS alert messages that have been formatted pursuant to the (i) ''Common Alerting Protocol Version 1.2'' (July 1, 2010), and (ii) ''Common Alerting Protocol, v. 1.2 USA Integrated Public Alert and Warning System Profile Version 1.0'' (Oct. 13, 2009), into EAS alert messages that comply with the EAS Protocol, such that the Preamble and EAS Header Codes, audio Attention Signal, audio message, and Preamble and EAS End of Message (EOM) Codes of such messages are rendered equivalent to the EAS Protocol (set forth in § 11.31), in accordance with the technical specifications governing such conversion process set forth in the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010) (except that any and all specifications set forth therein related to using text-to-speech technology and gubernatorial ''must carry'' shall not be followed); and

(3) Processing such converted messages in accordance with the other sections of this part.

(b) EAS Participants may comply with the requirements of this section by deploying an Intermediary Device. If an EAS Participant elects to meet the requirements of this section by deploying an Intermediary Device, it shall be required to construct visual messages from CAP-formatted EAS messages in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010), as set forth in §§ 11.51(d), (g)(3), (h)(3), and (j)(2) of this part, on or by June 30, 2015.

(c) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Federal Communications Commission must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Communications Commission, 445 12th Street SW., Washington, DC (Reference Information Center) and is available from the sources indicated below. It is also 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*.

(1) The following standard is available from the EAS–CAP Industry Group (ECIG), 21010 Southbank Street, #365, Sterling, VA 20165, or go to *http://www.eas-cap.org*.

(i) ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

(ii) [Reserved].

(2) The following standards are available from Organization for the Advancement of Structured Information Standards (OASIS), 25 Corporate Drive, Suite 103, Burlington, MA 01803–4238, call 781–425–5073, or go to *http://www.oasis-open.org*.

(i) ''Common Alerting Protocol Version 1.2'' (July 1, 2010).

(ii) ''Common Alerting Protocol, v. 1.2 USA Integrated Public Alert and Warning System Profile Version 1.0'' (Oct. 13, 2009).

■ 24. Amend § 11.61 by revising paragraphs (a) introductory text, (a)(1)(i), (a)(2)(ii) and (b) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(4) of this section.

(1) * * *

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM, analog and digital LPFM stations, and analog and digital LPTV stations are required to transmit only the test script.

* * * * *

(2) * * *

(ii) DBS providers, analog and digital class D non-commercial educational FM stations, analog and digital LPFM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in § 11.35(a) and 11.54(a)(3).

* * * * *

(b) Entries shall be made in EAS Participant records, as specified in § 11.35(a) and 11.54(a)(3).

The following appendix will not be published in the Code of Federal Regulations.

Appendix A

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Third Further Notice of Proposed Rulemaking (*Third FNPRM*) in this proceeding. The Commission sought written comment on the proposals in the *Third FNPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fifth Report and Order

2. This *Fifth Report and Order* adopts changes to the Commission's Part 11 rules governing the Emergency Alert System (EAS) to codify the obligation to process alert messages formatted in the Common Alerting Protocol (CAP) and to streamline and clarify these rules generally to enhance their effectiveness.

3. Specifically, the *Fifth Report and Order:*

• Clarifies that the scope of the CAP-related obligations addressed in this order are limited to those necessary to ensure that CAP-formatted alert messages distributed to EAS Participants will be converted into and processed in the same way as messages formatted in the current EAS Protocol.

• Amends § 11.56 of the Commission's rules to require EAS Participants to convert CAP-formatted EAS messages into messages that comply with the EAS Protocol requirements, following the procedures for such conversion set forth in the EAS–CAP Industry Group's (ECIG) ECIG Implementation Guide.

• Amends § 11.52 of the Commission's rules to require that EAS Participants monitor FEMA's Integrated Public Alert and Warning System (IPAWS) for Federal CAP-formatted alert messages using whatever interface technology is appropriate.

• Clarifies that the language from the Second Report and Order (*Second Report and Order*) in this docket regarding receipt of CAP-formatted messages from Next Generation EAS delivery systems was intended to put EAS Participants on notice that, should FEMA adopt technical standards covering delivery of CAP-formatted messages to EAS Participants over specific platforms, such as satellite systems, EAS Participants would ultimately need to configure their systems to be able to interface with such systems to meet their existing obligation to process CAP-formatted messages.

• Permits EAS Participants to use intermediary devices to meet their CAP-related obligations, provided that all intermediary devices must provide that capability of utilizing the enhanced text in a CAP message to meet the visual display requirements in section 11.51(d), (g)(3), (h)(3), and (j)(2) of the Commission's rules, as set forth in section 3.6 of the ECIG Implementation Guide, by June 30, 2015.

• Declines to make any changes to the minimum encoder requirements set forth in section 11.32(a) regarding CAP-to-EAS Protocol conversion.

• Revises the input and output configuration requirements in §§ 11.32(a)(2) and (a)(3) of the Commission's rules to require at least one audio port and at least one data port, and to delete references to RS232–C and 1200 baud rate.

• Revises the minimum requirements for decoders in section 11.33(a) to include the capability to decode CAP-formatted messages and convert them into EAS Protocol-compliant messages, as set forth in section 11.56 and clarifies that this requirement can be met through the deployment of an intermediary device.

• Revises the input and output configuration requirements in §§ 11.33(a)(1) and (a)(7) of the Commission's rules to require at least one audio port and at least one data port, and to delete references to RS232–C and 1200 baud rate.

• Amends section 11.33(a)(4) of the Commission's rules to include selective display and logging of text that was compiled from CAP-formatted messages be added to the EAS device log.

• Declines to revise § 11.33(a)(10) of the Commission's rules to require processing of CAP-formatted message by default when duplicate messages are received in both the EAS Protocol and CAP formats, as recommended in the Communications Security, Reliability, and Interoperability Council (CSRIC) Final Report (*CSRIC Final Report*).

• Revises section 11.33(a)(11) of the Commission's rules to ensure that Emergency Action Notification (EAN) messages receive priority over all other EAS messages, regardless of whether the EAN message was received via the audio port or data port, or was formatted in EAS Protocol or CAP.

• Declines to revise section 11.1 of the Commission's rules to include new CAP-related alert originators, as recommended in the *CSRIC Final Report.*

• Revises the text of § 11.11(a) of the Commission's rules to include as a minimum requirement compliance with the CAP-related requirements in § 11.56 of the Commission's rules, and to delete the reference to ''analog television broadcast stations.''

• Revises the equipment deployment tables in § 11.11 of the Commission's rules by adding a footnote to the ''EAS decoder'' entries in the tables to clarify that the obligation to receive and translate CAP-formatted messages may be met by deploying an intermediary device, and by deleting the date references in the equipment deployment tables in section 11.11 (as well as cross-references to these dates in other sections of Part 11, such as section 11.51(c) and (d)), along with the entry for two-tone encoders. Declines to incorporate references to the monitoring requirements in section 11.52 in section 11.11.

• Declines to revise the language of § 11.20 of the Commission's rules to require a specific reference to CAP alerts, CAP relay networks, or CAP monitoring requirements.

• Revises § 11.21(a) of the Commission's rules to make clear that the State EAS Plans specify the monitoring assignments and the specific primary and backup path for EAS Protocol-formatted EANs and that the monitoring requirements for CAP-formatted EANs are set forth in section 11.52, and to

make clear that to the extent a state may distribute CAP-formatted EANs to EAS Participants via its state alerting system, its State EAS Plan must include specific and detailed information describing how such messages will be aggregated and delivered, just as it must for state CAP-formatted non-EAN messages.

• Defers taking any action with respect to revising § 11.21(c) of the Commission's rules until, at a minimum, review of the test data received from EAS Participants as a result of the November 9, 2011, nationwide EAS test has been completed.

• Declines to revise the language in § 11.31(a) of the Commission's rules to better reflect CAP's capabilities.

• Amends sections 11.35(a) and (b) of the Commission's rules to clarify that these subsections apply to all equipment used as part of the EAS, including all equipment that performs the functions of decoding and encoding messages formatted in the EAS Protocol and the Common Alerting Protocol.

• Declines to revise § 11.45 of the Commission's rules to prohibit CAP messages lacking ''Actual'' status indicators, as recommended in the *CSRIC Final Report.*

• Declines to revise § 11.51 of the Commission's rules to require EAS Participants to transmit (or ''render'') a CAP-compliant message, as recommended in the *CSRIC Final Report.*

• Amends sections 11.51(d), (g)(3), (h)(3), and (j)(2) of the Commission's rules to require EAS Participants to derive the visual display elements, including the originator, event, location and the valid time period of the EAS message, from the CAP text data as described in section 3.6 of the ECIG Implementation Guide (intermediary devices must provide for such functionality by June 30, 2015).

• Declines to revise section 11.54(b) of the Commission's rules to mandate that CAP-formatted messages be broadcast only if the scope of the alert is ''Public,'' and to include IPAWS monitoring, as recommended in the *CSRIC Final Report.*

• Clarifies that it would be inappropriate to adopt any form of blanket exemption from the basic obligations of monitoring for, receiving, and processing CAP-formatted messages, but concludes that the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.

• Incorporates conformance with the ECIG Implementation Guide into the Commission's existing certification scheme.

• Amends section 11.55 of the Commission's rules to eliminate the requirement that EAS Participants receive and transmit CAP-formatted messages initiated by state governors.

• Amends the procedures for processing EANs set forth in § 11.54 of the Commission's rules and related Part 11 rule sections so that EAS Participants process EANs like any other EAS message, only on a mandatory and priority basis. To effect these changes, deletes §§ 11.16, 11.42, 11.44, 11.53, 11.54(a), (b)(1)–(8), (b)(10), (b)(12) and (c) of the Commission's rules, as well as the Emergency Action Termination (EAT) event code.

• Eliminates Non-Participating National (NN) deleting references to status, and in this regard, revise sections 11.18, 11.41, 11.54, and 11.55 of the Commission's rules to remove references to NN status, and deletes section 11.19 altogether.

• Seeks comment on whether the option for EAS Participants to manually process EANs (but not state or local EAS messages) should be eliminated.

• Defers taking any action with respect to the EAS Operating Handbook until, at a minimum, review of the test data received from EAS Participants as a result of the November 9, 2011, nationwide EAS test has been completed.

• Revises section 11.11(a) of the Commission's rules to remove the references therein to ''participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels.''

• Revises the definition for LP–1 station in § 11.2(b) of the Commission's rules to reflect that these stations can be a radio or TV station.

• Deletes § 11.14 of the Commission's rules.

• Revises section 11.2(a) to delete the numerical reference to the actual number of Primary Entry Point (PEP) stations in existence, and to clarify that PEP stations distribute EAS messages in accordance with the EAS Protocol requirements in section 11.31.

• Deletes section 11.13 of the Commission's rules and folds the definition for the EAN currently in section 11.13 into section 11.2.

• Revises §§ 11.31 and 11.34(d) of the Commission's rules to replace the references to the Federal Information Processing Standard (FIPS) numbers with references to the American National Standards Institute (ANSI) Codes INCITS 31.200x (Formerly FIPS 6–4), Codes for the Identification of Counties and Equivalent Entities of the United States, its Possessions, and Insular Areas standard.

• Revises the analog and digital broadcast station equipment deployment table in § 11.11(a) of the Commission's rules so that ''LPFM'' and ''LPTV'' are identified with the columns listing the requirements for those categories, and revises §§ 11.61(a)(1)(i) and 11.61(a)(2)(ii) of the Commission's rules to include ''LPFM'' stations.

• Revises section 11.32(a)(9)(iv) of the Commission's rules to limit the duration of the Attention Signal to no more than eight seconds, and deletes as obsolete sections 11.33(b) and 11.12.

• Clarifies that EAS Participants may relay, for the benefit of downstream monitoring stations, messages they received that did not include an End of Message (EOM) code within the reset time limit set on their decoder.

• Declines to revise § 11.33(a)(3)(ii) of the Commission's rules to eliminate the requirement to delete messages upon expiration of their time periods, thus allowing EAS Participants to air alert messages after expiration of the effective time period set by the alert message originator.

• Reiterates that the Commission lacks the authority to raise or distribute funds for EAS-related purposes and therefore cannot provide training for state and local emergency managers.

• Observes that the decision to require EAS Participants to meet the video display requirements in section 11.51(d), (g)(3), (h)(3), and (j)(2) by using the enhanced text in the CAP message, as outlined in the ECIG Implementation Guide, will help harmonize the EAS rules with the requirements of section 79.2.

• Identifies several proposals raised in the comments submitted in response to the *Third FNPRM* as being outside the scope of the *Third FNPRM* and thus not taken up by the *Fifth Report and Order.*

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. SBA filed no comments in this proceeding, and there were no other comments specifically addressed to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. 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 rules adopted herein. 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 Small Business Administration (SBA).

6. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission 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. The Commission estimates that, of this total, as many as 88, 506 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

7. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts. Business concerns included in this industry

are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,390. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Radio Stations.* The rules and policies adopted in the *Fifth Report and Order* potentially will apply to all AM and FM radio broadcasting applicants, and proponents for new FM allotments, who qualify for the Tribal Priority adopted in the First Report and Order in this proceeding. The ''Radio Stations'' Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts. According to BIA/Kelsey, MEDIA Access Pro Database on January 13, 2011, 10,820 (97%) of 11,127 commercial radio stations have revenue of $7 million or less. Therefore, the majority of such entities are small entities. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses may therefore be over-inclusive.

10. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small entities.

11. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by the rules adopted in the *Fifth Report and Order.*

12. *Cable System Operators (Telecom Act Standard).* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

13. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 3,188 firms in this previous category that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, most cable systems are small and may be affected by the rules adopted in the *Fifth Report and Order.* In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

14. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that 3,188 firms operated n 2007 as Wired Telecommunications Carriers. 3,144 had 1,000 or fewer employees, while 44 operated with more than 1,000 employees.

15. *Broadband Radio Service and Educational Broadband Service (FCC*

Auction Standard). The established rules apply to Broadband Radio Service (''BRS,'' formerly known as Multipoint Distribution Systems, or ''MDS'') operated as part of a wireless cable system. The Commission has defined ''small entity'' for purposes of the auction of BRS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved this definition of small entity in the context of MDS auctions. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

16. The rules and policies adopted in the *Fifth Report and Order* would also apply to Educational Broadband Service (''EBS,'' formerly known as Instructional Television Fixed Service, or ''ITFS'') facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services, Cable and Other Subscription Programming, also appears to apply to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, the Commission does not collect annual revenue data for EBS licensees and is not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, the Commission tentatively concludes that at least 1,932 are small businesses and may be affected by the rules and policies adopted in the *Fifth Report and Order.*

17. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

18. *Incumbent Local Exchange Carriers (LECs).* The Commission has included small incumbent LECs in this IRFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on its analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees, and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted in the *Fifth Report and Order.*

19. *Competitive (LECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees, and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

20. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

21. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the majority of Satellite Telecommunications firms can be considered small entities.

22. The second category, *i.e.* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by the rules and policies adopted in the *Fifth Report and Order.*

23. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic

census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. To gauge small business prevalence for the DBS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. There are revisions to current Part 11 reporting, recordkeeping, or compliance requirements set forth in the *Fifth Report and Order.* Specifically, the *Fifth Report and Order:*

• Revises section 11.21(a) to make clear that the State EAS Plans specify the monitoring assignments and the specific primary and backup path for SAME-formatted EANs. This revision merely applies a current reporting requirement to a new technical protocol and the Commission does not expect it to alter the reporting burden to any appreciable degree. The revision will ensure the accuracy of EAS operational documents and thus contributes to public safety. Accordingly, the Commission believes the revision to be necessary.

• Revises section 11.33(a)(4) to require that if an alert message is derived from a CAP-formatted message, the contents of the text, assembled pursuant to ECIG Implementation Guide, should be added to the EAS device log. This revision merely applies a current reporting requirement to a new technical protocol and the Commission does not expect it to alter the reporting burden to any appreciable degree.

• Eliminates Non-Participating National source (NN) status and thus deletes all references to NN status from section 11.41 (and other sections) of the Part 11 rules. Obtaining NN status required the submission of paperwork to the FCC, thus, eliminating such status eliminates a potential paperwork requirement. Because NN stations were otherwise required to meet the same logging and reporting requirements of non-NN stations, the elimination of this status did not impact other logging or reporting requirements to which NN stations are subject.

• Deletes section 11.42 in its entirety, which set forth certain reporting requirements for common carrier stations involved in national level EAS operations. Like all of the provisions in section 11.42, the provisions related to common carriers facilitated EAS operations that were phased out in 1995. Accordingly, deleting section 11.42 formally eliminates reporting requirements that were effectively eliminated long ago.

• Revises section 11.54(b)(13) to eliminate the requirement that EAS Participants enter into their logs/records the time of receipt of EAT messages during a national level emergency. This action is necessary because the *Fifth Report and Order* eliminates the EAT from the Part 11 rules, and incrementally lessens the logging/recording requirements associated with EANs.

• Revises section 11.55 section to clarify that the time of receipt of CAP-formatted emergency alert messages must be entered into the stations/systems' logs/records. The requirement in section 11.55 directing stations/systems to enter into their logs/records the time of receipt of an emergency alert message already broadly applies to any emergency alert message, regardless of how it is formatted; this revision merely makes this point clearer.

• Adopts, in paragraphs 164–167, 170–171 and 175–176, streamlined procedures for equipment certification that take into account standards and testing procedures adopted by FEMA. This revision merely applies a current certification requirement to equipment that complies with a new technical protocol and the Commission does not expect it to alter the certification burden to any appreciable degree.

25. These requirements are intended to advance our public safety mission and enhance the performance of the EAS while reducing regulatory burdens wherever possible.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 such 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 such small entities.''

27. EAS Participants currently are required to receive and process CAP-formatted alert messages, as set forth in section 11.56. The *Fifth Report and Order* adopts dozens of revisions to Part 11 of the Commission's rules that are necessary in order for EAS Participants to meet this obligation and, more generally, to streamline and make more efficient the operation of the EAS. The majority of the rule revisions are not designed to introduce new obligations that do not already exist, but rather, more clearly identify and effect within Part 11 the CAP obligations previously adopted in the *Second Report and Order.* In many cases, the rule revisions eliminate or reduce recordkeeping and reporting requirements. In all instances, the Commission chose the least costly, technically feasible option. In this regard, these revisions are designed to minimally impact all EAS Participants, including small entities, to the extent feasible, while at the same time protecting the lives and property of all Americans. This confers a direct benefit on small entities. For example, the rule revisions maintain the existing EAS architecture and permit affected parties to meet their CAP-related obligations via intermediary devices, which potentially may alleviate the need to obtain new EAS equipment for many EAS Participants. Similarly, the revisions to EAN processing make the Part 11 rules simpler both to understand and implement within equipment designs.

28. Removing redundant or obsolete sections from the EAS rules not only streamlines EAS operation, but also decreases costs to all involved in the functioning of the EAS. Moreover, the CAP-related amendments that the Commission makes to its EAS rules are designed to minimize costs. For example, the *Fifth Report and Order* removes the obligation to receive and process CAP-formatted alerts messages initiated by state governors. This will eliminate the costs of upgrading EAS equipment to comply with this requirement.

29. Commenters were invited to suggest steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters were also invited to propose alternatives that serve the goal of minimizing the impact on small entities. Virtually all commenters agreed that incorporation of CAP into the Part 11 rules will significantly benefit both public safety officials and the public by creating a more efficient, reliable and effective EAS. The new rules require EAS Participants to monitor FEMA's IPAWS system for Federal CAP-formatted alert messages using whatever interface technology is appropriate. This approach marks an alternative from the Commission's proposal in the *Third FNPRM* and is in response to comments received in response to the *Third FNPRM* that advocated for more flexibility for this requirement. Moreover, the new rules permit, with certain limitations, EAS Participants to use intermediary devices to meet their CAP-related obligations. The approach taken in the *Fifth Report and Order* strikes a balance by allowing use of these devices by EAS Participants—many of whom are small or are non-commercial—but only to the extent such devices can comply with the rules adopted today by June 30, 2015. This is a significantly less costly alternative to requiring immediate compliance.

30. *Report to Congress:* The Commission will send a copy of the *Fifth Report and Order,* including this FRFA, in a report to be sent to Congress and the Government

Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fifth Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fifth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2011–0034; FXES11130900000C3–123–FF09E32000]

RIN 1018–AX79

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of American Burying Beetle in Southwestern Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will reestablish the American burying beetle, a federally listed endangered insect, into its historical habitat in Wah'kon-tah Prairie in southwestern Missouri. We will reestablish the American burying beetle under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and will classify that reestablished population as a nonessential experimental population (NEP) within St. Clair, Cedar, Bates, and Vernon Counties, Missouri. This rule provides a plan for establishing the NEP and provides for allowable legal incidental taking of the American burying beetle within the defined NEP area.

DATES: This final rule is effective April 23, 2012.

ADDRESSES: This final rule is available on *http://www.regulations.gov* and available from our Web site at *http://www.fws.gov/midwest/endangered.* Comments and materials received, as well as the supporting file for this final rule will be available for public inspection, by appointment, during normal business hours, at the Columbia, Missouri Ecological Services Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203; telephone 573–234–2132. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Fish and Wildlife Biologist, at the Columbia, Missouri Ecological Services Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203, telephone 573–234–2132; facsimile 573–234–2181.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Background

The American burying beetle (*Nicrophorus americanus,* ABB) was listed as endangered throughout its range on July 13, 1989 (54 FR 29652), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), without critical habitat (USFWS 2008, p. 2). The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j) of the Act, the Secretary of the Interior can designate reestablished populations outside the species' current range, but within its historical range, as ''experimental.'' With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this experimental population will not be essential to the continued existence of the species in the wild. This determination has been made because, since the time the species was listed, wild populations of the ABB are now found in seven additional States, three of which are considered robust and suitable for donor populations (USFWS 2008, p. 14). Therefore, the Service will designate a nonessential experimental population (NEP) for the species in southwestern Missouri.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) of the Act apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the NEP is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for ABBs established within the NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7 of the Act.

American burying beetles used to establish an experimental population will come from a captive-rearing facility

at the St. Louis Zoo, which propagates this species under the Federal Fish and Wildlife Permit #TE135297–0. The donor population for the Zoo is a wild population from Ft. Chaffee, Arkansas. Each spring, Ft. Chaffee Maneuver Training Center (MTC) will provide the St. Louis Zoo with up to 15 ABB pairs, provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that using individuals from donor populations for release is not likely to jeopardize the continued existence of the species in the wild. ABBs will be transported to St. Louis Zoo staff to augment the St. Louis Zoo's captive population, or possibly for direct reintroduction to Wah'kon-tah Prairie. The purpose of the captive population is to provide stock for reintroductions in ''suitable areas'' within the species' historical range, in accordance with recovery action 7.2 of the American Burying Beetle Recovery Plan (USFWS 1991, p. 52).

We have not designated critical habitat for the ABB. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

We will not change the NEP designation to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

Biological Information

The ABB is the largest member of the family Silphidae in North America, and the largest among a guild of species that breed and rear their young on vertebrate carcasses. Because carrion is a scarce and ephemeral resource, ABBs must traverse large areas in search of it. By necessity, they are strong flyers capable of covering several miles overnight. The farthest recorded dispersal in a year for reintroduced ABBs is 3 miles (4.8 km) (McKenna-Foster *et al.* 2007, p. 9). Data from the Nantucket reintroduction show that the farthest dispersal in one season was 3 miles (4.8 km) (McKenna-Foster *et al.* 2007, p. 9). Data from Nebraska indicate that the vast majority (92 percent) of ABB were recaptured within 0.6 miles (1 km) of their initial capture within the same season (Bedick *et al.* 1999, p. 176). After ABBs find an appropriate-sized carcass, a pair of beetles cooperatively buries and prepares the carcass by removing its fur or feathers and coating it with antibacterial secretions. These activities require soil excavation; consequently soils must be conducive for excavation, and plant roots systems must not hinder excavation. Reproductive habitat activities also require soil that is appropriately moist. Both parents may remain to feed the larva with regurgitated meat until they are capable of feeding themselves. After pupation, new adults emerge within 30–45 days. ABBs are generally considered univoltine (having one brood or generation per year) in the wild, with a life span of about 12 months. They are a habitat generalist with regards to vegetation, and will eat all classes of vertebrate carcasses (USFWS 2008, pp. 8, 11).

The ABB's historical range included 35 States and three Canadian provinces in the eastern temperate areas of North America (USFWS 1991, p. 4). At the time of listing, only two ABB populations were known, one on Block Island, Rhode Island, and one in Latimer County, Oklahoma. Subsequent monitoring in other States documented additional populations in Arkansas, Nebraska, Texas, South Dakota, and Kansas (USFWS 2008, p. 16). The population on Block Island is the only naturally occurring population east of the Mississippi River. The ABB also occurs in captive-breeding populations. Currently, captive populations are maintained at the Roger Williams Park Zoo in Providence, Rhode Island; St. Louis Zoo in St. Louis, Missouri; The Wilds in Ohio; and the Cincinnati Zoo in Cincinnati, Ohio.

The reasons for the decline of the ABB during the 1900s are still unknown. Many hypotheses for the decline have been suggested, such as the widespread use of dichloro-diphenyl-trichloroethane (DDT) and other pesticides, habitat loss and fragmentation, decrease in the availability of carrion, increased use of artificial lighting, an unidentified pathogen, increase in competition from vertebrate scavengers, and an increase in competition from other carrion insects (Sikes and Raithel 2002, pp. 104–109). Predation is not believed to be an important mortality factor for the ABB, although interaction with fire ants, whether through competition or predation, is thought to adversely affect ABB populations. Disease is not known to be a factor in the decline of the ABB, but knowledge of diseases of insects is in its infancy (USFWS 2008, p. 31). Competition for carrion by scavengers is thought to be an important factor in the decline of ABB (Sikes and Raithel 2002, p. 111). Competition with ants, flies, and vertebrate scavengers, as well as other species of burying beetles, can be limiting factors for ABBs (Sikes and Raithel 2002, p. 111). Weather extremes, such as drought, wildfire, hurricanes, and ice storms, may affect the viability of existing populations (USFWS 2008, p. 33).

Recovery Efforts

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. The ABB recovery plan was developed within 2 years of the listing of the species and reflects the best information available at that time. The recovery objectives of the 1991 plan are to (1) ''reduce the immediacy of the threat of extinction * * *'' and (2) ''improve its status so that it can be reclassified from endangered to threatened.'' The recovery plan did not include delisting criteria; however, criteria for the reclassification are:

(a) Three populations of *N. americanus* have been reestablished (or additional populations discovered) within each of four broad geographical areas of its historical range: the Northeast, the Southeast, the Midwest, and the Great Lakes States;

(b) Each population contains a minimum of 500 adults as estimated by capture rates per trap night and black lighting effort; and

(c) Each population is demonstrably self-sustaining for at least 5 consecutive years (or is sustainable with established long-term management programs) (USFWS 1991, pp. 31–32).

The 1991 Recovery Plan considers conducting additional reintroductions a top priority (Priority 1) (USFWS 1991, p. 63). The first reintroduction site for the ABB was Penikese Island, Massachusetts, in 1990. After ABBs were released on Penikese for 4 years, the population persisted there for about 8 years (until 2002). No ABBs were subsequently found there during modest trapping efforts from 2003 to 2006. Nantucket Island was the next ABB reintroduction site, which was initiated in 1994. Release of ABBs ended in 2006, and the population has persisted. Since 1998, there have been sporadic efforts to reintroduce a population in Ohio, but ABBs have yet to be recaptured after overwintering (USFWS 2008, p. 5).

Reestablishment Area

Historically, the ABB was recorded in 13 counties throughout Missouri, and

was most likely found throughout the State. The last documented ABB occurrence in the State was collected in a light-trap from Newton County (southwest Missouri) in the mid-1970s (Simpson 1991, p. 1). Monitoring for existing ABB populations has been ongoing in Missouri since 1991. A concerted monitoring effort has been conducted by the St. Louis Zoo since 2002, and monitoring began on Wah'kon-tah Prairie in 2004. During the period 2002–2009, researchers monitored 49 sites from 25 counties in Missouri for ABB (Merz 2009, p. 8). No ABBs were observed or collected in any of the sites surveyed in Missouri since the 1970s.

The reintroduction site, Wah'kon-tah Prairie, is a 3,030-acre (1,226-hectare) site jointly owned and managed by the Missouri Department of Conservation (MDC) and The Nature Conservancy (TNC). It is a designated special focus area, where TNC is working to restore a greater prairie chicken (*Tympanuchus cupido*) population and native tallgrass prairie. Wah'kon-tah Prairie straddles the border of St. Clair and Cedar Counties, and is very close to Bates and Vernon Counties, all within southwestern Missouri. The area within the borders of these four counties, 2,885 square miles (7,472 square kilometers (km)), is the designated area for the nonessential experimental population (NEP). The minimum distance from the reintroduction site to outside the designated experimental population boundary is 17 miles (27 km); the greatest distance is 52 miles (84 km). This NEP area was selected because of its proximity to the last recorded ABB sighting in Missouri, the quantity of recent ABB monitoring, and the relative abundance of carrion (Hamilton and Merz 2010, pp. 4–5).

According to the St. Louis Zoo's American Burying Beetle Activity Summary in 2009, 12 sites within the NEP area were monitored for carrion beetles (Jean *et al.* 2009, p. 1). Five of these sites were on Wah'Kon-Tah Prairie, one of which was sampled for 66 days throughout the season. The pitfall traps within the NEP area collected 46,522 individuals, of which 86 percent were other species of the beetle family Silphidae (to which the ABB belongs); the remainder were other insects and spiders. No ABBs were found (Jean *et al.* 2009, p. 1).

Section 10(j) of the Act requires that an experimental population be wholly separate geographically from wild populations of the same species. Because there are no known populations of ABB in Missouri, and there are no records of ABB in the bordering counties of eastern Kansas, this NEP is geographically separate from all other known ABB populations. Based on the movement data of other ABB populations, we do not believe the reintroduced ABBs will move beyond the designated NEP area. If monitoring shows that the reintroduced ABB are moving toward a border of the NEP, we may seek to amend the NEP boundaries, after monitoring the possible new NEP areas. If individuals of this population move outside the designated NEP area, we will presume that they came from the reintroduced population. We may then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

Release Procedures

Captive-bred beetles from the St. Louis Zoo, wild beetles from Ft. Chaffee, or both, will be brought to the release site in late spring by representatives of the St. Louis Zoo or the Service. ABBs will be paired 24 hours in advance of release. These beetles will be marked by clipping the elytra (the modified forewings that encase the thin hind wings used in flight) to distinguish between captive-bred and wild beetles, and between the release transects. For the release, a soil plug is dug and removed, and paired ABBs are provisioned with a 120–200 gram (4–7 ounce) carcass and placed into the hole. The soil plug is then placed back over the hole and a wire screen is stapled over the area to keep out scavenging animals and birds. These holes will be dug in several lines, or transects. The number of transects will be determined by the number of beetles available, and apportioned in equal numbers (Hamilton and Merz 2010, p. 7). The ABB Reintroduction Plan contains additional information on the release procedures and monitoring protocols (contact the person listed under **FOR FURTHER INFORMATION CONTACT** for copies of this document).

Population Status

We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of ABBs from the donor population at Ft. Chaffee, Arkansas, for releases into Wah'kon-tah Prairie is not likely to jeopardize the continued existence of the species in the wild. These donor populations are closely monitored by the Service, and over collection will not be permitted. Establishing additional ABB populations within the species' historical range is an important step in recovery (USFWS 1991, p. 52).

The special rule that accompanies this section 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of ABBs that is accidental and incidental to otherwise lawful activities. We provide this exemption because we believe that such incidental take of members of the NEP associated with otherwise lawful activities is necessary and advisable for the conservation of the species, as activities that currently occur or are anticipated in the NEP area, such as haying, grazing, and occasional burning of pastures, are generally compatible with ABB recovery.

This designation is justified because no adverse effects to extant wild or captive ABB populations will result from release of progeny from the captive flock. We also expect that the reintroduction effort into Missouri will result in the successful establishment of a self-sustaining population, which will contribute to the recovery of the species.

Management

Management issues related to the ABB NEP that have been considered include:

(a) *Mortality:* The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. Incidental take of the ABB within the NEP area will not be prohibited, provided that the take is unintentional and is in accordance with the special rule that is a part of this 10(j) rule. However, if there is evidence of intentional take of an ABB within the NEP that is not authorized by the special rule, we will refer the matter to the appropriate law enforcement entities for investigation.

(b) *Special handling:* In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may in the course of their official duties, handle ABBs to aid sick or injured ABBs, or to salvage dead ABBs. However, non-Service personnel and their agents would need to acquire permits from the Service for these activities.

(c) *Coordination with landowners and land managers:* Through various meetings, the Service and cooperators have identified issues and concerns associated with the ABB population establishment. The population establishment was discussed with

potentially affected State agencies and private landowners. Affected State agencies, landowners, and land managers have either indicated support for, or no opposition to, the population establishment, provided an NEP is designated and a special rule is promulgated which does not prohibit incidental take.

(d) *Monitoring:* Surveys conducted prior to releasing the ABBs will assess the over-wintering population from the prior year's release. During reintroduction, carcasses will be exhumed 10–12 days after burial to determine breeding success and the number of third instar (a developmental stage in insects representing their third molt) larvae present. This should provide a close estimate of the number of offspring produced in that first generation.

During the period from June through August, each reintroduction site will be surveyed for at least three nights in duration. In addition to sampling at the release site(s), surrounding areas will be sampled in at least four directions, approximately 0.6 mile (1 km) away, for at least three consecutive nights, following a statistically-based monitoring plan. Monitoring at the release sites and areas within approximately 0.6 mile (1 km) of those sites should detect the majority of the released beetles. Monitoring using pitfall trap surveys in the subsequent early summer and fall following release will provide an estimate of breeding pair productivity by collecting young adults following emergence. This will also allow for an estimate of overwinter survival of progeny. Beetles captured in the late summer and fall will be paired, provisioned with a carcass, and held until all pairs can be reintroduced back to the original release sites. We intend to reintroduce at least 50 pairs each year for 5 years, or until data suggest a viable population of more than 1,000 individuals has been established. At year five, the cooperators will evaluate the project's successes and failures and make adjustments to the ABB reintroduction project, if necessary.

Summary of Public and Peer Review Comments and Recommendations

In the proposed rule published on July 22, 2011 (76 FR 43973), we requested that all interested parties submit written comments on the proposal by August 22, 2011. We also contacted appropriate Federal and State agencies, scientific experts, and other interested parties, and invited them to comment on the proposal. A newspaper notice inviting general comments was published in the El Dorado Springs (Missouri) Star, and an article inviting the same was published in the El Dorado Springs (Missouri) Sun. We did not receive any requests for a public hearing, but we did hold a public meeting in El Dorado Springs, Missouri, on August 11, 2011.

We reviewed all comments we received from the public and peer reviewers for substantive issues and new information regarding the creation of an experimental population of American burying beetles in southwestern Missouri. All substantive information provided during the comment period has either been incorporated into this final determination or is addressed below. We received seven written comments, including comments from three peer reviewers. Six comments supported the proposed NEP listing, including the comments from the three peer reviewers. One comment had no substantive issues.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three individuals with scientific expertise that included familiarity with the species and their reintroduction. We received responses from all three peer reviewers from whom we requested comments. All three responses supported the 10(j) rule, and brought up no issues to be addressed.

Public Comments

Comment: The Missouri Department of Conservation (MDC) provided recommendations on the post-release monitoring protocol described in the proposed rule and in the reintroduction plan. Based on information from other ABB reintroduction efforts, MDC commented that a sampling radius of 0.6 mile (1 km) would be more likely to capture dispersing ABBs than the 1 mile (1.6 km) described in the proposed rule. Furthermore, MDC suggested adding four specific sampling directions (NW., NE., SE., and SW.) to the four directions described in the proposed rule and the reintroduction plan.

Our response: We will ensure implementation of a statistically-based post release monitoring, and we have revised the final rule and reintroduction plan to reflect that sampling will occur approximately 0.6 mile (1 km) away from the release site, as recommended by MDC. Our ability to conduct monitoring at specific distances and directions suggested by MDC is tempered by access to lands off of Wah'kon-tah Prairie, the locations of the reintroduction transects, and the number of stations necessary for a statistically sound monitoring protocol.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this final rule is not significant and has not reviewed this final rule under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the final rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the final rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the final rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the final rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), 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 (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that will be affected includes the release areas at Wah'kon-tah Prairie and adjacent areas into which ABBs may disperse, which over time could include sizable portions of the NEP. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for

incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for the ABB populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the ABB, but we do not expect projects to be halted or substantially modified as a result of these regulations.

This rule will broadly allow incidental take of the ABB within the NEP area. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes is prohibited. Intentional take for research or recovery purposes will require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the NEP area are agriculture, rural development, and recreation. We believe the presence of the ABB will not affect the use of lands for these purposes because there will be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the ABB, and Federal agencies will only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments will not be affected because the NEP designation will not place additional requirements on any city, county, or other local municipalities.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This NEP designation for the ABB will not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding those populations are significantly reduced. This reduction of regulatory burden allows landowners to continue using their lands in ways that may adversely impact the ABB, but are otherwise lawful. For example, this rule will not prohibit the taking of ABBs in the NEP area when such take is incidental to an otherwise legal activity, such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations. Because of the substantial regulatory relief provided by the NEP designations, we do not believe the reestablishment of this species will conflict with existing or proposed human activities or hinder public use of lands within the NEP.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of a listed species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a federalism impact summary statement is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this rule with, the affected resource agencies in Missouri. Achieving the recovery goals for this species will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government, and is being undertaken in coordination with the State of Missouri. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism impact summary statement under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

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 readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this rule.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095. We may not collect 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

The reintroduction of native species into suitable habitat within their historical or established range is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4, 516 DM 2.3A, 516 DM 2 Appendix 1, and 516 DM 8 Appendix 1.4.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request at the Columbia, Missouri Ecological Services Office (see **ADDRESSES**).

Authors

The primary authors of this rule are staff members of the Service's Columbia, Missouri Ecological Services Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

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 set forth below:

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 § 17.11(h) by revising the entry for ''Beetle, American burying'' under ''INSECTS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
Beetle, American burying.	*Nicrophorus americanus*.	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	Entire, except where listed as an experimental population.	E	351	NA	NA
Beetle, American burying.	*Nicrophorus americanus*.	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	In southwestern Missouri, the counties of Cedar, St. Clair, Bates, and Vernon.	XN	800	NA	17.85(c)
*	*	*	*	*	*		*

■ 3. Amend § 17.85 by adding paragraph (c) to read as follows:

§ 17.85 Special rules—invertebrates.

* * * * *

(c) American Burying Beetle (*Nicrophorus americanus*).

(1) *Where is the American burying beetle designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the American burying beetle is within the species' historical range and is defined as follows: The Missouri Counties of Cedar, St. Clair, Bates, and Vernon.

(ii) The American burying beetle is not known to exist in Cedar, St. Clair, Bates, or Vernon Counties in Missouri, as of the date of enacting this regulation. Based on its habitat requirements and movement patterns, we do not expect this species to become established outside this NEP area.

(2) *What activities are not allowed in the NEP area?*

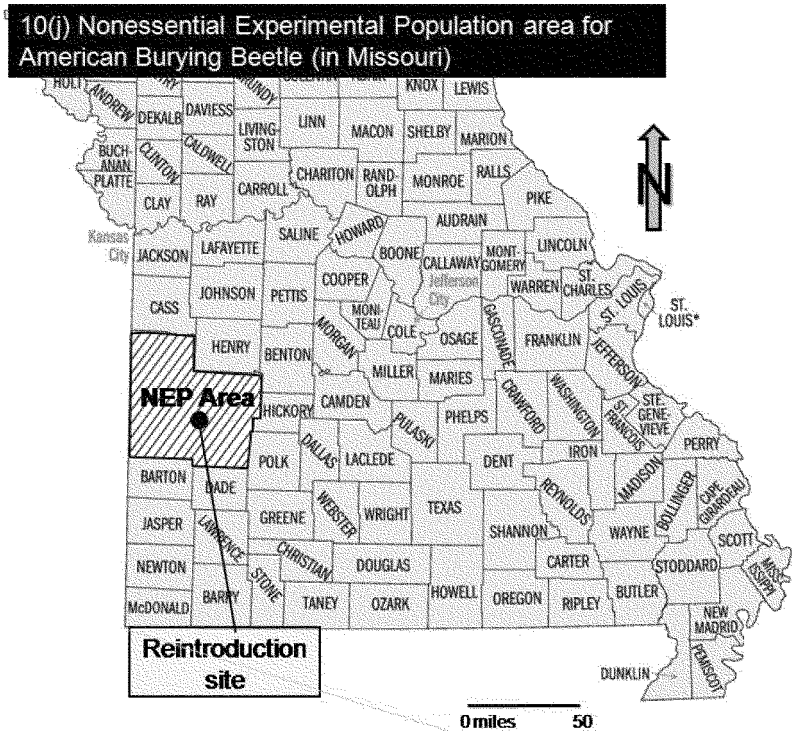
(i) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, American burying beetles, or parts thereof, that are taken or possessed in violation of paragraph (c)(3) of this section or in violation of applicable State fish and wildlife laws or regulations or the Act.

(ii) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (c)(2)(i) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the American burying beetle follows:



Dated: March 12, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–6779 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 100217098–2125–02]

RIN 0648–AY64

Taking and Importing Marine Mammals; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Department of the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force), Eglin Air Force Base (Eglin AFB) is issuing regulations to govern the taking of Atlantic bottlenose dolphins, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations at Eglin AFB, Florida, for a 5-year period. The U.S. Air Force activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of Letters of Authorization (LOAs) for the incidental take of marine mammals during the described activities and specified time frames, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking. NMFS issued annual Incidental Harassment Authorizations (IHAs) pursuant to section 101(a)(5)(D) of the MMPA for similar specified activities in 2005, 2006, 2007, and 2008. No activities have occurred to date under those IHAs.

DATES: Effective April 23, 2012, through April 24, 2017.

ADDRESSES: A copy of the application containing a list of the references used in this document may be obtained by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, and telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address. NMFS has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in accordance with the National Environmental Policy Act (NEPA) as implemented by the regulations published by the Council on Environmental Quality (CEQ).

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary), upon request, to allow for a period of not more than 5 years, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Alternatively, if the taking is limited to harassment, certain determinations are made and the authorization does not exceed one year, an IHA may be issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the **Federal Register** a notice of a receipt of an application for the implementation

of regulations or a proposed IHA initiating a period for public review and comment.

An authorization for the incidental takings may be granted if NMFS finds that the taking during the period of the authorization 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 to achieve the least practicable adverse impact.

NMFS has defined ''negligible impact'' as: ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–36) modified the MMPA by removing the ''small numbers'' and ''specified geographic region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA):

''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or behavioral patterns are abandoned or significantly altered (Level B harassment).''

Summary of Request

On November 6, 2009, NMFS received a letter from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to NEODS training operations. These training operations are properly considered ''military readiness activity'' under the provisions of the NDAA. On January 15, 2010, NMFS published a notice of receipt (75 FR 2490) in the **Federal Register** for the U.S. Air Force's NEODS training operations and determined that its application was adequate and complete. The **Federal Register** notice solicited comments from the public. After the close of the public comment period and review of comments, NMFS, on October 1, 2010, NMFS published a proposed rule (75 FR 60694) in the **Federal Register** to authorize the take of marine mammals pursuant to the U.S. Air Force's NEODS training operations and solicited public comments. On November 30, 2010, NMFS received a revised application from the U.S. Air Force which addressed public comments received during the comment period for the proposed rule. This application re-estimated the Zones of Influence (ZOI) and associated takes on revised thresholds for Level A and Level B harassment. On December 5, 2011, NMFS received a revised application from Eglin AFB with revised monitoring and mitigation measures to reduce the potential for lethal take of bottlenose dolphins, in response to an event involving the mortality of common dolphins associated with similar explosive training operations at the U.S. Navy's Silver Strand Training Complex near San Diego, California.

The U.S. Air Force states and NMFS concurs that underwater explosive detonations could result in the take by harassment of marine mammals by exposing them to sound. The requested regulations would establish a framework for authorizing incidental take with one or more future LOAs over a period not to exceed five years. These LOAs, if approved, would authorize the take, by Level B (behavioral) harassment, of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to conducting NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at property off Santa Rosa Island (SRI), Florida, in the northern Gulf of Mexico (GOM). Based on the application, estimated take, without considering mitigation effectiveness, would average approximately 10 animals per year; approximately 50 animals over the five year period. NMFS issued annual IHAs pursuant to section 101(a)(5)(D) of the MMPA for almost identical activities in 2005 (70 FR 51341; August 30, 2005), 2006 (71 FR 60639; October 16, 2006), 2007 (72 FR 58290; October 15, 2007), and 2008 (73 FR 56800; September 30, 2008). No missions have occurred under previous IHAs because of a separate concern about the safety of demolition charges being transported under a bridge. NEODS missions would involve underwater detonations of small, live explosive charges adjacent to inert mines. The U.S. Air Force states that underwater detonation of the specified explosive charges may expose bottlenose dolphins in the area to noise and pressure resulting in non-injurious temporary threshold shift (TTS) (temporary hearing loss).

Additional information on the NEODS training operations is contained in the application, which is available upon request (see **ADDRESSES**).

Description of the Specified Activities

Background

The EGTTR encompasses approximately 222,739 km^2 (86,000 mi^2) within the GOM and consists of the airspace over the GOM, which is scheduled and operated by Eglin AFB. Potential impacts to marine mammals from NEODS testing are expected to occur at the NEODS test areas of Eglin AFB shown in Figure 1–1 of Eglin AFB's application, which are located approximately three nautical miles (nmi) from shore, in approximately 18.3 m (60 ft) of water and in area W–151 of the EGTTR.

The mission of NEODS is to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The U.S. Navy EOD force of approximately 1,000 personnel has the equipment, mobility, and flexibility to tackle the global spectrum of threats in all world environments. Mine Countermeasures (MCM) detonations is one function of the U.S. Navy EOD force, which involves mine-hunting and mine-clearance operations. The NEODS facilities are located at Eglin AFB, Florida. The training at Eglin AFB involves focused training on basic EOD skills. Examples of these fundamental skills are recognizing ordnance, reconnaissance, measurement, basic understanding of demolition charges, and neutralization of conventional and chemical ordnance.

The NEODS at Eglin AFB plan to use the GOM waters off of SRI for a portion of the NEODS class. The NEODS would utilize areas approximately one to three nmi offshore of Test Site A–15, A–10 or A–3 for MCM training (see Figure 1–1 of Eglin AFB's application). A ''test site'' is a specific location on EGTTR where the mission activities actually occur. The goal of the training is to give NEODS students the tools and techniques to implement MCM and for neutralizing mines by diving and hand-placing charges adjacent to the mines through real scenarios. The students would be taught established techniques for neutralizing mines by diving and hand-placing charges adjacent to the mines. The detonation of small, live explosive charges adjacent to the mine disables the mine function. Inert mines are utilized for training purposes. This training would occur offshore of SRI up to eight times annually, at varying times within the year.

NEODS Operations

MCM training classes are 51 days in duration, with four days of on-site training in the GOM. Two of these four days will be utilized to lay the inert mines prior to the training. The other two days will require the use of live detonations in the GOM. One large safety vessel and five MK V inflatable 3.1 m (10 ft) rubber boats with 50 horsepower (HP) engines would be used to access the GOM waters during training activities. The training procedures during the two ''live demolition'' days are described as follows.

First Live Demolition Day: Five inert mines will be placed in a compact area on the GOM floor in approximately 60 ft of water. These five mines will be utilized for the one or two live demolition days. Divers will locate the mines by hand-held sonars (AN/PQS–2A acoustic locator and the Dukane Underwater Acoustic Locator System), which detect the mine casings (mine shape reacquisition). The hand-held sonar has been evaluated by the U.S. Navy and the sound source levels and sonar frequency ranges are below the threshold considered Level B harassment for marine mammals for sonar use (see Table 1–1 of Eglin AFB's application). Approximately 50,000 hrs of use would be required to affect one dolphin. It is expected that maximum sonar use associated with NEODS operations will be approximately 300 hrs annually. Therefore, potential noise impacts from sonar use are not included in this analysis.

Five charges packed with C–4 explosive material (either 2.3 kg or 5 pound [lb] net explosive weight [NEW] or 4.6 kg [10 lb] NEW) will be set up adjacent to the mines. A charge includes detonation cord, non-electric caps, time fuses and fuse igniters. No more than five charges will be utilized over the 2-day period. Live training events will occur eight times annually, averaging once every six to seven weeks. Four of the training events will involve 5-lb charges, and four events will involve 10-lb charges. Because five detonations (maximum) are expected during each event, there will be up to twenty 5-lb detonations and twenty ten-lb detonations annually, for a total of 40 detonations.

NMFS and the U.S. Air Force expect that 60 percent of the training events will occur in summer, and 40 percent will occur in winter, and analyses of potential marine mammal impacts in Section 6 of Eglin AFB's application reflect this seasonal distribution. Overpressure from the detonation is intended to disrupt the electrical charge on the mine, rendering it safe. The five charges will be detonated individually with a maximum separation time of 20 minutes between each detonation. The time of detonation will be limited to an hour after sunrise and an hour before sunset. Mine shapes and debris will be recovered and removed from the GOM waters when training is completed.

Second Live Demolition Day: Each team has two days to complete their entire evolution (detonation of five charges). The second day will be utilized only for teams not completing their evolution on day one.

TABLE 1—(TABLE 1–1 OF THE APPLICATION) HAND-HELD SONAR CHARACTERISTICS

	AN/PQS–2A	Dukane
Operating Frequency	115 kHz to 145 kHz	37.5 kHz +/− 1 kHz.
Sound Pressure Level	178.5 dB re 1 μPa @ 1m	157 to 160.5 dB re 1 μPa @ 1m.

The AN/PQS–2A sonar system produces a non-continuous audible tone in the diver's headset when a target is located. The AN/PQS–2A sonar's frequency range is within the hearing range of Atlantic bottlenose dolphins. The U.S. Navy evaluated the use of AN/PQS–2A sonar (in addition to many other types of sonar systems) in a 2009 Environmental Impact Statement for activities in the Panama City, Florida area. Using a bottlenose dolphin density of 0.81 animals/km^2, it would require approximately 50,000 hrs of use to reach a take level of 0.5 animals. As a point of comparison, if the AN/PQS–2A sonar was in use for 12 hrs per day on every day of training in the GOM, the total number of hrs of use would be 384 annually. Eglin AFB considers that there would be no impacts to bottlenose dolphins from AN/PQS–2A sonar use.

Additional details regarding the NEODS training operations can be found in Eglin AFB's LOA application and NMFS' Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Level B Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida (EA). The EA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. According to the application, the U.S. Navy and the U.S. Marine Corps believe that the ability of personnel to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

As the U.S. Air Force notes in its application, the U.S. Navy believes that an array of trans-national, rogue, and sub-national adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The U.S. Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: Shallow water; the surf zone; and the beach zone. The U.S. Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The U.S. Air Force has determined and NMFS concurs that the NEODS mission in the GOM offshore of Eglin AFB is a military readiness activity for purposes of the MMPA as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA, Pub. L. 108–236 referencing the definition in section 315 (f) of Pub. L. 107–314).

Dates, Duration, and Location of Specified Activity

NEODS missions will occur over the next five years utilizing resources within the Eglin Military Complex, including three sites in the EGTTR (Figure 1–1 of Eglin AFB's application). There will be eight training events annually, with an average of one event occurring every six to seven weeks. Half

of the events will involve 5-lb charges and half will involve 10-lb charges.

Area W–151: The inshore and offshore boundaries of W–151 are roughly parallel to the shoreline contour. The shoreward boundary is 3 nmi from shore, while the seaward boundary extends approximately 85 to 100 nmi offshore, depending on the specific location. W–151 covers a surface area of approximately 35,145 km² (10,247 nmi²), and includes water depths ranging from approximately 35 to 700 m (114.8 to 2,296.6 ft). This range of depth includes continental shelf and slope waters. Approximately half of W–151 lies over the shelf. Latitude/Longitude of corners of W–151:

- 30.24006° North, −86.808838° West.
- 29.539011° North, −84.995536° West.
- 28.03949° North, −85.000147° West.
- 28.027598° North, −85.199395° West.
- 28.505304° North, −86.799043° West.

Area W–151A: W–151–A extends approximately 60 nmi offshore and has a surface area of 8,797 km² (2,565 nmi²). Water depths range from approximately 35 to 350 m (114.8 to 1,148.3 ft) and include continental shelf and slope zones. However, most of W–151A occurs over the continental shelf, in water depths less than 250 m (820.2 ft). Latitude/Longitude of four corners of W–151A:

- 30.24006° North, −86.808838° West.
- 30.07499° North, −85.999327° West.
- 29.179968° North, −85.996341° West.
- 29.384439° North, −86.802579° West.

Description of Marine Mammals and Habitat Affected in the Activity Area of the Specified Activities

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and one sirenian, the West Indian manatee (see Table 1 below). The marine mammals that generally occur in the training operations area belong to three taxonomic groups: Mysticetes (baleen whales), odontocetes (toothed whales and dolphins), and sirenians (the manatee). Marine mammal species listed as Endangered under the U.S. Endangered Species Act (ESA), include the humpback, sei, fin, blue, North Atlantic right, sperm whale, and Florida manatee. Table 2 below outlines the marine mammal species, their habitat in the region of the project area, and their ESA and MMPA conservation status.

During winter months, manatee distribution in the GOM is generally confined to southern Florida. During summer months, a few may migrate north as far as Louisiana. However, manatees primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions would be conducted one to three nmi from shore. Therefore, effects on manatees are considered very unlikely, and the discussion of marine mammal species is confined to cetaceans. The primarily cetacean occurring in the NEODS area of interest, EGTTR sub-area 197 (Figure 3–1 of Eglin AFB's application), is the Atlantic bottlenose dolphin and this analysis will focus on that species.

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE ACTION AREA IN THE GULF OF MEXICO OFF OF FLORIDA

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes:			
North Atlantic right whale (*Eubalaena glacialis*).	Coastal and shelf	EN	D.
Humpback whale (*Megaptera novaeangliae*).	Pelagic, nearshore waters, and banks	EN	D.
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal	NL	NC.
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	NL	NC.
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN	D.
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	EN	D.
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN	D.
Odontocetes:			
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN	D.
Cuvier's beaked whale (*Ziphius cavirostris*).	Pelagic	NL	NC.
Gervais' beaked whale (*Mesoplodon europaeus*).	Pelagic	NL	NC.
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL	NC.
Blainville's beaked whale (*Mesoplodon densirostris*).	Pelagic	NL	NC.
Sowerby's beaked whale (*Mesoplodon bidens*).	Pelagic	NL	NC.
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL	NC.
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL	NC.
Killer whale (*Orcinus orca*)	Widely distributed	NL EN—Southern Resident.	NC D—Southern Resident, AT1 Transient.
Short-finned pilot whale (*Globicephala macrorhynchus*).	Inshore and offshore	NL	NC.
False killer whale (*Pseudorca crassidens*)	Pelagic	NL	NC.
Melon-headed whale (*Peponocephala electra*).	Pelagic	NL	NC.
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL	NC.
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL	NC.
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	NL	NC.

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE ACTION AREA IN THE GULF OF MEXICO OFF OF FLORIDA—Continued

Species	Habitat	ESA [1]	MMPA [2]
			S—33 stocks inhabiting the bays, sounds, and estuaries along GOM coast. D—Western North Atlantic Coastal.
Rough-toothed dolphin (*Steno bredanensis*).	Pelagic	NL	NC.
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL	NC.
Striped dolphin (*Stenella coeruleolba*)	Pelagic	NL	NC.
Pantropical spotted dolphin (*Stenella attenuata*).	Pelagic	NL.	NC D—Northeastern Offshore.
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL	NC.
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL	NC. D—Eastern.
Clymene dolphin (*Stenella clymene*)	Pelagic	NL	NC.
Sirenians:			
West Indian (Florida) manatee (*Trichechus manatus latirostris*).	Coastal, rivers, and estuaries	En	D.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, and NL = Not listed.
[2] U.S. Marine Mammal Protection Act: NC = Not classified, D = Depleted, and S = Strategic.

The three species of marine mammals that are known to commonly occur in close proximity to the NEODS training area of the GOM are the West Indian (Florida) manatee, Atlantic spotted dolphin, and Atlantic bottlenose dolphin.

Florida Manatee

The West Indian manatee in Florida and U.S. waters is listed as Endangered under the Endangered Species Act (ESA). They primarily inhabit coastal and inshore waters. Because the Florida manatee is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) it is not considered further in this analysis.

Atlantic Spotted Dolphins

The Atlantic spotted dolphin is endemic to the Atlantic Ocean in temperate to tropical waters (Perrin *et al.,* 1987, 1994). In the GOM, Atlantic spotted dolphins occur primarily from continental shelf waters 10 to 200 m (33 to 656 ft) deep to slope waters greater than 500 m (1,640 ft) deep (Fulling *et al.,* 2003; Mullin and Fulling, 2004). Atlantic spotted dolphins were seen in all seasons during GulfCet aerial surveys of the northern GOM from 1992 to 1998 (Hansen *et al.,* 1996; Mullin and Hoggard, 2000). It has been suggested that this species may move inshore seasonally during spring, but data supporting this hypothesis are limited (Caldwell and Caldwell, 1966; Fritts *et al.,* 1983).

Eglin AFB has included Atlantic spotted dolphins in previous requests for IHAs to be conservative, although their occurrence is considered unlikely. The stock assessment reports for the northern GOM describes the shoreward range of Atlantic spotted dolphins as 10 m (33 ft) depth. NEODS activities can occur from one to three miles offshore. Maximum water depth of the activities is 18.3 m (60 ft), but they often train in approximately 9.1 m (30 ft) of water, so this species range occurs at the very edge of the activities. Therefore, the chance of impacting Atlantic spotted dolphins is remote, especially given the monitoring and mitigation measures described below.

Atlantic Bottlenose Dolphins

The marine mammal species most likely to be affected by the NEODS training operations is the Atlantic bottlenose dolphin. Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters. Atlantic bottlenose dolphins occur in slope, shelf, and inshore waters of the entire GOM, and their diet consists mainly of fish, crabs, squid, and shrimp (Caldwell and Caldwell, 1983). In addition, a coastal and an offshore form of the bottlenose dolphin have been suggested. Baumgartner *et al.* (2001) suggest a bimodal distribution in the northern GOM, with a shelf population occurring out to the 150 m (492 ft) isobath and a shelf break population out to the 750 m (2,460.6 ft) isobath. Occurrence in water with depth greater than 1,000 m (3,280.8 ft) is not considered likely and is not applicable to this assessment. Migratory patterns from inshore to offshore are likely associated with the movements of prey rather than a preference for a particular habitat characteristic (such as surface water temperature) (Ridgeway, 1972; Irving, 1973; Jefferson *et al.,* 1992).

Based on a combination of geography, ecological, and genetic research, Atlantic bottlenose dolphins have been divided into many separate stocks within the GOM. Within the EGTTR, there are four defined stocks of bottlenose dolphins: The Northern GOM Oceanic Stock, the Northern GOM Continental Shelf Stock, the Eastern GOM Coastal Stock, and the Northern GOM Coastal Stock. In addition, there are 33 stocks of bottlenose dolphins inhabiting the bays, sounds, and estuaries along the GOM coast (Waring *et al.,* 2007). NEODS training operations occur offshore of Eglin AFB's SRI property in water depths of approximately 60 ft. This location most closely coincides with the defined boundary of the Northern GOM Coastal Stock, which is considered to occur from the GOM shoreline to the 20 m (65.6 ft) isobath. However, individuals from the Northern GOM Bay, Sound, and Estuarine Stocks may also potentially enter the training areas, as movement between various communities has been documented (see Waring *et al.,* 2009).

NEODS training operations occur geographically between the Pensacola/East Bay and Choctawhatchee Bay stocks, although individuals from other

locations could potentially travel through the training areas as well. The Northern GOM coastal stocks and all bay, sound, and estuarine stocks are designated as strategic under the MMPA. Strategic stocks are defined by the MMPA as a marine mammal stock for which the level of direct human-caused mortality exceeds the potential biological removal level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or which is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA. For the coastal stocks, total human-caused mortality and serious injury for each stock is not known and there is insufficient information available to determine whether the total fishery-related mortality and serious injury for each stock is insignificant and approaching zero mortality and serious injury rate. Because for each stock the stock size is currently unknown and potential biological removal (PBR) undetermined, and because there are documented cases of human-related mortality from a number of sources, each stock is a strategic stock. For the bay, sound, and estuarine stocks, human-caused mortality and serious injury for each of these stocks is not known, but considering the evidence from stranding data, the total fishery-related mortality and serious injury exceeds 10 percent of the total known PBR or previous PBR, and, therefore, it is probably not insignificant and approaching the zero mortality and serious injury rate. Because most of the stock sizes are currently unknown, but likely relatively few mortalities and serious injuries would exceed PBR, NMFS considers that each of these stocks is a strategic stock (NMFS, 2009).

Prior to the 2007 Garrison survey and model predictions, the best estimates of Northern GOM Atlantic bottlenose dolphin abundance were 7 to 15 years old, occurred during different seasons, and each of the surveys suffered from differing degrees of negative bias in abundance estimates because all surveys assumed that all animals on the trackline were seen. Therefore, estimates based on those surveys would be highly uncertain. Based on data from the Protected Species Habitat Modeling in the EGTTR, the total estimate of abundance of bottlenose dolphins from the winter 2007 survey was 65,861 (95 percent CI 36,699 to 118,200) and for the summer 2007 survey was 11,433 animals (95 percent CI 7,346 to 17,793) (Garrison, 2008). For the summer and winter surveys, the highest density of bottlenose dolphins occurred in the northern inshore stratum. The summer survey overall abundance estimate for bottlenose dolphins was approximately 50 percent lower than the winter survey (Garrison, 2008). Bottlenose dolphin stocks for the shelf edge and slope are not considered strategic. The PBR for shelf and slope stocks is 45 dolphins (Waring *et al.,* 2001). The exact structure of these stocks is complex and continues to be revised as research is completed.

The presence of fish in the stomachs of some individual offshore bottlenose dolphins suggest that they dive to depths of more than 500 m (1,640 ft). A tagged individual near Bermuda had maximum recorded dives of 600 to 700 m (1,969 to 2,297 ft) and durations of 11 to 12 minutes. Dive durations up to 15 minutes have been recorded for trained individuals. Typical dives, however, are more shallow and of a much shorter duration. Data from a tagged individual off Bermuda indicated a possible diel dive cycle (i.e., a regular daily dive cycle) in search of mesopelagic (living at depths between 180 and 900 m [591 and 2,953 ft]) prey in the deep scattering layer.

In the EGTTR as a whole, there were a total of 281 groups of bottlenose dolphins during the winter survey and 162 groups during the summer survey. According to the species-habitat model for bottlenose dolphins, densities were predicted to be highest in relatively shallow water, with an offshore peak in density between 40 to 60 m (131 to 196.9 ft) depth and in waters ranging between 27.5 to 28.5 °C (81.5 to 83.3 °F) (Garrison, 2008).

Bottlenose dolphin density estimates for the study area are derived from Protected Species Habitat Modeling in the EGTTR (Garrison, 2008). NMFS developed habitat models using new aerial survey line transect data collected during the winter and summer of 2007. The winter survey was conducted primarily during the month of February (water temperatures of 12 to 15 °C [53.6 to 59 °F]) while the summer survey was primarily during July (water temperatures >26 °C [78.8 °F]). In combination with remotely sensed habitat parameters (sea surface temperature and chlorophyll), these data were used to develop spatial density models for bottlenose dolphins within the continental shelf and coastal waters of the eastern GOM. Encounter rates during the aerial surveys were corrected for sighting probabilities and the probability that animals were available to be seen on the surface. The models predict the absolute density of bottlenose dolphins within the EGTTR. Given that the survey area (EGTTR sub-area 197, Figure 3–1 of Eglin AFB's application) completely overlaps the NEODS mission area and that this data is currently the best available survey data, these models best reflect the occurrence of bottlenose dolphins within the EGTTR. Most, but not all, of the NEODS mission area is contained within EGTTR subarea 197 (see Figure 3–1 of Eglin AFB's application). The two westernmost test areas lie within subarea 197, but the easternmost one does not. Dolphin density is not available for the area directly east of subarea 197. However, the physical and biological parameters used to develop density estimates in this subarea likely do not differ significantly between the training areas. The density estimate for subarea 197 is therefore considered the best currently available and is applied to all locations of NEODS training operations.

Table 3–1 of Eglin AFB's application provides median and adjusted bottlenose dolphin densities in EGTTR sub-area 197. These absolute estimates of density (animals per square kilometer [km^2] were produced by combining the spatial density model, sighting probability, and availability model (Garrison, 2008). All environmental terms were retained in the species-habitat model for the winter survey and the summer survey with the exception of glare for the summer survey. The model fits for the winter and summer were highly significant, explained a significant portion of the variability in the data, and resulted in effective predictions of spatial distribution of bottlenose dolphins.

NEODS missions may be executed at any time during the year. It is anticipated that approximately 60 percent of missions will be executed during summer months, and 40 percent will be executed during winter months. Separate summer and winter density estimates are provided in Table 3–1 of Eglin AFB's application. Months with high CV values (greater than 1) have high degrees of uncertainty in the model predictions. These months include May, June, September, October, and November where density was unknown. In order to compensate for the months without good estimates, interpolation was used between the available months by providing a means of estimating the function at intermediate points through presuming that there were linear seasonal trends. Interpolation assumes that the poorly estimated periods lie somewhere in the middle of the well estimated periods. Adjusted densities for each month were reached after

interpolation calculations (see Table 3–1 of Eglin AFB's application). Based on the adjusted densities, January, March, and July have the highest bottlenose dolphin densities while the months from August through December months have the lowest densities. On average, there are 0.81 bottlenose dolphins/km² throughout the year in EGTTR sub-area 197. Seasonally there are on average 0.84 dolphins/km² during summer and 0.78 dolphins/km² during winter in sub-area 197. NMFS has independently evaluated the foregoing approach for calculating the likely occurrence and density of bottlenose dolphins in the specified geographic area and determined that it yields the best scientific data available for purposes of determining the extent of impacts to affected stocks, the likely amount of incidental harassment, and informing the negligible impact determination.

TABLE 3—(TABLE 3–1 OF THE APPLICATION) BOTTLENOSE DOLPHIN DENSITIES FOR EGTTR SUB-AREA 197

Month	Median density (individuals/km²)	CV	Valid	Adjusted density (individuals/km²) [a]
November	0.00	31.62	0	0.51
December	0.52	0.25	1	0.52
January	1.24	0.22	1	1.24
February	0.73	0.20	1	0.73
March	1.22	0.28	1	1.22
April	0.84	0.46	1	0.84
Average Winter Density				0.84
May	0.00	22.41	0	0.95
June	0.00	4.47	0	1.06
July	1.17	0.24	1	1.17
August	0.48	0.22	1	0.48
September	0.01	3.02	0	0.49
October	0.00	20.43	0	0.50
Average Summer Density				0.78
Overall Average Density				0.81

[a] Adjusted through interpolation.

NMFS anticipates that no bottlenose dolphins will be injured, seriously injured, or killed during the NEODS training operations. The specific objective of the U.S. Air Force's mitigation and monitoring plan is to ensure that no dolphins (or manatees) or other protected species are in the action area where they might be impacted by the explosive detonations. Because of the circumstances and the mitigation and monitoring requirements discussed in this document, NMFS believes it highly unlikely that the activities would result in injury (Level A harassment), serious injury, or mortality of bottlenose dolphins; however, they may temporarily avoid the area where the explosive demolitions will occur (after there has been at least one detonation). Eglin AFB has requested the incidental take of 10 bottlenose dolphin each year and approximately 50 animals during the five year duration of the action.

Further information on the biology, habitat, and local distribution of these species and others in the region can be found in Eglin AFB's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Comments and Responses

On January 15, 2010, NMFS published a notice of receipt of application for a LOA in the **Federal Register** (75 FR 2490) and requested comments, information, and suggestions from the public for 30 days. NMFS received comments from the Marine Mammal Commission (Commission) and a private citizen. The private citizen's comments opposed the issuance of an authorization without providing any specific rationale for that position. NMFS, therefore, cannot respond to this comment. NMFS' responses to the Commission's comments are addressed in the proposed rule (75 FR 60694, October 1, 2010). On October 1, 2010, NMFS published a Notice of Proposed Rule (75 FR 60694) on the U.S. Air Force's request to take marine mammals incidental to NEODS training operations at Eglin AFB and requested, comments, information, and suggestions concerning the request. During the 30-day public comment period for the proposed rule, NMFS received comments from two private citizens and the Commission. The following are the comments and NMFS' responses.

Comment 1: A comment from a private citizen does not support giving this permit to Eglin AFB because marine mammals ''deserve to live, not be bombed to death or have sonar cause brain hemorrhages so that they can't navigate and die from blood hemorrhages.''

Response: Eglin AFB and NMFS have evaluated the potential harm to marine mammals resulting from NEODS activities using the best currently available science. It is possible that bottlenose dolphins may be affected by underwater detonations. However, as discussed in the proposed rule, these effects will most likely be in the form of temporary behavioral disturbance, not injury or death. NMFS is requiring monitoring and mitigation measures to be implemented during all missions, and expects that these measures will significantly decrease the potential for impacts and reduce likely incidental harassment to a level that does not exceed negligible impact as defined by 50 CFR 216.103. The hand-held sonar used during NEODS activities are not likely to affect marine mammals. Due to the location of the NEODS training operations and required pre-mission monitoring, it is highly unlikely that manatees will be affected. In addition, section 101(a)(5)(A) of the MMPA requires that the Secretary to issue the

requested authorization to the U.S. Air Force only if the Secretary determines that the NEODS training operations will result in a negligible impact on the affected species or stocks, and the authorization prescribes the permissible methods of taking, mitigation measures for effecting the least practicable adverse impact to species or stocks, and requirements for monitoring and reporting.

Comment 2: A comment from a private citizen states that the proposed rule is an immediate threat to bottlenose dolphins and even manatees in the coastal waters surrounding Florida. The suggestion that Level B harassment to marine species is acceptable in order for Naval students to arm/disarm underwater mines is negligent and extreme, especially when our oceans are facing rapid change in temperature, over-fishing, and toxic waste.

Moreover, the Sarasota Dolphin Research Agency states ''evaluating the effects of * * * noise on marine mammals [in order to] expand understanding of * * * threats to bottlenose dolphins * * * observations made during * * * detonation * * * indicated that dolphins do exhibit behavioral responses'' (Buckstaff and Ganon, 2010; *http://www.sarasotadolphin.org/Human/ResponseConstruction.asp*). Essentially, not enough research has been conducted on long term outcome of sound and noise on bottlenose dolphins (or other marine life), and blatant disregard for marine environments is an abuse of the Naval authority.

The commenter challenges the rule in its entirety, and requests the U.S. Navy find other manners in which to test the student aptitude of arming/disarming underwater mines. Ordnance training can occur in simulated marine environments without posing needless harm to the animals and ecosystems of coastal waters.

Response: The NEODS training operations are necessary to train U.S. Navy personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance that constitutes a threat to people, material, installations, ships, aircraft, and operations. Although most NEODS components of the training operations are conducted on land and in controlled environments, the training described in this application is carried out in real-world conditions in order to make the training as effective as reasonably possible. Simulated environments (e.g., pools) generally do not effectively represent open-ocean conditions.

While better understanding the effects of underwater noise on marine species is an important goal, Eglin AFB and NMFS has evaluated the potential harm to marine mammals resulting from NEODS activities using the best currently available science. While bottlenose dolphins may be affected by underwater detonations, because of the infrequency and short duration of the detonations these impacts are expected to be minimal. Additionally, the U.S. Air Force and NMFS will require monitoring and mitigation measures to be implemented during all NEODS missions, and expects that these measures will result in the lowest practicable adverse impact on marine mammal species and stocks and reduce likely incidental harassment to a level that does not exceed a negligible impact as defined by 50 CFR 216.103. Due to the location of NEODS training operations and required pre-mission monitoring, it is highly unlikely that manatees will be affected.

Comment 3: The Commission recommends that the NMFS require the U.S. Air Force to describe in detail the environmental parameters and procedures used to determine the safety zones and subsequent takes and incorporate these in the final rule.

Response: Before issuing the final rule, NMFS required the U.S. Air Force to describe in detail the environmental parameters and procedures used to determine safety zones (i.e. ZOIs) and subsequent takes. Underwater noise propagation, and therefore the distance to which noise thresholds are estimated to extend, depends upon a number of environmental parameters. For estimating threshold distances in the U.S. Air Force's MMPA application for NEODS training operations, Eglin AFB used a proprietary application developed by a contractor, Science Applications International Corporation. The application permits users to input data related to underwater explosions into an Excel spreadsheet, including net explosive weight, number of detonations, and the desired noise threshold metrics. The possible metrics include energy expressed as decibel levels (total energy and/or greatest 1/3 octave band), peak pressure (psi), and positive impulse (psi-msec). The program output then displays the distance from source to which a particular threshold extends. Various threshold distances are provided according to depth of detonation, season (summer or winter), and province number.

The Warning Areas most frequently used for military testing and training exercises in the Gulf of Mexico (W–155, W–151, and W–470) have been divided into 16 acoustic provinces derived from U.S. Navy oceanographic and environmental databases. Within a given province, water depth, sound speed, and sediment properties are similar, and therefore acoustic properties are expected to be similar. NEODS training operations will occur in W–151. The relevant oceanographic and environmental data was entered into the spreadsheet, and noise threshold distances corresponding to the appropriate depth, season, and province number were provided and used to populate Table 6–2 in Eglin AFB's application. NMFS has included these environmental parameters and procedures used to determine the safety zones (i.e., ZOIs) and subsequent takes and incorporated these in the final rule.

Comment 4: The Commission recommends that before issuing the final rule, NMFS require the U.S. Air Force to re-estimate the safety zones and associated takes based on the Level A harassment (injury) threshold of 13 psi-msec and the Level B harassment (non-TTS) threshold of 177 dB re 1 μPa^2-sec.

Response: Before issuing the final rule, NMFS has required and Eglin AFB Natural Resources Section has re-estimated the safety zones and associated incidental takes so that they include 13psi-msec (Level A harassment) and 177 dB re 1 μPa^2-sec (Level B harassment) thresholds. Revisions were made in the application accordingly and are also reflected in NMFS' take estimates and final rule, and will be in subsequent authorizations. The application is available online on the NMFS Incidental Take Authorization Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. NMFS has relied on those revisions in establishing safety zones in the final rule.

Comment 5: The Commission recommends that before issuing the final rule, NMFS provide additional justification for its preliminary determination that the mitigation and monitoring measures would be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones; this would include describing changes in detection probability under various sea state and weather conditions. If such information is not available, then NMFS and the U.S. Air Force should undertake the studies needed to verify that the proposed mitigation and monitoring measures are likely to detect all or nearly all marine mammals in or near the safety zones and, if necessary, develop alternative means of detecting marine mammals in or near those zones. As it has noted in past correspondence, the Commission would be pleased to

discuss with NMFS and the U.S. Air Force the collection and analysis of such data and the design of such experiments to promote a better understanding of the utility and shortcomings of visual monitoring as an effective mitigation measure.

Response: The probability of sighting bottlenose dolphins within the monitoring zone is affected by animal behavior, observer effectiveness, and weather/Beaufort sea state and wind force. Species that occur in groups, exhibit conspicuous surface activity (e.g., leaping, splashing, and visible blows), and surface often are more likely to be observed than species for which one or more of these attributes is not applicable. Bottlenose dolphin behavior is considered conducive to effective observation. The typical group size of 2 to 15 individuals (DON, 2007a; Wursig *et al.,* 2000) is expected to occur in the area of NEODS training operations. Although dives of 10 to 15 minutes have been recorded for trained individuals, the typical dive time is 3 to 4 minutes (Wynne and Schwartz, 1999). Observation for dolphins will occur at least 30 minutes before detonations occur. Therefore, it is likely that at least one individual will be at the surface during the observation time frame. In addition, bottlenose dolphins are generally surface-active and, due to dive times, surface relatively frequently. Caretta *et al.* (2000) considered the likelihood of bottlenose dolphins being observed during surveys in the Pacific great enough that the possibility of missed individuals on the transect line was discounted.

Eglin AFB will require the use of trained observers during NEODS training operations involving detonations. Due in part to the dolphin behavioral characteristics and mission requirements described above, it is expected that observers will have a high detection rate in acceptable weather conditions. A Beaufort sea state of less than 3 is considered optimal for cetacean observation (Davis *et al.,* 2000), and mitigation measures stipulate that missions will be delayed if sea state is greater than 3. Detection probability generally decreases with distance from the observer. However NMFS expects that observation effectiveness will be acceptable within the specified range (880 m maximum or 2,887 ft).

Specific information on the probability of observing bottlenose dolphins from a stationary platform in the nearshore GOM is not available. Various authors have generally addressed the issue of observation effectiveness during cetacean surveys. Two types of bias are often discussed in this context, including perception and availability bias. Perception bias refers to the failure of observers to detect animals, although they are present in the survey area and available to be seen. Availability bias refers to animals that are in the survey area, but are not able to be seen because they are submerged when observers are present. The probability of detecting bottlenose dolphins on a transect line during shipboard surveys has been estimated by various authors as between 62 and 100 percent (DON, 2007b). These probabilities take into account perception and availability bias. However, these estimates are not necessarily applicable to NEODS operations because they represent results from survey efforts on moving vessels (NEODS observers will be stationary) and occur in different geographic locations.

Comment 6: The Commission recommends that NMFS condition the final rule and any LOA issued under that rule to require suspension of the proposed activities if a marine mammal is seriously injured or killed and the injury or death could be associated with the proposed activities and, if supplementary measures are unlikely to reduce the risk of serious injury or death to a very low level, require the U.S. Air Force to suspend its activities until an authorization for such taking has been obtained.

Response: Although Eglin AFB Natural Resources Section believes the required monitoring and mitigation measures will substantially reduce the potential for impacts to bottlenose dolphins, the U.S. Air Force is willing to require that NEODS activities be suspended if a marine mammal is seriously injured or killed and the injury or death can be associated by the U.S. Air Force with the NEODS operations. In addition, Eglin AFB agrees that, if supplementary measures are unlikely to reduce the risk of serious injury or death to a very low level, activities should be suspended until an authorization for such take has been obtained. This requirement has been added to the application under the Mitigation Procedures Plan and NMFS has included it as a requirement in the final rule.

Comment 7: In exchanged emails, the Commission and NMFS noted discrepancies within both the application and NMFS' proposed rule. In response, the U.S. Air Force made several clarifications and agreed to work with NMFS to correct the other discrepancies, including determining safety zones and estimated takes associated with Level B harassment (non-TTS) for multiple detonations. The Commission recommends that NMFS ensure that numerous discrepancies in the application and proposed rule are corrected in the final rule.

Response: Eglin AFB has addressed all issues noted in the Commission's comments submitted via email as well as those officially submitted during the public comment period for the proposed rule. NMFS has ensured that these discrepancies in the application and proposed rule are corrected in the final rule.

Potential Effects of Specified Activities on Marine Mammals and Estimates of Take by Harassment

In general, potential impacts to marine mammals from explosive detonations could include non-lethal injury (Level A harassment), serious injury, and mortality, as well as Level B harassment, which can consist of behavioral disturbance or temporary loss of hearing sensitivity. In the absence of monitoring and mitigation, marine mammals may be killed or injured as a result of an explosive detonation due to direct physiological effects such as the response of air cavities in the body, including the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second potential possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

Marine mammals may potentially be harassed due to noise from NEODS mission involving underwater detonations. For example, exposing bottlenose dolphins to underwater noise from explosive detonations could result in disturbing important behavioral patterns. The potential numbers and species harassed by noise are assessed in this section. Three key sources of information are necessary for estimating potential noise effects on marine resources: (1) The number of distinct firing or test events; (2) the ZOI for noise exposure; and (3) the population density of animals that potentially occur within the ZOI. The ZOI reflects the geographic extent of the effects anticipated from the

action. The ''test site'' and ''mission area'' are both found within the ZOI.

For the acoustic analysis, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater detonation noise. No ESA-listed marine mammals would be affected given the location of the action in nearshore waters. The only ESA-listed marine mammal likely to be found in the northeastern GOM, the Federal and state-listed endangered sperm whale (*Physeter macrocephalus*), occurs farther out on the continental slope in water generally deeper than 600 m (1,968.5 ft). Manatees are not considered likely to occur in the mission areas (see Figure 1–1 of Eglin AFB's application) and are therefore not considered in this analysis.

For the explosives in question, actual detonation depths would occur at 60 ft near the sand bottom. The inert mines and sea floor may potentially interact with the propagation of noise into the water. However, effects on the propagation of noise into the water column cannot be determined without in-water noise monitoring at the time of detonation. Potential exposure of a sensitive species to detonation noise could theoretically occur at the surface or at any number of depths with differing consequences. A conservative acoustic analysis was selected to ensure the greatest direct path for the harassment ranges and to give the greatest impact range for the injury thresholds.

Criteria and thresholds that are the basis of the analysis of NEODS noise impacts to cetaceans were initially used in U.S. Navy Environmental Impact Statements for ship shock trials of the *Seawolf* submarine and the *Winston S. Churchill* (*Churchill*) vessel (DON, 1998; DON, 2001) and adopted by NMFS (NMFS, 2001). Supplemental criteria and thresholds have been introduced in the EGTTR Programmatic Environmental Assessment (U.S. Air Force, 2002), subsequent EGTTR LOA (U.S. Air Force, 2003) permit request, Precision Strike Weapons (PSW) LOA (U.S. Air Force, 2004), and Naval Surface Warfare Center Panama City Division LOA (U.S. Navy, 2008).

Standard impulsive and acoustic metrics were used to analyze underwater pressure waves in this document.

- Energy flux density (EFD) is the time integral of the squared pressure divided by the impedance. EFD levels have units of dB re 1 $\mu Pa^2 \cdot s$.
- 1/3-Octave EFD is the energy flux density in a 1/3-octave frequency band; the 1/3 octave selected is the hearing range at which the subject animals' hearing is believed to be most sensitive.
- Peak pressure is the maximum positive pressure for an arrival of a sound pressure wave that a marine mammal would receive at some distance away from a detonation.
- Positive impulse represents a time-averaged pressure disturbance from an explosive source with units in psi-milliseconds (psi-msec).
- Units used here are psi and dB levels.

Level A harassment is non-lethal injury, the onset of which is estimated based on levels associated with eardrum rupture (i.e., tympanic-membrane [TM] rupture) and the onset of slight lung injury. The threshold for TM rupture corresponds to a 50 percent rate of rupture (i.e., 50 percent of animals exposed to the level are expected to suffer TM rupture); this threshold is stated in terms of an EFD value of 1.17 in-lb/in^2, which is about 205 dB re 1 $\mu Pa^2 \cdot s$ EFD. Use of this value acknowledges that TM rupture is not necessarily a life-threatening injury, but is a useful index of possible injury that is well-correlated with measures of permanent hearing impairment. Ketten (1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold. The onset of slight lung injury is the second threshold considered indicative of non-lethal injury. A dolphin would be expected to recover from this type of injury. Slight lung injury is considered to occur at a positive impulse level of 13 psi-msec. At distances closer to the detonation, the pressure wave could cause extensive lung injury, leading to mortality. It is assumed that the range of extensive lung injury is less than that of slight injury; therefore, using the range of slight lung injury provides a more conservative take estimate.

Public Law 108–136 (2004) amended the definition of Level B harassment under the MMPA for military readiness activities, such as this action (and also for scientific research on marine mammals conducted by or on the behalf of the Federal Government). For military readiness activities, Level B harassment is now defined as ''any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behavioral patterns are abandoned or significantly altered.'' Unlike Level A harassment, which is solely associated with physiological effects, both physiological and behavioral effects may cause Level B harassment.

The physiological effect associated with non-injurious Level B harassment is known as temporary threshold shift (TTS), which is defined as a temporary, recoverable loss of hearing sensitivity (NMFS, 2001; DON, 2001). Two criteria are considered indicative of the onset of peak pressure at 23 psi (peak). This threshold is derived from the Environmental Impact Statement for the (*Churchill*) shock testing and was subsequently adopted by NMFS in its final rule on the unintentional taking of marine mammals incidental to the shock testing (NMFS, 2001). The original criteria in *Churchill* incorporated 12 psi (peak). The current criteria and threshold for peak pressure over all exposures was updated from 12 psi (peak) to 23 psi (peak) for explosives less than 907 kg (2,000 lb) based on an IHA issued to the U.S. Air Force for a similar action (NMFS, 2006a). See Table 4 (below) for NMFS' current criteria and thresholds for explosives. Peak pressure threshold are much greater than those for the energy metric when charge weights are small, even when source and animal are away from the surface. In order to more accurately estimate TTS for smaller detonations while preserving the safety feature provided by the peak pressure threshold, the peak pressure threshold is appropriately scaled for small shot detonations. This scaling is based on the similitude formulas (e.g., Urick, 1983) used in virtually all compliance documents for short ranges. Further, the peak-pressure threshold for TTS due to explosives offers a safety margin for source or animal near the ocean surface. The more conservative isopleth of the criteria for estimating TTS is used in take analysis.

Behavioral reactions may occur at noise levels below those considered to cause TTS in marine mammals, particularly in cases where multiple detonations occur. Behavioral effects may include decreased ability to feed, communicate, migrate, or reproduce, among others. Such effects are known as sub-TTS Level B harassment. Although repetitive exposures (below TTS) to the same animals are considered unlikely due to the infrequent test events (no more than 5 detonations over a one or two day period), the potential variability in target locations, and the continuous movement of marine mammals in the northeastern GOM, the potential exists for a marine mammal to be impacted during multiple detonations. In this document, behavioral effects associated with such a scenario are considered to occur at an EFD level of 177 dB re 1 $\mu Pa^2 \cdot s$ EFD. The tables below provide a

summary of threshold criteria and metrics for potential noise impacts to sensitive species.

TABLE 4—(TABLE 6–1 OF THE APPLICATION) NMFS' THRESHOLD CRITERIA AND METRICS UTILIZED FOR IMPACT ANALYSES FROM THE USE OF EXPLOSIVES

Mortality	Level A harassment (non-lethal injury)		Level B harassment (non-injurious; TTS and associated behavioral disruption [dual criteria])	Level B harassment (non-injurious behavioral, sub-TTS)
31 psi-msec (onset of severe lung injury [mass of dolphin calf]).	205 dB re 1 μPa²·s EFD (50 percent of animals would experience TM rupture).	13 psi-msec positive pressure (onset of slight lung injury).	182 dB re 1 μPa²·s EFD*; 23 psi peak pressure (< 2,000 lb) 12 psi peak pressure (> 2,000 lb).	177 dB re 1 μPa²·sEFD* (for multiple detonations only).

* **Note:** In greatest 1/3-octave band above 10 Hz or 100 Hz.

Noise ZOIs were calculated for bottom detonation scenarios at 60 ft for both Level A harassment (i.e., injury) and Level B harassment (significant behavioral disturbance). To determine the number of potential ''takes'' or animals affected, cetacean population information from surveys was applied to the various ZOIs. The impact calculations for this section utilize marine mammal density estimates that have been derived from a Legacy-funded NMFS/Air Force project (Garrison, 2008). The species density estimate data were adjusted to reflect the best available data and more realistic encounters of these animals in their natural environment (Garrison, 2008). These calculations and estimates are explained in detail in Section 3, and adjusted density estimates are provided in Table 3–1 of Eglin AFB's application. Although mission schedules are variable and may occur during any time of year, 60 percent (24 detonations) are expected to occur during summer and 40 percent (16 detonations) are expected to occur in winter. Therefore, seasonal bottlenose dolphin density estimates (0.78 dolphins/km²) in summer and 0.84 dolphins/km² in winter) are used for take analysis.

Table 6–2 of Eglin AFB's application gives the estimated impact ranges for the two explosive weights. The test locations are one to three nmi south of SRI. NEODS detonations were modeled for bottom detonations at 60 ft.

TABLE 5—(TABLE 6–2 OF THE APPLICATION) ZOI FOR UNDERWATER EXPLOSIONS

Ordnance	NEW (lbs)	Depth of explosion (m)	Ranges for 205 dB re 1 μPa²·s EFDL (m)	Ranges for 13 psi-msec (m)	Ranges for 182 dB re 1 μPa²·s EFDL (m)	Ranges for 23 psi (m)	Ranges for 177 dB re 1 μPa²·s EFDL (m)
Summer:							
NEODS MCM 2.3 kg (5 lb) charge	5	18	52.1	156	227.5	222	520
NEODS MCM 4.5 kg (10 lb) charge	10	18	77	225	385	280	845
Winter:							
NEODS MCM 5 lb charge	5	18	52.2	156	229.8	222	529
NEODS MCM 10 lb charge	10	18	77	226	389	280	880

EFDL = Energy Flux Density Level.

Applying the harassment ranges in Table 6–2 of the application to the species densities of Table 3–1 of the application, the number of animals potentially occurring within the ZOI was estimated. These results are presented in Tables 6–3, 6–4, and 6–5 of the application. For Level A harassment calculations (Table 6–3 of the application), the ZOI corresponding to 13 psi-msec is used because this radius is in all cases greater than the radius corresponding to 205 dB re 1 μPa²· s EFD. For Level B harassment calculations (Table 6–4 of the application), the ZOI corresponding to the 182 dB re 1 μPa²· s EFD metric is used because this radius is in all cases greater than the radius corresponding to 23 psi (peak). A whole animal (and potential take) is defined as 0.5 or greater, where calculation totals result in fractions of an animal. Where less than 0.5 animals are affected, no take is assumed. The calculations in Tables 6–3 and 6–4 of the application are based on the expected tempo of: (1) 40 total detonations per year; (2) one-half of detonations are of 5 lb charges, and one-half are of 10 lb charges; and (3) 60 percent of detonations occur in summer, and 40 percent occur in winter.

TABLE 6—(TABLE 6–3 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL A HARASSMENT (13 PSI-MSEC POSITIVE PRESSURE)

Species	Density (animals/km²)	ZOI (km)		Number of animals exposed to level A harassment	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer:					
Bottlenose Dolphin	0.78	0.156	0.225	0.72 (12 detonations)	1.49 (12 detonations).
Winter:					
Bottlenose Dolphin	0.84	0.156	0.226	0.51 (8 detonations)	1.08 (8 detonations).
Total Number Animals Potentially Exposed To Level A Harassment Annually			3.80		

TABLE 7—(TABLE 6–4 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL B HARASSMENT (182 DB RE 1 μPA²·S EFD 1/3 OCTAVE BAND) NOISE EXPOSURE

Species	Density (animals/km²)	ZOI (km)		Number of animals exposed to Level B harassment (TTS)	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer:					
Bottlenose Dolphin	0.78	0.2275	0.385	1.52 (12 detonations)	4.36 (12 detonations).
Winter:					
Bottlenose Dolphin	0.84	0.2298	0.389	1.11 (8 detonations)	3.19 (8 detonations).
Total number animals potentially exposed to Level B harassment (TTS and behavioral) annually			10.18		

TABLE 8—(TABLE 6–4 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL B HARASSMENT (177 DB RE 1 μPA²·S EFD 1/3 OCTAVE BAND) NOISE EXPOSURE

Species	Density (animals/km²)	ZOI (km)		Number of animals exposed to level B harassment (behavioral)	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer:					
Bottlenose Dolphin	0.78	0.520	0.845	7.95 (12 detonations)	20.99 (12 detonations).
Winter:					
Bottlenose Dolphin	0.84	0.529	0.880	5.91	16.35
Total number animals potentially exposed to Level B harassment (sub-TTS and behavioral) annually				51.20	

The tables above indicate that the potential takes of marine mammals for non-injurious (Level B) harassment, as well as the onset of injury (Level A harassment) to cetaceans is possible but low, even without implementing any monitoring and mitigation measures. Slightly fewer than four bottlenose dolphins are estimated to be exposed annually to a positive pressure level corresponding to Level A harassment (13 psi-msec). Noise levels corresponding to Level B harassment (182 dB re 1 μPa² · s EFD) would potentially affect approximately 10 dolphins. Finally, approximately 50 dolphins could be exposed to noise levels associated with sub-TTS behavioral harassment. None of the above impact estimates take into account the monitoring and mitigation measures that will be employed by the proponent to minimize potential impacts to protected species. These monitoring and mitigation measures are described in Eglin AFB's application (see below) and are anticipated to substantially reduce the potential impacts to marine mammals.

Based on the analyses and results provided here and in Section 6 of Eglin AFB's application, approximately four Atlantic bottlenose dolphins could be exposed to pressure levels (13 psi-msec) corresponding to Level A harassment annually in the absence of monitoring and mitigation measures. Approximately 10 dolphins could be exposed to noise levels corresponding to Level B harassment (TTS and associated behavioral), while 50 individuals could be exposed to noise levels corresponding to Level B harassment. NMFS expects that monitoring and mitigation measures set forth in the final rule would substantially reduce the number of animals impacted. The individuals potentially affected could be part of the Northern GOM Coastal Stock and/or part of one or more of the Northern GOM bay, sound, and estuarine stocks. The Northern GOM coastal stock and all bay, sound, and estuarine stocks are considered

strategic. Although the NEODS training area lies outside the defined range of the bay, sound, and estuarine stocks, movement between such stocks has been documented in GOM coastal waters, as described in Waring *et al.* (2009). Movements have ranged from travel through adjacent communities to movement over several hundred kms off Texas, and may include seasonal movements into GOM waters. NEODS training operations will occur between the ranges of the Pensacola/East Bay and Choctawhatchee Bay Stocks, although individuals from other locations could potentially travel through the training areas as well. These stocks and their movements are not fully understood; therefore, it is possible that individuals from these stocks could be affected. PBR has not been determined for the coastal stock due to insufficient information. Similarly, PBR has not been determined for many of the bay, sound, and estuarine stocks, including the Pensacola/East Bay and Choctawhatchee Bay stocks.

Based on the calculation methods discussed above, NMFS estimated take numbers per year of 10 individuals and 50 individuals during the five-year rule for Atlantic bottlenose dolphins. The actual number of individual animals being exposed or taken may be less due to the U.S. Air Force's implementation of monitoring and mitigation measures.

Possible Effects of Activities on Marine Mammal Habitat

The primary source of marine mammal habitat impact is noise resulting from live NEODS missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the missions are present in limited duration and are intermittent as well.

Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, debris, ordnance, and chemical residues in the water column. The effects of each of these components were considered in the NEODS BA and were determined to be unlikely to adversely affect protected marine species. Marine mammal habitat would not be affected, lost or modified.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the NEODS training operations in the EGTTR less desirable shortly after each demolition event. The impacts will be localized and instantaneous. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Mitigation

In order to issue an Incidental Take Authorization under section 101(a)(5)(A) and (D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''the least practicable adverse impact'' includes consideration of personnel, safety, practicality of implementation, and the impact on the effectiveness of the ''military readiness activity.'' NEODS training involves military readiness activities.

NEODS has employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Eglin AFB is committed to assessing the mission activity for opportunities to provide operational mitigations while potentially sacrificing some mission flexibility.

Mitigation consists of visual monitoring of the mission site that is required in order to decrease the likelihood of potential impacts to marine mammals and other protected species. Pre- and post-mission surveys using trained observers are required for each NEODS mission. Surveys will be conducted from surface vessels and possibly helicopters. Missions will only be conducted during daylight hours (i.e., an hour after sunrise and an hour before sunset). Depending on visibility, surface observation would be effective out to several kms.

Trained observers onboard support boats would be staged from the highest point possible. The observer on the vessel will be familiar with marine life in the mission area and must be equipped with optical equipment with sufficient magnification (e.g., binoculars), which should allow the observer to sight and report surfacing marine mammals from a significant distance. The trained observer will have proper lines of communication to make recommendations to the Officer in Tactical Command so that he/she can then decide on whether or not the mission can proceed.

Weather that supports the ability to sight marine life is required in order to mitigate the test site effectively (DON, 1998). Wind, visibility, and surface conditions of the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create ''white cap'' conditions, limiting an observer's ability to locate surfacing marine mammals. NEODS missions would be canceled or delayed if the sea state were greater than the Scale Number 3 described on Table 9 (below) and in Eglin AFB's application.

TABLE 9—(TABLE 11–1 OF THE APPLICATION) BEAUFORT SEA STATE SCALE FOR MARINE MAMMAL OBSERVATION

Scale No.	Sea conditions
0	Flat calm, no waves or ripples.
1	Small wavelets, few if any whitecaps.
2	Whitecaps on 0 to 33 percent of surface; 0.3 to 0.6 m (1 to 2 ft) waves.
3	Whitecaps on 33 to 50 percent of surface; 0.6 to 0.9 m (2 to 3 ft) waves.
4	Whitecaps on greater than 50 percent of surface; greater than 0.9 m (3 ft) waves.

During a typical mission in the GOM, visual surveys are conducted out to a distance from the detonation point corresponding to the largest impact ZOI, which would be the Level B sub-TTS behavioral harassment range. However, due to recent dolphin mortalities associated with EOD activities at the Silver Strand Training Complex (SSTC) off of San Diego, California, new survey protocols will be implemented. These protocols represent an agreement between the U.S. Navy and NMFS regarding the size of the visual survey areas for training activities using time-delay fuses. Such fuses are used so that U.S. Navy personnel can safely vacate the area before detonation occurs. The

U.S. Air Force will ensure that the U.S. Navy complies with the mitigation and monitoring protocols set forth herein this document, and future reference will be to the U.S. Navy, as the U.S. Navy carries out the NEODS training operations.

Under the new protocol, the survey radius (distance from the detonation point) is increased so that marine mammals would not likely have time to swim into the affected area after the charge has been set and U.S. Navy divers have left the area. Once the system is armed and divers exit the water, they are typically not allowed back into the water to disarm the charge. Therefore, the distance that a dolphin could typically swim during the time delay is added to the survey distance. The typical swim speed for dolphin species is considered to be 5.6 km per hour (three knots), or approximately 93.3 m (102 yards [yd]) per minute. Table 10 (Table 11–2 of the application) lists the distance a dolphin might travel at this swim speed during various time delays. In addition, NMFS requested that an additional 182.9 m (200 yd) buffer be added to this distance to account for dolphins possibly swimming faster than the average speed of three knots. This additional buffer is shown in the table below.

TABLE 10—(TABLE 11–2 OF THE APPLICATION) POTENTIAL SWIM DISTANCE OF A DOLPHIN WITH AN ADDITIONAL 200 YD BUFFER

Typical dolphin swim speed	Time delay	Distance traveled during time delay	Distance traveled with additional 200 yd buffer
3 knots (102 yd/minute)	5 minutes	510 yd	710 yd.
	6 minutes	612 yd	812 yd.
	7 minutes	714 yd	914 yd.
	8 minutes	816 yd	1,016 yd.
	9 minutes	918 yd	1,118 yd.
	10 minutes	1,020 yd	1,220 yd.

The total distance potentially traveled during the time delay, as listed in Table 10, is then added to the range of the applicable NMFS injury criteria to determine the final survey radius. The more conservative (larger) of the ranges between the injury dual criteria is used, which for the document is the 13 psi-msec threshold (see Table 5 above or Table 6–2 of the application). If marine mammals are not observed within the mitigation-monitoring zone before the charge is set, they would be unlikely to swim into the injury zone during the time-delay window. The adjusted survey radius for various time delays is Table 11 below (see Table 11–3 of the application). The injury criterion range and final survey distance are shown in meters in order to be consistent with U.S. Navy standards established for the SSTC.

TABLE 11—(TABLE 11–3 OF THE APPLICATION) SURVEY RADIUS FOR TIME-DELAYED FIRING DEVICES

Charge weight (new)	13 psi-msec range	Survey radius for time delay, adjusted for swim distance and buffer					
		5 minutes	6 minutes	7 minutes	8 minutes	9 minutes	10 minutes
5 lb	171 * yd	881 yd	983 yd	1,085 yd	1,187 yd	1,289 yd	1,391 yd.
10 lb	247 * yd	957 yd	1,059 yd	1,161 yd	1,263 yd	1,365 yd	1,467 yd.

* Ranges from Table 5 are converted to yd.

In order to provide a more practical implementation of mitigation measures, the U.S. Navy and NMFS agreed to round survey ranges to distances more easily delineated in the field. Therefore, to be consistent with the method used for missions at the U.S. Navy's SSTC, the survey distances shown in Table 11 are rounded to either 914.4 or 1,280.2 m (1,000 or 1,400 yd). A different number of survey vessels are required for each distance. The final rounded distances are shown in Table 12 (Table 11–4 of the application).

TABLE 12—(TABLE 11–4 OF THE APPLICATION) FINAL ROUNDED SURVEY RADIUS FOR TIME-DELAYED FIRING DEVICES

Charge weight (new)	Final rounded survey radius by time delay					
	5 minutes	6 minutes	7 minutes	8 minutes	9 minutes	10 minutes
5 lb	1,000 yd	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd.
10 lb	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,400 yd.

The following visual monitoring requirements will be implemented for each NEODS mission. These requirements are based on the agreement between NMFS and the U.S. Navy for EOD activities conducted in water depths of 7.3 m (24 ft) or greater.

- Underwater detonations using timed delay devices will only be conducted during daylight hours (i.e., an hour after sunrise and an hour before sunset).
- Time delays longer than 10 minutes will not be used. Initiation of the timer device will not start until the mitigation-monitoring zone is clear of marine mammals for 30 minutes.
- A mitigation-monitoring zone will be established around each underwater detonation location as indicated in Table 12 based on charge weight and

length of time-delay used. When conducting surveys within the mitigation-monitoring zone radius (but always outside the detonation plume radius/human safety zone) boats will travel in a circular pattern around the detonation point, surveying the inner (toward the detonation site) and outer (away from the detonation site) areas. For a survey radius of 1,000 yd, the boat will be positioned at 457.2 m (500 yd) from the detonation point. Similarly, for a survey radius of 1,400 yd, boats will be positioned at a distance of 640.1 m (700 yd).

- For a survey radius of 1,000 yd, two boats are required. For a radius of 1,400 yd, either three boats or two boats/one helicopter are required.
- When using two boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. When using three boats, each boat will be separated by 120 degrees (equidistant from each other).
- Two observers in each boat will conduct continuous visual surveys of the mitigation-monitoring zone for the entire duration of the training event, including at least 30 minutes prior to detonation. Observers will search the mitigation-monitoring zone for the presence of marine mammals, and other marine species such as sea turtles, diving birds, large concentrations of fish or jellyfish, and large *Sargassum* mats. The presence of diving birds, fish, jellyfish, and *Sargassum* may indicate an increased likelihood of dolphin presence.
- The mission would be postponed if large concentrations of fish, jellyfish, and/or large *Sargassum* rafts are observed within the mitigation-monitoring zone. The delay would continue until the fish, jellyfish, and/or large *Sargassum* rafts that caused the postponement are confirmed to be outside the mitigation-monitoring zone.
- To the extent practicable, boats will maintain a 18.5 km per hour (10 knot or 11.5 miles per hour) search speed. This search speed is expected to ensure adequate coverage of the buffer zone. While weather conditions and sea state may require slower speeds in some instances, 10 knots is considered a prudent, safe, and executable speed that will allow adequate surveillance. For a 1,000-yd survey zone, a boat travelling at 10 knots and 500 yd from the detonation point would circle the point approximately 3.2 times during a 30-minute survey period. By using two boats, approximately 6.4 circles would be completed in total. Similarly, for a 1,400 yd radius, each boat would circle the detonation point approximately 2.3 times within 30 minutes, and use of three boats would result in 6.9 total circles.
- If available, a U.S. Navy helicopter can be used in lieu of one of the survey boats, so long as safety of flight is not jeopardized. U.S. Navy helicopter pilots are trained to conduct searches for relatively small objects in the water, such as a missing persons. A helicopter search pattern is dictated by standard U.S. Navy protocols and accounts for multiple variables, such as size and shape of the search area, size of the object, and environmental conditions, among others.
- The mitigation-monitoring zone will be surveyed for 30 minutes prior to detonation and continue for 30 minutes after detonation (concentrated on the area down current of the test site), in order to monitor for marine mammals and other protected species. It is the U.S. Navy's intent to conduct five successive detonations with a maximum time of 20-minutes between detonations, although a variety of factors can cause a delay of longer than 20 minutes, including a delay until the following day. Monitoring would continue during the 20 minute interval between detonations, and would serve as both post-detonation monitoring as well as pre-mission monitoring for the next detonation. If the time between detonations is delayed beyond 20 minutes, post-mission monitoring will be conducted for 30 minutes. At the conclusion of the final detonation, post-monitoring will be conducted for 30 minutes.
- Other personnel besides designated observers shall also maintain situational awareness of the presence of marine mammals within the mitigation-monitoring zone to the extent practicable given dive safety considerations.
- Divers placing the charges on mines will observe the immediate underwater area around the detonation site for marine mammals and other marine species such as diving birds, sea turtles, and Gulf sturgeon, and report sightings to surface observers.
- If a marine mammal is sighted within an established mitigation-monitoring zone or moving towards it, underwater detonation events will be postponed or suspended until the marine mammal that caused the postponement/suspension of training operations has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.
- If a marine mammal is detected within or about to enter an established mitigation-monitoring zone and subsequently cannot be reacquired, the mission will be postponed or suspended until the last verified location is outside the mitigation-monitoring zone, the animal is moving away from the area, and the area is clear of marine mammals for at least 30 minutes.
- Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported to the Eglin AFB. Eglin AFB will coordinate with other members of marine mammal stranding networks, as appropriate, and report these events to NMFS or USFWS. The report will contain date and time of sighting, location, species description, and indications of the animal's status (see section below for more information on reporting).

NEODS training operations will be suspended and the U.S. Air Force will re-initiate consultation under the MMPA with NMFS' Office of Protected Resources if (1) a marine mammal is killed or seriously injured and the injury or death could be associated with the NEODS training operations; and (2) implementing supplemental mitigation and monitoring measures is not likely to reduce the risk of serious injury or death to a very low level. The U.S. Air Force will suspend operations until the proper authorization for incidental take is obtained from NMFS.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present. Any authorization issued pursuant to this final rule will require the U.S. Air Force to conduct mitigation monitoring before, during, and after completion of training exercises in accordance with the procedures discussed above. Methods for monitoring will include trained observers positioned on vessels. Monitors will be required to record and report specific data to NMFS in an annual monitoring report.

Mitigation may include any supplemental activities that are designed and exercised to help reduce or eliminate the potential adverse impacts to the marine resources. The U.S. Air Force recognizes the importance of such ''in-place'' mitigations and is aware that NMFS

recommends an approved mitigation plan that outlines the scope and effectiveness of the action's mitigations.

The risk of harassment (Levels A and B) to marine mammals has been determined to be relatively small. Eglin AFB has determined that with the implementation and commitment to utilizing the ''visual monitoring'' mitigations, potential takes are greatly reduced.

For NEODS testing, areas to be used in missions are visually monitored for marine mammal presence from a surface vessel prior to detonation of mine neutralization charges. Monitoring would be conducted before missions to clear marine mammals within the ZOI. If protected animals are inside the ZOI, firing would be postponed until they left the area. The following procedures will be conducted during the mission activities:

- Conduct survey clearance procedures using best operational methods possible.
- Clear ZOI and avoid all dolphins and protected species indicators (e.g., *Sargassum* rafts) to the maximum extent possible.
- Re-conduct clearance procedures if dolphins or protected species indicators (e.g., *Sargassum* rafts) are encountered.
- All observers must complete the Marine Observer Certification course annually.
- Conduct post-mission observation and report operations data as required by Eglin's Natural Resources Section, 96 CEG/CEVSN.
- Submit an annual summary (coordinated through 96 CEG/CEVSN) of mission observations to:

National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702

and

National Marine Fisheries Service, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910.

Information recorded will include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors before, during, and after explosive activities. Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area will be reported to NMFS and USFWS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and USFWS.

Eglin AFB would notify NMFS and the Regional Office prior to initiating of each explosive demolition session. If at any time injury or death of any marine mammal occurs that may be a result of the NEODS activities, Eglin AFB would suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury, serious injury, or death does not occur, and to ensure that the applicant remains in compliance with the MMPA. Any takes of marine mammals other than those authorized by the LOA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, within 24 hours. An annual draft final report must be submitted to NMFS within 90 days after the conclusion of the NEODS activities. An annual report must be submitted at the time of renewal of the LOA as well. Also, a report must be submitted at least 180 days prior to the expiration of these regulations. The report will include a summary of the activities undertaken and information gathered pursuant to the monitoring requirements set forth in the regulations and LOA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this rule, such as an injury, serious injury or mortality, Eglin AFB will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at (301) 427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network at (877) 433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at (888) 404–3922). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all noise-generating sources use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Eglin AFB to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin AFB may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the cause of injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Eglin AFB will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network ((877) 433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Eglin AFB to determine whether modifications in the activities are appropriate.

In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the final rule (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Eglin AFB will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Regional Marine Mammal Stranding Network ((877) 433–8299), and/or by email to the Southeast

Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. Eglin AFB will provide photographs or video footage (if available) or other documentation of the stranded animals sighting to NMFS and the Marine Mammal Stranding Network.

Encouraging and Coordinating Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin's Natural Resources Section does participate in marine animal tagging and monitoring programs lead by other agencies. Additionally, the Natural Resources Section supports participation in annual surveys of marine mammals in the GOM with NMFS. From 1999 to 2002, Eglin AFB's Natural Resources Section, through a contract representative, participated in summer cetacean monitoring and research opportunities. The contractor participated in visual surveys in 1999 for cetaceans in the GOM, photographic identification of sperm whales in the northeastern GOM in 2001, and as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. In addition, Eglin's Natural Resources Section has obtained Department of Defense funding for two marine mammal habitat modeling projects. The latest such project (Garrison, 2008) included funding and extensive involvement of NMFS personnel so that the most recent aerial survey data could be utilized for habitat modeling and animal density estimates in the northeastern GOM.

Eglin AFB conducts other research efforts that utilize marine mammal stranding information as a means of ascertaining the effectiveness of mitigation techniques. Stranding data is collected and maintained for the Florida panhandle and GOM-wide areas. This is undertaken through the establishment and maintenance of contacts with local, state, and regional stranding networks.

Eglin AFB assists with stranding data collection by maintaining its own team of stranding personnel. In addition to simply collecting stranding data, various analyses are performed. Stranding events are tracked by year, season, and NMFS' statistical zone, both GOM-wide and on the coastline in proximity to Eglin AFB. Stranding data is combined with records of EGTTR mission activity in each water range and analyzed for any possible correlation. In addition to being used as a measure of the effectiveness of mission mitigations, stranding data can yield insight into the species composition of cetaceans in the region.

Negligible Impact Determination

As explained, NMFS will only issue an authorization to incidentally take marine mammals pursuant to section 101(a)(5)(A) of the MMPA if, based on review of the best scientific information available and consideration of applicable mitigation and their likely effectiveness, it determines that the total taking authorized over the five-year period will have a negligible impact on affected species or stocks of marine mammals. NMFS implementing regulations codified at 50 CFR 216.103 state that ''negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

In making a negligible impact determination NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammal (i.e., depleted, not depleted, decreasing, increasing, stable, and impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment or survival; and

(6) The effectiveness of monitoring and mitigation measures (i.e., the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

Tables 2, 3, 6, 7, and 8 in this document disclose the habitat, regional abundance, conservation status, density, and the number of individuals exposed to sound levels considered the threshold for Level A and B harassment. Also, there are no known important reproductive or feeding areas in the action area.

For reasons stated previously in this document, and in the proposed rule (76 FR 60694, October 1, 2010), the specified activities associated with the NEODS training operations are not likely to cause PTS or other non-auditory injury, serious injury, or death to affected marine mammals. As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be minimized through the incorporation of the monitoring and mitigation measures.

Approximately 50 Atlantic bottlenose dolphins are anticipated to incur hearing impairment (TTS). While some other species of marine mammals (none of which are ESA-listed) occur in the project area year-round, only Atlantic bottlenose dolphins are anticipated to be potentially impacted by the NEODS operations. Due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). NEODS operations would occur up to eight times annually, at varying times within the year, and include two ''live demolition'' days. Therefore, the U.S. Air Force's NEODS operations will not be creating increased sound levels in the marine environment for prolonged periods of time.

The population estimates for the species that may be taken by harassment from the most recent U.S. Gulf of Mexico Stock Assessment Reports and Protected Species Habitat Modeling in the EGTTR were provided earlier in this document. From the most conservative estimates of both marine mammal densities in the action area and the size of the harassment thresholds, the maximum calculated number of individual Atlantic bottlenose dolphins that could potentially be harassed annually and over the five-year rule is 6 (summer) and 4 (winter) (10 total annually), which numbers amount to 0.05 percent (summer) and less than 0.01 percent (winter) of the total estimated population size.

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat, and taking into

consideration the implementation of the mitigation and monitoring measures, NMFS has determined that NEODS operations by the U.S. Air Force will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the NEODS training operations over the five-year period covered by the regulations would have a negligible impact on the affected species or stocks of marine mammals.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Section 101(a)(5)(A) of the MMPA also requires NMFS to determine that the total of such taking authorized will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for taking for subsistence uses. There is no subsistence hunting for marine mammals in the waters off of the coast of Florida that implicates section 101(a)(5)(A) of the MMPA.

Endangered Species Act (ESA)

For the reasons already described in this *preamble,* NMFS has determined that the described NEODS training operations and the accompanying LOA are not likely to affect marine mammal species managed under NMFS jurisdiction and protected by the ESA. The U.S. Air Force requested an informal section 7 consultation with NMFS SERO on May 9, 2010 and NMFS SERO concurred that the action may affect, but is not likely to adversely affect, ESA-listed species or designated critical habitat in a letter to the U.S. Air Force dated July 28, 2010.

National Environmental Policy Act (NEPA)

NMFS has conducted the necessary NEPA analysis and has prepared an ''Environmental Assessment on the Promulgation of Regulations and the Issuance of a Letter of Authorization to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida,'' which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the action prior to making a determination on the final rule. Based on the analysis in the EA and the underlying information in the record, including the application, proposed rule, public comments and informal section 7 consultation, NMFS has prepared and issued a Finding of No Significant Impact determining that preparation of an Environmental Impact Statement is not required.

Determinations

Based on Eglin AFB's application, as well as the analysis contained herein, NMFS has determined that the impact of the described NEODS training operations will result, at most, in a temporary modification in behavior (Level B harassment) of Atlantic bottlenose dolphins, which are expected to temporarily vacate the action area to avoid NEODS training activities. The activities may also result in minor visual and acoustic disturbances from detonations. The effect of the NEODS training operations is expected to be limited to non-TTS behavioral disturbance and short-term and localized TTS-related behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, NMFS only expects and has thus authorized the incidental take of up to 50 Atlantic bottlenose dolphins. In addition, no take by injury, serious injury, or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. No injury (Level A harassment), serious injury, or mortality is expected or authorized for marine mammals, and take by harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. Further, NMFS has determined that the anticipated takes incidental to this activity are expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this action as there are no subsistence users within the specified geographic area of the project.

Classification

For purposes of Executive Order 12866, the Office of Management and Budget has determined that this rule stage is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief of Counsel for Advocacy of the Small Business Administration that this final rule 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 is not repeated here. No comments were received regarding this certification. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Authorization

As a result of these determinations, NMFS is issuing five-year regulations establishing a framework for the issuance of LOAs to Eglin AFB for the take of Atlantic bottlenose dolphins by Level B harassment incidental to NEODS training operations, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Changes From the Proposed Rule

In addition to minor edits to the rule for clarification, NMFS has made the following changes to the rule:

- Revised dates;
- Revised safety zones based on the weight of the charge;
- Revised analysis of takes based on the Level A harassment (injury) threshold of 13 psi-msec and the Level B harassment (non-TTS) threshold of 177 dB re 1 μPa^2-sec;
- Revised monitoring and mitigation measures to increase the probability of detecting all marine mammals within or entering the identified safety zones under various Beaufort sea state and weather conditions;
- Revised monitoring and mitigation measures to reduce the potential for lethal take of bottlenose dolphins, as occurred in similar explosive training operations at the U.S. Navy's Silver Strand Training Complex near San Diego, California; and
- Require suspension of the NEODS training operations if a marine mammal is seriously injured or killed and the injury or death could be associated with the Eglin AFB activities and, if supplementary measures are unlikely to reduce the risk of serious injury or death to a very low level, require the U.S. Air Force to suspend its activities until an authorization for such taking has been obtained.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 14, 2012.

Alan D. Risenhoover,

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

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart I is added to part 217 to read as follows:

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School Training Operations

Sec.
217.80 Specified activity and specified geographical region.
217.81 Effective dates.
217.82 Permissible methods of taking.
217.83 Prohibitions.
217.84 Mitigation.
217.85 Requirements for monitoring and reporting.
217.86 Applications for Letters of Authorization.
217.87 Letters of Authorization.
217.88 Renewal and review of Letters of Authorization and adaptive management.
217.89 Modifications of Letters of Authorization.

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations

§ 217.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area set forth in paragraph (b) of this section.

(1) NEODS missions involving underwater detonations of small, live explosive charges adjacent to inert mines in order to disable the mine function,

(2) Live training events occurring eight times annually, averaging one event occurring every 6 to 7 weeks,

(3) Four of the training events involving 5-lb charges, and four events involving 10-lb charges,

(4) Up to 20 5-lb detonations and twenty 10-lb detonations annually, for a total of 40 detonations,

(5) The five charges occurring for each training event shall be detonated individually with a maximum separation time of 20 minutes between each detonation,

(6) Mine shapes and debris shall be recovered and removed from the Gulf of Mexico waters when training is completed, and

(7) Each training team has two days to complete their entire evolution (i.e., detonation of five charges). If operations cannot be completed on the first live demolition day, the second live demolition day shall be utilized to complete the evolution.

(b) The incidental take of marine mammals at Eglin Air Force Base, within the Eglin Military Complex, including three sites in the Eglin Gulf Test and Training Range at property off Santa Rosa Island, Florida, in the northern Gulf of Mexico, under the activity identified in paragraph (a) of this section, is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*).

(1) The latitude/longitude of corners of W–151 in the Eglin Gulf Test and Training Range are:

(i) 30.24006° North, −86.808838° West

(ii) 29.539011° North, −84.995536° West

(iii) 28.03949° North, −85.000147° West

(iv) 28.027598° North, −85.199395° West

(v) 28.505304° North, −86.799043° West

(2) The latitude/longitude of corners of W–151A in the Eglin Gulf Test and Training Range are:

(i) 30.24006° North, −86.808838° West

(ii) 30.07499° North, −85.999327° West

(iii) 29.179968° North, −85.996341° West

(iv) 29.384439° North, −86.802579° West

§ 217.81 Effective dates.

Regulations in this subpart are effective from April 23, 2012, through April 24, 2017.

§ 217.82 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 of this chapter and § 217.87, the U.S. Department of the Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base (U.S. Air Force), its contractors, and clients, may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in § 217.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The incidental taking of marine mammals is authorized for the species listed in § 217.80(b) and is limited to Level B harassment.

(c) The incidental taking of an average of 10 individuals annually and 50 individuals during the 5-year rule, for Atlantic bottlenose dolphins.

(d) The U.S. Air Force shall suspend NEODS training operations until it obtains additional authorization for the take of marine mammals if:

(1) A marine mammal is injured, seriously injured, or killed during training operations;

(2) The injury, serious injury, or death could be associated with the activities; and

(3) After coordination and concurrence with NMFS, the U.S. Air Force determines that supplementary measures are unlikely to reduce the risk of injury, serious injury or death to a very low level, require the U.S. Air Force to suspend its activities until an authorization for such taking has been obtained.

§ 217.83 Prohibitions.

Notwithstanding takings contemplated in § 217.80 and authorized by a Letter of Authorization issued under §§ 216.106 of this chapter and 217.87, no person in connection with the activities described in § 217.80 may:

(a) Take any marine mammal not specified in § 217.80(b);

(b) Take any marine mammal specified in § 217.80(b) other than by incidental take as specified in § 217.82(a) through (d);

(c) Take a marine mammal specified in § 217.80(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 of this chapter and 217.87.

§ 217.84 Mitigation.

(a) The activity identified in § 217.80(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 217.80(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 of this chapter and 217.87 must be implemented. These mitigation measures include (but are not limited to):

(1) Underwater detonations using timed delay devices will only be conducted during daylight hours. The time of detonation shall be limited to an hour after sunrise and an hour before sunset.

(2) NEODS missions shall be postponed if:

(i) The Beaufort sea state is greater than scale number three. Such a delay would maximize detection of marine mammals.

(ii) Large concentrations of fish, jellyfish, and/or large *Sargassum* rafts are observed within the mitigation-monitoring zone. The delay would continue until the fish, jellyfish, and/or *Sargassum* rafts that cause the postponement are confirmed to be outside the mitigation-monitoring zone.

(3) Time delays longer than 10 minutes will not be used. Initiation of the timer device will not start until the mitigation-monitoring zone is clear of marine mammals for 30 minutes.

(4) A calculated mitigation-monitoring zone will be established around each underwater detonation location based on charge weight and length of time-delay used. When conducting surveys within the mitigation-monitoring zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation point, surveying the inner (toward the detonation site) and outer (away from the detonation site) areas. For a survey radius of 914.4 meters, the boat will be positioned at 457.2 meters from the detonation point. Similarly, for a survey radius of 1,280.2 meters, boats will be positioned at 640.1 meter distance.

(5) For a survey radius of 914.4 meters, two boats are required. For a radius of 1,280.2 meters, either three boats or two boats/one helicopter are required.

(6) When using two boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. When using three boats, each boat will be separated by 120 degrees (equidistant from each other).

(7) Two observers in each boat will conduct continuous visual surveys of the mitigation-monitoring zone for the entire duration of the training event, including at least 30 minutes prior to detonation. Observers will search the mitigation-monitoring zone for the presence of marine mammals, and other marine species such as sea turtles, diving birds, large concentrations of fish or jellyfish, and large *Sargassum* mats. The presence of diving birds, fish, jellyfish, and *Sargassum* may indicate an increased likelihood of dolphin presence.

(8) To the extent practicable, boats will maintain 18.5 kilometer per hour search speed. This search speed is expected to ensure adequate coverage of the buffer zone. While weather conditions and sea state may require slower speeds in some instances, 18.5 kilometers per hour is considered a prudent, safe, and executable speed that will allow adequate surveillance. For a 914.4 meter survey zone, a boat traveling at 18.5 kilometers per hour and 457.2 meters from the detonation point would circle the point approximately 3.2 times during a 30 minute survey period. By using two boats, approximately 6.4 circles would be completed in total. Similarly, for a 1,280.2 meter radius, each boat would circle the detonation point approximately 2.3 times within 30 minutes, and use of three boats would result in 6.9 total circles.

(9) If available, a U.S. Navy helicopter can be used in lieu of one of the survey boats, so long as safety of flight is not jeopardized. U.S. Navy helicopter pilots are trained to conduct searches for relatively small objects in the water, such as a missing person. A helicopter search pattern is dictated by standard U.S. Navy protocols and accounts for multiple variables, such as size and shape of the search area, size of the object, and environmental conditions, among others.

(10) The mitigation-monitoring zone will be surveyed for 30 minutes prior to detonation and continue for 30 minutes after detonation (concentrated on the area down current of the test site), in order to monitor for marine mammals and other protected species. It is the U.S. Air Force's (on behalf of the U.S. Navy) intent to conduct five successive detonations with a maximum time of 20 minutes between detonations, although a variety of factors can cause a delay of longer than 20 minutes between detonations, although a variety of factors can cause a delay of longer than 20 minutes, including a delay until the following day. Monitoring would continue during the 20 minutes time between detonations, and would serve as both post-detonation monitoring as well as pre-mission monitoring for the next detonation. If the time between detonations is delayed beyond 20 minutes, post-mission monitoring will be conducted for 30 minutes. At the conclusion of the final detonation, post-monitoring will be conducted for 30 minutes.

(11) Other personnel besides designated observers shall also maintain situational awareness of the presence of marine mammals within the mitigation-monitoring zone to the extent practicable given dive safety considerations.

(12) Divers placing the charges on mines will observe the immediate underwater area around the detonation site for marine mammals and other marine species such as diving birds, sea turtles, and Gulf sturgeon, and report sightings to surface observers.

(13) If a marine mammal is sighted within an established mitigation-monitoring zone or moving towards it, underwater detonation events will be postponed or suspended until the marine mammal that caused the postponement/suspension of training operations has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

(14) If a marine mammal is detected within or about to enter an established mitigation-monitoring zone and subsequently cannot be reacquired, the mission will be postponed or suspended until the last verified location is outside the mitigation-monitoring zone, the animals is moving away from the area, and the area is clear of marine mammals for at least 30 minutes.

(15) Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported to Eglin Air Force Base. Eglin Air Force Base will coordinate with other members of marine mammal stranding networks, as appropriate, and report these events to NMFS or U.S. Fish and Wildlife Service. The report will contain date and time of sighting, location, species description, and indications of the animal's status.

(16) Training operations shall be suspended if the conditions of § 217.83(a)–(d) regarding the injury, serious injury, or death of a marine mammal during NEODS training operations are met.

(17) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.85 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization pursuant to § 216.106 of this chapter and § 217.87 for activities described in § 216.80(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southeast Region, NMFS, by letter or telephone, prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 217.80(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.80(b), then the Holder of the Letter of Authorization must, in addition to complying with the requirements of

§ 217.82(a)–(d), notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8400), within 24 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate trained, qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to perform the following monitoring requirements:

(1) For NEODS testing, areas to be used in missions shall be visually monitored for marine mammal presence from a surface support vessel prior to detonation of mine neutralization charges. Monitoring shall be conducted 30 minutes before missions to clear the mitigation-monitoring zone. Post-mission monitoring shall also be conducted for 30 minutes after the final detonation (concentrated on the area down current of the test site). If marine mammals are inside the mitigation-monitoring zone, detonations shall be postponed until they have left the area. The observer on the vessel must be equipped with the proper optical equipment and lines of communication in order to recommend the decision to move forward with the mission.

(2) Monitoring shall occur pre-mission (for 30 minutes), throughout the mission, and post-mission (for 30 minutes). Post-mission monitoring shall concentrate on the area down current of the test site.

(3) Survey clearance procedures shall be conducted using best operational methods possible. After the mitigation-monitoring zone is cleared, all dolphins and protected species indicators (e.g., *Sargassum* rafts) shall be avoided to the maximum extent possible.

(4) Clearance procedures shall be re-conducted if dolphins or protected species indicators (e.g., *Sargassum* rafts) are encountered.

(5) After conducting post-mission monitoring, NEODS training operations data as required by Eglin Air Force Base's Natural Resources Section, 96 CEG/CEVSN shall be reported. Post-mission monitoring shall commence immediately following each detonation and shall be concentrated on the area down current of the test site. If any injured or dead marine mammals are observed, that information will be reported and coordinated with marine animals stranding networks.

(6) An annual summary (coordinated through 96 CEG/CEVSN) of mission observations shall be submitted to: NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, Florida 33702; and NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, Maryland 20910.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit an annual report summarizing the specified activity as well as monitoring and mitigation data to the Southeast Regional Administrator and Director of the Office of Protected Resources, NMFS, within 90 days after the conclusion of the NEODS training operations. This report must contain the following information:

(1) Date(s), time(s), and location(s) of explosive activities,

(2) Design of the monitoring program,

(3) Results of the monitoring program including, but not necessarily limited to:

(i) Species counts,

(ii) Numbers of observed disturbances,

(iii) Descriptions of the disturbance behaviors before, during, and after explosive activities,

(iv) Bearing and distances,

(v) Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area shall be reported to NMFS and the U.S. Fish and Wildlife Service so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish shall be reported to NMFS and U.S. Fish and Wildlife Service.

(e) An annual report (referred to in § 217.85(d)) must be submitted at the time of notification of the renewal of the Letter of Authorization.

(f) A draft comprehensive final report must be submitted at least 180 days prior to expiration of these regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first four and a half years of the Letter of Authorization. A revised final comprehensive technical report, including all monitoring results during the entire period of the Letters of Authorization, must be submitted 90 days after the end of the period of effectiveness of the regulations. This report shall summarize the activities undertaken and the results reported in all previous reports.

(g)(1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a Letter of Authorization, such as an injury, serious injury, or mortality, Eglin Air Force Base will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Regional Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at 888–404–3922). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all noise-generating source use in the 24 hours preceding the incident;

(iv) Water depth;

(v) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(vi) Description of all marine mammal observations in the 24 hours preceding the incident;

(vii) Species identification or description of the animal(s) involved;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Eglin Air Force Base to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin Air Force Base may not resume their activities until notified by NMFS via letter or email, or telephone.

(2) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the cause of injury or death is unknown and the death is relatively recent (i.e., less than a moderate state of decomposition as described in the next paragraph), Eglin Air Force Base will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information

identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident, NMFS will work with Eglin Air Force Base to determine whether modifications in the activities are appropriate.

(3) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the Letter of Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Eglin Air Force Base will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Regional Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. Eglin Air Force Base will provide photographs or video footage (if available) or other documentation of the stranded animals sighting to NMFS and the Marine Mammal Stranding Network.

§ 217.86 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 217.80(a) must apply for and obtain either an initial Letter of Authorization in accordance with § 217.87 or a renewal under § 217.88.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Application for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization;

(2) A description of the activity, the dates of the activity, and the specific location of the activity; and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

(e) [Reserved]

§ 217.87 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, shall be valid for a period of time not to exceed the period of validity of this subpart.

(b) The Letter of Authorization shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring, and reporting.

(c) Issuance and renewal of the Letter of Authorization shall be based on a determination that the total number of marine mammals taken by the activity as a whole shall have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 217.88 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 217.87 for the activity identified in § 217.80(a) shall be renewed upon a request by the applicant or determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations, provided that:

(1) NMFS is notified that the activity described in the application submitted under § 217.86 shall be undertaken and there shall not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) NMFS has received, reviewed, and accepted the monitoring reports required under § 217.85(d) and (e) and the Letter of Authorization issued under § 217.87;

(3) NMFS determines that the mitigation, monitoring, and reporting measures required under §§ 217.84 and 217.85 and the Letter of Authorization issued under §§ 216.106 and 217.87 of this chapter, were undertaken and shall be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) NMFS makes the determination required by § 217.87(c).

(b) If either a request for a renewal of a Letter of Authorization issued under § 216.106 of this chapter and § 217.88, or a determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season shall occur, NMFS shall publish a proposed modification to the Letter of Authorization in the **Federal Register** and provide the public a period of 30 days for review and comment. Review and comment on renewals or modifications of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed substantive changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization shall be published in the **Federal Register**.

(d) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the U.S. Air Force's monitoring from the previous year;

(2) Results from marine mammal and sound research; or

(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.80(b), a

Letter of Authorization issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification shall be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 2012–6824 Filed 3–21–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120106033–2163–02]

RIN 0648–BB68

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: The Assistant Administrator (AA) for Fisheries, National Oceanic and Atmospheric Administration (NOAA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A (waters off the U.S. West Coast) and implementing regulations for 2012, announces approval of the Area 2A CSP, and provides notice of the guideline harvest levels (GHLs) for Areas 2C and 3A. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) (Councils).

DATES: This rule is effective April 23, 2012. The IPHC's 2012 annual management measures are effective March 22, 2012, except for the measures in section 26, which are effective April 23, 2012. The 2012 management measures are effective until superseded.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting: the International Pacific Halibut Commission, 2320 W. Commodore Way Suite 300, Seattle, WA 98199–1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS Northwest Region, 7600 Sand Point Way, NE., Seattle, WA 98115. This final rule also is accessible via the Internet at the Federal eRulemaking portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For waters off Alaska, Glenn Merrill, 907–586–7228, email at *glenn.merrill@noaa.gov;* or Rachel Baker, 907–586–7228, email at *rachel.baker@noaa.gov;* or, for waters off the U.S. West Coast, Sarah Williams, 206–526–4646, email at *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2012 under the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979).

As provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), may accept or reject, on behalf of the United States, recommendations made by the IPHC in accordance with the Convention (Halibut Act, Sections 773–773k.). On March 5, 2012, the Secretary of State of the United States, with the concurrence of the Secretary, accepted the 2012 IPHC regulations as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773–773k.

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. The Regional Fishery Management Councils may develop and the Secretary may implement regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with approved IPHC regulations. The NPFMC has exercised this authority most notably in developing a suite of halibut management programs that correspond to the three fisheries that harvest halibut in Alaska: the subsistence, sport, and commercial fisheries.

Subsistence and sport halibut fishery regulations are codified at 50 CFR part 300. Commercial halibut fisheries in Alaska operate within the Individual Fishing Quota (IFQ) Program and Community Development Quota (CDQ) Program (50 CFR part 679), and through area-specific catch sharing plans. Regulations for a commercial and sport fishery Halibut CSP in Areas 2C and 3A are being developed pursuant to the NPFMC authority under the Halibut Act. NMFS published a proposed rule for the Area 2C and Area 3A CSP on July 16, 2011, and accepted comments on the proposed rule and on the Environmental Assessment (EA), Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (IRFA) prepared for the CSP through September 21, 2011. In October 2011, NMFS informed the NPFMC that public comments received on the proposed CSP raised issues that may require additional input from the NPFMC before NMFS can proceed to a final rule. NMFS is continuing to work with the NPFMC to address these issues of concern and is seeking NPFMC advice on how to proceed with agency review of the Area 2C and Area 3A CSP.

The PFMC also exercises authority in a CSP allocating halibut among groups of fishermen in Area 2A, off the coasts of Washington, Oregon, and California. The CSP allocates the Area 2A catch limit among treaty Indian and non-Indian harvesters, and non-Indian commercial and sport harvesters. The treaty Indian group includes tribal commercial, and tribal ceremonial and subsistence fisheries. The Secretary implemented the Area 2A CSP recommended by the PFMC in 1995. Each year between 1995 and the present, the PFMC has adopted minor revisions to the plan to account for needs of the fisheries. These revisions are implemented in regulations for Area 2A through annual rule making and annual IPHC review and recommendation of management measures for Secretarial review. The Area 2A regulations are part of the IPHC annual management measures and are superseded each year by new implementing regulations.

The NPFMC implemented a CSP among commercial IFQ and CDQ halibut fisheries in IPHC Areas 4C, 4D and 4E (Area 4) through rulemaking, and the Secretary approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified (50 CFR 300.65) and amended through rule making on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through IPHC review and recommendation for Secretarial review.

Publication of this final rule announces that the U.S. Secretary of

State has accepted the annual management measures recommended by the IPHC, implements Area 2A regulations supporting annual management measures recommended by IPHC, implements the Area 2A CSP, announces the GHLs for Areas 2C and 3A, and makes minor changes to the codified halibut regulations. The proposed rule for the Area 2A CSP was published on February 3, 2012 (77 FR 5473).

Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2012 IPHC annual management measures are published in the **Federal Register** to provide notice of their immediate regulatory effect, and to inform persons subject to the regulations of the restrictions and requirements. NMFS could implement more restrictive regulations for the sport fishery for halibut or components of it; therefore, anglers are advised to check the current Federal or IPHC regulations prior to fishing.

The IPHC held its annual meeting in Anchorage, Alaska, January 24–27, 2012, and recommended a limited number of changes to the previous IPHC regulations (76 FR 14300, March 16, 2011). The Secretary of State approved the following changes to the previous IPHC regulations for 2012:

1. New halibut catch limits in all regulatory areas in Section 11;
2. New commercial halibut fishery opening and closing dates in Section 8;
3. Licensing requirements for retaining incidental Pacific Halibut caught in the Primary Sablefish Fishery North of Pt. Chehalis, Washington; in Sections 4 and 8;
4. Modified logbook regulations in Areas 2A and 2B in Section 16;
5. Adopting the revised Catch Sharing Plan (CSP) for Area 2A in Sections 22 and 26;
6. Size limit on the halibut retained on board a charter vessel fishing in Regulatory Area 2C of less than 45 inches or greater than 68 inches in length (a ''reverse slot limit'') in Section 28.

These are the only changes to the previous IPHC regulations for the 2012 fishing season. NMFS is publishing the 2012 IPHC regulations in this final rule to provide the public with the complete set of regulations.

Catch Limits

The IPHC recommended to the governments of Canada and the United States catch limits for 2012 totaling 33,540,000 pounds (15,213 mt), an 18.3 percent reduction from the 2011 catch limits for all areas. The IPHC staff reported on the 2011 assessment of the Pacific halibut stock that estimated coastwide biomass, with apportionment among regulatory areas based on the data from the annual IPHC standardized stock assessment survey. The IPHC recommended a 21.5 percent harvest rate for Area 2A through Area 3A, and a harvest rate of 16.1 percent for Areas 3B, 4A, 4B and 4CDE. Catch limits adopted for 2012 were lower in all regions of the stock except Areas 2A and 2C. The IPHC also recommended using the harvest control rule it adopted in 2011 to implement the full reductions in catch limits identified by the stock assessment, rather than the partial (50 percent) reductions used in previous years. Concern exists over continued declining halibut catch rates in most areas and IPHC staff recommended continued action to reduce harvests. The IPHC staff also noted as a continuing problem that updated information often indicates that previous estimates of biomass are incorrect, and that as a result actual historical harvest rates of the halibut stock are higher than the estimates IPHC used to inform its stock assessments. IPHC scientists will be conducting additional research on this matter in 2012.

The IPHC adopted the staff recommendations for catch limits in 2012 for all areas except 2B. Catch limits adopted for Areas 2A and 2C in 2012 were approximately 9 percent, and 13 percent higher, respectively, than in 2011. Catch limits adopted for Areas 2B, 3A, and 3B in 2012 were approximately 8 percent, 17 percent, and 32 percent lower, respectively, than in 2011 Catch limits in Areas 4A, 4B, 4CD, and 4E were approximately 35 percent, 14 percent, 34 percent, and 26 percent lower, respectively, than in 2011.

Commercial Halibut Fishery Opening Dates

The opening date for the tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 17, 2012. The date takes into account a number of factors, including timing of halibut migration and spawning, marketing for seasonal holidays, and interest in getting product in to the processing plants before the herring season opens. The closing date for the halibut fisheries is November 7, 2012. This date takes into account the anticipated time required to fully harvest the commercial halibut catch limits while providing adequate time for IPHC staff to review the complete record of 2012 commercial catch data for use in the 2013 stock assessment process.

In the Area 2A directed fishery, each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 27, July 11, July 25, August 8, August 22, September 5, and September 19, 2012, unless the IPHC specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

Modification of Area 2A Licensing Regulations

Because the Area 2A TAC is over 900,000 lbs (408.2 mt), incidental take of halibut will be allowed in the sablefish primary fishery in 2012. Therefore regulations pertaining to vessel licensing in Area 2A were updated at paragraph 4(4)(a) to allow vessels operating in the commercial halibut or sablefish primary fishery to choose a license that allows this type of participation.

Size Limit on the Halibut Retained on Board a Charter Vessel Fishing in Area 2C of Less Than or Equal to 45 Inches and Greater Than or Equal to 68 Inches in Length

This final rule prohibits a person onboard a charter vessel referred to in 50 CFR 300.65 and fishing in Area 2C from taking or possessing any halibut, with head on, that is greater than 45 inches (114.3 cm) and less than 68 inches (172.7 cm), as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail.

The IPHC recognizes the role of the NPFMC to develop policy and regulations that allocate the Pacific halibut resource among fishermen in and off of Alaska, and that NMFS has developed numerous regulations to support the NPFMC's goals of limiting guided sport (charter) harvests over the past several years. The IPHC specifically recommended this additional size limit as a management measure in the Area 2C charter fishery, based on guidance from the NPFMC to limit charter halibut harvests to the stated harvest policy of the United States for the charter fishery, the GHL.

The GHL was recommended by the NPFMC in February 2000, after several years of debate and refinement. NMFS published a final rule implementing the GHL on August 8, 2003 (68 FR 47256). The GHL establishes a pre-season estimate of the acceptable annual harvests for the charter fishery in Areas 2C and 3A. The GHLs are established as a total maximum poundage, which is responsive to annual fluctuations in abundance. For example, in the event of a reduction in either area's halibut

biomass, as determined by the IPHC, the area GHL is reduced incrementally in a stepwise fashion in proportion to the reduction.

Regulations at § 300.65(c)(1) specify the GHLs based on the total constant exploitation yield (CEY) that is established annually by the IPHC. The CEY represents the target level for total halibut removals in an area for the coming year. The IPHC calculates the CEY in a given area by multiplying a target harvest rate by the estimate of exploitable biomass, or the portion of the biomass available to the fishery. The charter halibut fishery exceeded the GHL in Area 2C from 2004 through 2010. During 2004 through 2007, the GHL was 1,432,000 pounds. During that time period, charter harvests were approximately 1,750,000 pounds in 2004, 1,952,000 pounds in 2005, 1,804,000 pounds in 2006, and 1,918,000 pounds in 2007. In 2008, the GHL was 931,000 pounds and charter harvests were approximately 1,999,000 pounds. In 2009 the GHL was 788,000 pounds and the charter harvest was approximately 1,245,000 pounds. In 2010, the GHL was 788,000 pounds and the charter harvest was approximately 1,249,000 pounds. The Area 2C charter harvest exceeded its GHL every year from 2004 through 2010 notwithstanding management measures designed by the NPFMC and implemented by NMFS to control sport halibut harvest to the GHL in this area.

Recognizing that the GHL was not limiting fishing, the NPFMC recommended a CSP for Area 2C and Area 3A in October 2008, to replace the current GHL and establish specific allocations of halibut harvest between the charter and commercial setline fisheries in Area 2C and 3A. Under the CSP, the IPHC would annually establish one combined charter and commercial catch limit to which pre-specified sector allocation percentages would apply. Multiplying the specified percentage by the combined catch limit would result in a specific catch limit for each sector. Using a nondiscretionary process specified in Federal regulations, changes in the combined charter and commercial catch limit could trigger changes in the charter halibut bag and size limit in effect for that year.

At the IPHC's annual meeting in January 2011, the IPHC became aware that charter halibut harvests in Area 2C were likely to exceed the 788,000 pound GHL based on the well-established trend of charter harvests since 2004, and the demonstrated removals under existing regulations. Therefore, the IPHC concluded that additional restrictions were necessary to limit that charter harvest to the GHL and achieve the IPHC's overall conservation objective and the NPFMC's allocation objective for Area 2C.

The IPHC determined that limiting charter harvests in Area 2C to one fish of no more than 37 inches would likely meet the multiple objectives established by the IPHC in 2011. The Secretary of State, with the concurrence of the Secretary, accepted the IPHC's recommended daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011).

In November 2011, the Alaska Department of Fish and Game (ADF&G) estimated that 2011 Area 2C charter harvests under the 37-inch maximum length rule totaled approximately 388,000 pounds, which is significantly below the GHL of 788,000 pounds. The NPFMC determined that the GHL would continue to be in place for the 2012 charter halibut season because the CSP would not be implemented for 2012. Based on the 2011 charter harvest estimate that was well below the GHL under the 37-inch maximum length limit regulation, the NPFMC determined that it would be appropriate for IPHC to consider management measures in addition to a maximum length limit to limit charter harvest to the GHL. To address this issue for 2012, the NPFMC requested that ADF&G analyze the following options for management measures for the Area 2C charter halibut fishery to limit charter harvest to the 2012 GHL:

1. Maximum size limits;
2. Reverse slot limits (anglers may retain fish under a relatively small maximum size limit and fish over a relatively high minimum size limit, but must return to the sea fish that are larger than the lower size limit and smaller than the upper size limit); and
3. Closures on selected days of the week.

In November 2011, the IPHC announced the total CEY for Area 2C in 2012, which results in an Area 2C GHL of 931,000 pounds. In December 2011, the NPFMC reviewed the analysis of the management measures to limit Area 2C charter harvest to the 2012 GHL and unanimously recommended that the IPHC implement a reverse slot limit with a lower limit of under 45 inches (U45) and an upper limit of over 68 inches (O68). This U45/O68 reverse slot limit would allow the retention of halibut approximately ≤ 32 pounds and ≥ 123 pounds (headed and gutted). In considering charter management measures for 2012, the NPFMC sought to select a management measure that would enable the charter sector to harvest an amount of halibut close to the GHL without exceeding it.

The NPFMC noted that its U45/O68 reverse slot limit recommendation is likely to limit charter harvest to the GHL because the analysis projected that charter harvest under these length limits would be 6.4 percent under the GHL. The NPFMC also determined that its recommendation was conservative because it assumes (1) the higher of two harvest projections of numbers of fish (45,338) harvested by charter vessel anglers in Area 2C based on the recent 3-year average; and (2) that charter vessel anglers will want to retain the largest halibut possible, will choose to release more smaller halibut in comparison to recent years, and this selectivity will result in approximately 20 percent more fish harvested that are greater than 68 inches in length than in the previous fishing year.

The NPFMC recommended a reverse slot limit instead of a maximum length limit based on input from its Charter Implementation Committee and charter fishery participants indicating that the reverse slot limit would provide anglers with an opportunity to retain a ''trophy'' fish (halibut larger than 68 inches), whereas a maximum length limit would prohibit retention of any halibut larger than the maximum length limit. These charter fishery stakeholders indicated that a reverse slot limit would be less likely to result in adverse economic impacts from reduced angler demand than a maximum length limit regulation.

The NPFMC did not recommend daily closures because of identified enforcement difficulties and uncertainty regarding the effects of daily closures on charter harvest. Additionally, the day of the week closure would impact charter businesses differently, depending on their business model and their ability to change halibut fishing schedules for individual clients.

The NPFMC requested that the IPHC implement the U45/O68 reverse slot limit in the 2012 Area 2C charter fishery. At its annual meeting in January 2012, the IPHC reviewed the ADF&G analysis the NPFMC used in developing its recommendation. The IPHC unanimously recommended implementing the U45/O68 reverse slot limit for charter anglers in Area 2C for the 2012 halibut fishing season. The IPHC determined that its recommended reverse slot limit in Area 2C was necessary to prevent excess halibut harvest by charter vessel anglers as an immediate but interim measure for 2012. The IPHC's recommendation was based on the NPFMC's objective to implement a management measure that

would (1) restrict charter harvest to the GHL, and (2) be less likely to result in adverse economic impacts for charter operators from reduced angler demand than a maximum length limit regulation.

Area 2C Carcass Retention

Current IPHC regulations prohibit the filleting, mutilation or other disfigurement of sport-caught halibut that would prevent the determination of the size or number of halibut possessed or landed. In Southeast Alaska Area 2C, the IPHC recommended maintaining the current regulation at section 28(2)(b) that a person onboard a charter vessel who possesses filleted halibut must also retain the entire carcass, with head and tail connected as a single piece, onboard the vessel until all the fillets are offloaded. This regulation was implemented in 2011 to facilitate enforcement of the 37-inch maximum size limit and accounting of each charter vessel angler's halibut bag limit. The IPHC recommended maintaining the carcass retention requirement in 2012 to facilitate enforcement of the U45/O68 reverse slot limit in Area 2C.

Pacific Fishery Management Council's Area 2A Catch Sharing Plan and Codified Regulations

In addition to implementing the IPHC recommendations, this final rule approves several Council-recommended changes to the Pacific Fishery Management Council's Area 2A CSP, implements the CSP through annual management measures, and makes minor changes to NMFS' codified regulations for the halibut fishery in Area 2A.

Changes to Codified Regulations for Area 2A

This final rule makes minor corrections to the Federal regulations at § 300.63 to make the term ''sablefish primary fishery'' consistent through the halibut regulations to match the groundfish regulations where the term is defined. Current halibut regulations use inconsistent terms to refer to the sablefish primary fishery. These changes are minor corrections and do not represent a shift in policy regarding the sablefish primary fishery or the halibut fishery.

Changes to the Area 2A Catch Sharing Plan; Annual Management Measures

This final rule approves the CSP as revised by recommendations of the PFMC. For 2012 and beyond, the PFMC has recommended several minor changes to the Plan that would: Adjust the primary fishery schedule for the Washington South coast subarea to maintain the number of fishing days seen in previous years; adjust the quota split for the Columbia River subarea between the early and late fishery to better align the fishery with recent effort trends, and adjust the Oregon contribution to the subarea to better align the Oregon quota contribution to the Columbia River subarea quota with previous years' halibut landings from Oregon; adjust the Oregon Central Coast subarea spring and nearshore quotas to allow the maximum number of fishing days in each fishery and adjust the inseason adjustment rules for this subarea so that any remaining quota from the spring fishery may be allocated to either the summer fishery and/or the nearshore fishery. This final rule also adopts the annual domestic management measures for Area 2A. Changes to these management measures from 2011 are necessary to implement the IPHC's decision regarding the Area 2A total allowable catch (TAC) and the above-described changes to the Catch Sharing Plan.

The adjustment in 2012 to the Oregon contribution to the quota for the Columbia River subarea results in a small portion of the overall Oregon/California sport fishery allocation being undistributed. The overall Oregon/California sport fishery allocation is separated into three components: (1) A contribution to the Columbia River subarea (previously 5 percent or amount equal to the Washington contribution, whichever was greater); (2) a 92 percent allocation to the Oregon Central Coast subarea; and (3) a 3 percent allocation to the South of Humbug subarea. In past years the Oregon contribution to the Columbia River subarea quota was set at 5 percent, because this amount was greater than the Washington contribution, meaning that the three components of the Oregon/California sport fishery allocation totaled 100 percent. This year, the Oregon contribution is set equal to the Washington contribution, which is an amount less than 5 percent of the overall Oregon/California sport fishery allocation. This change results in a remainder of 2 percent undistributed Oregon/California sport fishery allocation. To remedy this situation NMFS is not making any long-term changes to allocations, but is distributing the remainder of the overall Oregon/California sport fishery allocation left after the Columbia River contribution is removed according to the Oregon/California subarea allocations specified in the Plan; i.e., the remainder will be distributed 92 percent to the Central Coast subarea and 3 percent to the South of Humbug subarea. For 2013 and beyond NMFS anticipates that the Council will recommend changes to the CSP to address this issue.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, Washington

The CSP provides that incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, Washington, will be allowed when the Area 2A TAC is greater than 900,000 lb (408.2 mt), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). In 2012, the TAC is 989,000 lb (448.6 mt); therefore incidental halibut retention will be allowed in this fishery. Landing restrictions will be recommended by the PFMC for public review at its March meeting and final recommendations will occur at its April meeting. Following this meeting NMFS will publish the restrictions in the **Federal Register**.

Corrections to Federal Regulations at § 300.63

This rule makes minor corrections to the Federal regulations at § 300.63 to make the term ''sablefish primary fishery'' consistent through the halibut regulations and match the groundfish regulations where the term is defined. Current halibut regulations inconsistently use the terms when referring to the sablefish primary fishery.

Area 2A Catch Sharing Plan and Annual Regulations; Comments and Responses

NMFS accepted comments through February 21, 2012, on the proposed rule for the Area 2A CSP and annual regulations and received 2 public comments: One comment letter each from Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW) recommending season dates for halibut sport fisheries in each state.

Comment 1: The WDFW held a public meeting following the IPHC's final 2012 TAC decisions to review the results of the 2011 Puget Sound halibut fishery, and to develop season dates for the 2012 sport halibut fishery. Based on the 2012 Area 2A TAC of 989,000 lb (448.6 mt), the halibut quota for the Puget Sound sport fishery is 57,393 lb (26 mt). Because the catch in this area exceeded the quota in 2008, 2009, and 2010, WDFW will continue to use the highest catch rate seen over the last 5 years to determine the number of days available to the fishery. Within the Puget Sound

sport halibut fishery, WDFW recommends they open as follows: in the Eastern Region from May 3–19, Thursday through Saturday, and May 24–28, Thursday through Monday, and from May 31 through June 2, Thursday through Saturday. In the Western Region from May 24–28, WDFW recommends the fishery be open Thursday through Monday; and from May 31–June 23, Thursday through Saturday.

Response: NMFS agrees with WDFW's recommended Puget Sound season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates in this final rule.

Comment 2: ODFW held a public meeting following the final TAC decision by the IPHC to gather comments on the open dates for the recreational all-depth fishery in Oregon's Central Coast Subarea. Since 2004, the number of open fishing days that could be accommodated in the spring fishery has been roughly constant. The catch limit for this sub-area's spring season will be 191,780 lb (86.9 mt) in 2012, based on the IPHC's 2012 TAC for Area 2A. Because of the increased TAC for 2012, ODFW recommends setting a Central Coast all-depth fishery of 12 days. ODFW recommends the following days for the spring fishery, within this subarea's parameters for a Thursday-Saturday season and with weeks of adverse tidal conditions skipped: Regular open days of May 10–12, 17–19, 24–26 and May 31–June 2; back-up open days of June 14–16, 28–30, July 12–14, and 26–28. For the summer fishery in this subarea, ODFW recommended following the CSP's parameters of opening the first Friday in August, with open days to occur every other Friday-Saturday, unless modified in-season within the parameters of the CSP. Under the CSP, the 2012 summer all-depth fishery in Oregon's Central Coast Subarea occurs: August 3–4, 17–18, August 31–September 1, 14–15, 28–29, October 12–13, and 26–27.

Response: NMFS agrees with ODFW's recommended Central Coast season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates in this final rule.

Changes From the Proposed Rule

On February 2, 2012, NMFS published a proposed rule to modify the CSP and recreational management measures for Area 2A (77 FR 5473). The final TAC amounts were not available until January 27, 2012, which was after the proposed rule needed to be drafted and sent to the Office of the Federal Register for timely publication. The provisions in the proposed rule were based on the preliminary estimate of the 2A TAC of 989,000 lb. The final 2A TAC is unchanged from the proposed rule. There are four changes to sport fishery season dates in this final rule from the proposed rule. The first two changes are in sections (8)(b)(i)(A) and (B) in the annual management measures. These changes were made after discussion with WDFW to better align the season dates with past practices of having a ''quota management closure'' following the first two open periods; the dates listed in the proposed rule were in error and did not include a quota management closure.. The third change is in section (8)(d)(i). July 15th was listed as the closing date of the first open period, but it should be July 14th. The first open period is scheduled to close on a Saturday, and July 15 is a Sunday, therefore Saturday July 14 is the correct date. The final change is to season dates in section (8)(e)(i)(C). The opening of the summer season was incorrectly listed as September 7 and 8, the correct dates are September 14–15 to follow the season structure of being open every other week. The remainder of the changes in this final rule are to simply add dates for sport fisheries which were not listed in the proposed rule. The proposed rule does not contain final season dates because the states do not submit their final season date recommendations until the final TAC decision is made by the IPHC (after the publication of the proposed rule) and the states have held their public meetings. There are no other substantive changes from the proposed rule.

Guideline Harvest Levels for Areas 2C and 3A

NMFS provides notice of the 2012 Pacific halibut GHLs for the charter fishery in IPHC Regulatory Areas 2C and 3A. This notice is necessary to meet the regulatory requirement at 50 CFR 300.65(c) to publish notice announcing the GHLs and to inform the public about the 2012 GHLs for the charter fishery for halibut. The GHLs are benchmark harvest levels for participants in the charter fishery. Regulations at § 300.65(c)(1) specify the GHLs based on the total CEY that is established annually by the IPHC. The total CEY for 2012 is 5,865,000 pounds (2,660.3 mt) in Area 2C, and 19,779,000 pounds (8,971.6 mt) in Area 3A. The corresponding GHLs are 931,000 pounds (422.3 mt) in Area 2C, and 3,103,000 pounds (1,407.5 mt) in Area 3A.

Annual Halibut Management Measures

The following annual management measures for the 2012 Pacific halibut fishery are those recommended by the IPHC and accepted by the Secretary of State, with the concurrence of the Secretary. The sport fishing regulations for Area 2A, included in paragraph 26, are consistent with the measures adopted by the IPHC and approved by the Secretary of State, but were developed by the Pacific Fishery Management Council and promulgated by the United States under the Halibut Act.

1. Short Title

These Regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A–1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Definitions

(1) In these Regulations,

(a) ''authorized officer'' means any State, Federal, or Provincial officer authorized to enforce these Regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) ''authorized clearance personnel'' means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) ''charter vessel'' means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) ''commercial fishing'' means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, other than (i) sport fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) ''Commission'' means the International Pacific Halibut Commission;

(f) ''daily bag limit'' means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) ''fishing'' means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) ''fishing period limit'' means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) ''land'' or ''offload'' with respect to halibut, means the removal of halibut from the catching vessel;

(j) ''license'' means a halibut fishing license issued by the Commission pursuant to section 4;

(k) ''maritime area,'' in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) ''net weight'' of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2 percent deduction for ice and slime and a 10 percent deduction for the head;

(m) ''operator,'' with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) ''overall length'' of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) ''person'' includes an individual, corporation, firm, or association;

(p) ''regulatory area'' means an area referred to in section 6;

(q) ''setline gear'' means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) ''sport fishing'' means all fishing other than (i) Commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) ''tender'' means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) ''VMS transmitter'' means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.[1]

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both:

(a) the directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) the incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect to a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect to a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed ''Application for Vessel License for the Halibut Fishery'' form.

(7) A vessel operating in the directed commercial fishery or the incidental commercial fishery during the sablefish fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on ''Application for Vessel License for the Halibut Fishery'' form must be accurate.

(11) The ''Application for Vessel License for the Halibut Fishery'' form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or the documentation is changed.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) will not result in exceeding the catch limit established preseason for each regulatory area;

(b) is consistent with the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) is consistent, to the maximum extent practicable, with any domestic

[1] Call NOAA Enforcement Division, Alaska Region, at 907–586–7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishing or modifying the following:

(a) closed areas;

(b) fishing periods;

(c) fishing period limits;

(d) gear restrictions;

(e) recreational bag limits;

(f) size limits; or

(g) vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

6. Regulatory Areas

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′56″ N. latitude, 136°38′26″ W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. latitude, 164°20′00″ W. longitude) and south of 54°49′00″ N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. longitude and south of 56°20′00″ N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. longitude, south of 58°00′00″ N. latitude, and west of 168°00′00″ W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. longitude; and

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. longitude, and south of 65°34′00″ N. latitude.

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut, provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed commercial fishery [2] shall begin at 0800 hours and terminate at 1800 hours local time on June 27, July 13, July 11, July 25, August 8, August 22, September 5, and September 19 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery [3] is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 17 and 1200 hours local time on November 7.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 17 and 1200 hours local time on November 7.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 17 and terminate at 1200 hours local time on November 7, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 7.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved in accordance with paragraph (6).

(9) No person shall possess halibut on board a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00′00″ N. latitude in Isanotski Strait

[2] The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS and published in the **Federal Register**.

[3] The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS at CFR 300.63. Landing restrictions for halibut retention in the fixed gear sablefish fishery can be found at CFR 660.231.

that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. latitude, 164°55′42″ W. longitude) to a point at 56°20′00″ N. latitude, 168°30′00″ W. longitude; thence to a point at 58°21′25″ N. latitude, 163°00′00″ W. longitude; thence to Strogonof Point (56°53′18″ N. latitude, 158°50′37″ W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. latitude and 54°49′00″ N. latitude are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

CATCH LIMIT IN NET WEIGHT BY REGULATORY AREA

Regulatory area	Catch limit—net weight	
	Pounds	Metric tons
2A: directed commercial, and incidental commercial catch during salmon troll fishery	203,784	92.4
2A: incidental commercial during sablefish fishery	21,173	9.6
2B[4]	7,038,000	3,191.8
2C	2,624,000	1,190.0
3A	11,918,000	5,405.0
3B	5,070,000	2,299.3
4A	1,567,000	710.7
4B	1,869,000	847.6
4C	1,107,355	502.2
4D	1,107,355	502.2
4E	250,290	113.5

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 7, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas (IFQ) and all CDQs issued by NMFS have been taken, or November 7, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

Area 2B includes combined commercial and sport catch limits which will be allocated by DFO.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length (in feet)	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut

[4] Area 2B includes the combined commercial and sport catch limits which will be allocated by DFO.

fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that:

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by:

(a) Hook straightening;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Area 4C or 4D or 4E and lands its total annual halibut catch at a port within Area 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed, is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) The operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800–304–4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: the Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the Washington Department of Fish and Wildlife (WDFW) Voluntary Sablefish Logbook, Oregon Department of Fish and Wildlife (ODFW) Fixed Gear Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the State (ADF&G, WDFW, ODFW, or California Department of Fish and Game) or Tribal vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after 0000 (midnight) local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the DFO vessel registration number;

(b) The date(s) upon which the fishing gear is set and retrieved;

(c) The latitude and longitude coordinates for each set;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set.

(7) The logbook referred to in paragraph (5) shall be:

(a) Maintained on board the vessel;

(b) Retained for a period of two years by the owner or operator of the vessel;

(c) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) Mailed to the DFO (white copy) within seven days of offloading; and

(f) Mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed, except that this paragraph shall not prohibit the possession on board a vessel of:

(a) Halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR part 679;

(b) Fillets from halibut offloaded in accordance with section 17 that are possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload; [5] and

(c) Halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: date of offload; name of vessel; vessel number (State, Tribal or Federal, but not IPHC vessel number); scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on State fish tickets: the date of offload; vessel number (State, Tribal or Federal, not IPHC vessel number); total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the State fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings in accordance with NMFS regulation published at 50 CFR part 679.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight (in pounds) obtained at

[5] DFO has more restrictive regulations; therefore, section 17 paragraph (2)(b) does not apply to fish caught in Area 2B or landed in British Columbia.

the time of offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (11).

(14) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations [6] published at 50 CFR 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel as required by NMFS regulations published at 50 CFR 679.7(f)(4); or has an operational VMS on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IFQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(2) No person shall possess halibut taken with any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's State license number; or

(b) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial halibut fishery shall catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(8) No vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed halibut commercial fishery may be used to catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these Regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as

[6] Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

authorized by Prohibited Species Donation regulations of NMFS.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) May be retained for personal use; or

(b) May be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these Regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by State, Provincial, or Federal regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. latitude and east of 125°44′00″ W. longitude, and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian tribes.

(4) Regulations in paragraph (3) of this section that apply to State fish tickets apply to Tribal tickets that are authorized by Washington Department of Fish and Wildlife.

(5) Section 4 (Licensing Vessels for Area 2A) does not apply to commercial fishing for halibut in Subarea 2A–1 by treaty Indian tribes.

(6) Commercial fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from March 17 through November 7, or until 321,650 pounds (145.9 metric tons) net weight is taken, whichever occurs first.

(7) Ceremonial and subsistence fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 24,500 pounds (11.1 metric tons) net weight.

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the Fisheries Act of Canada and regulations as amended from time to time.

25. Sport Fishing for Halibut—General

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these Regulations committed by a passenger aboard said vessel.

26. Sport Fishing for Halibut—Area 2A

(1) The total allowable catch of halibut shall be limited to:

(a) 214,110 pounds (97.1 metric tons) net weight in waters off Washington; and

(b) 203,783 pounds (92.4 metric tons) net weight in waters off California and Oregon.

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is open May 3–19, 3 days per week, Thursday–Saturday. May 24–28, Thursday–Monday. May 31–June 2, 3 days per week, Thursday through Saturday. The fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is open May 24–28, Thursday–Monday, and open May 31–June 23, 3 days a week, Thursday–Saturday.

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.), is 108,030 lb (49 mt).

(i) The fishing seasons are:

(A) Commencing on May 10 and continuing 2 days a week (Thursday and Saturday) until 108,030 lb (49 mt) are estimated to have been taken and the season is closed by the Commission or until May 19.

(B) If sufficient quota remains the fishery will reopen on May 31 and/or June 2 in the entire north coast subarea, continuing 2 days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 108,030 lb (49 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 19, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 19 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*1*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*2*) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The 30-fm depth contour is defined in groundfish regulations at 50 CFR 660.71(e).

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at § 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 42,739 lb (19.3 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N. lat, 124°37.03′ W. long;

(2) 47°25.67′ N. lat, 124°34.79′ W. long;

(3) 47°12.82′ N. lat, 124°29.12′ W. long;

(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 40,739 lb (18.4 mt) for the primary fishery and 2,000 lb (0.9 mt) for the nearshore fishery. The primary fishery commences on May 6 and continues 2 days a week (Sunday and Tuesday) until May 22. If the primary quota is projected to be obtained sooner than expected the management closure may occur earlier. Beginning on June 3 the primary fishery will be open at most 2 days per week (Sunday and/or Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 6 and continues seven days per week. Subsequent to closure of the primary fishery the nearshore fishery is open seven days per week, until 42,739 lb (19.3 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, Subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 11,895 lb (5.3 mt).

(i) The fishing season commences on May 3, and continues 3 days a week (Thursday, Friday and, Saturday) until 9,516 lb (4.3 mt) are estimated to have been taken and the season is closed by the Commission or until July 14, whichever is earlier. The fishery will reopen on August 3 and continue 3 days a week (Friday through Sunday) until 2,379 lb (1.1 mt) have been taken and the season is closed by the Commission,

or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 191,780 lb (86.9 mt).

(i) The fishing seasons are:

(A) The first season (the ''inside 40-fm'' fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon ''inside 40-fm'' fishery (23,014 lb (10.4 mt)) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the ''all-depth'' fishery, is open three days week, Thursday through Saturday, on May 10–12, May 17–19, May 24–26, May 31–June 2, 2012. The projected catch for this season is 120,821 lb (54.8 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Depending on the amount of unharvested catch available, the potential season re-opening dates will be: June 14–16, June 28–30, July 12–14, and July 26–28. If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open every other Friday and Saturday on August 3–4, August 17–18, August 31–September 1, September 14–15, September 28–29, October 12–13 and October 26–27, 2012, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 168,766 lb (76.5 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period August 4, 2012. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning August 17–18, August 31–September 1. If after September 3, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 14 and 15, and ending October 31. After September 3, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 6,056 lb (2.7 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

27. Sport Fishing for Halibut—Area 2B

(1) In all waters off British Columbia: [7]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

28. Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

(1) In waters in and off Alaska: [8]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person unless a more restrictive bag limit applies in Federal regulations at 50 CFR 300.65; and

(c) No person may possess more than two daily bag limits.

(2) No person on board a charter vessel [9] referred to in 50 CFR 300.65 and fishing in Regulatory Area 2C shall take or possess any halibut that:

(a) With head on, is greater than 45 inches (114.3 cm) and less than 68 inches (172.7 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with

[7] DFO could implement more restrictive regulations for the sport fishery, therefore anglers are advised to check the current Federal or Provincial regulations prior to fishing.

[8] NMFS could implement more restrictive regulations for the sport fishery or components of it, therefore, anglers are advised to check the current Federal or State regulations prior to fishing.

[9] Charter vessels are prohibited from harvesting halibut in Area 2C and 3A during one charter vessel fishing trip under regulations promulgated by NMFS at CFR 300.66.

mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 3; and

(b) If the halibut is filleted the entire carcass, with head and tail connected as a single piece, must be retained on board the vessel until all fillets are offloaded.

(3) In Convention waters in and off Alaska, no person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner, except that:

(a) Each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces; and

(b) Halibut in excess of the possession limit in paragraph (1)(c) of this section may be possessed on a vessel that does not contain sport fishing gear, fishing rods, hand lines, or gaffs.

29. Previous Regulations Superseded

These Regulations shall supersede all previous regulations of the Commission, and these Regulations shall be effective each succeeding year until superseded.

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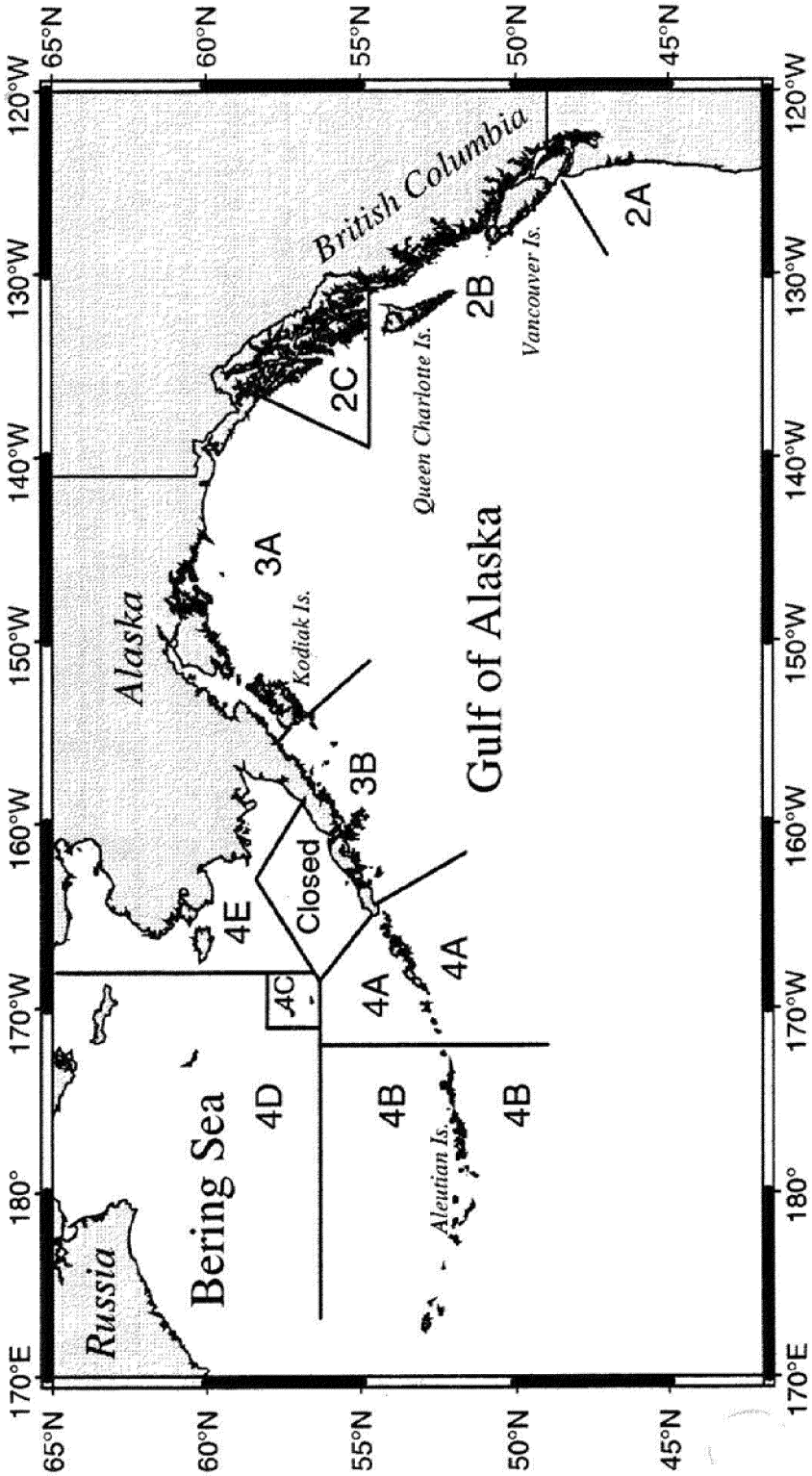

Figure 1. Regulatory areas for the Pacific halibut fishery.

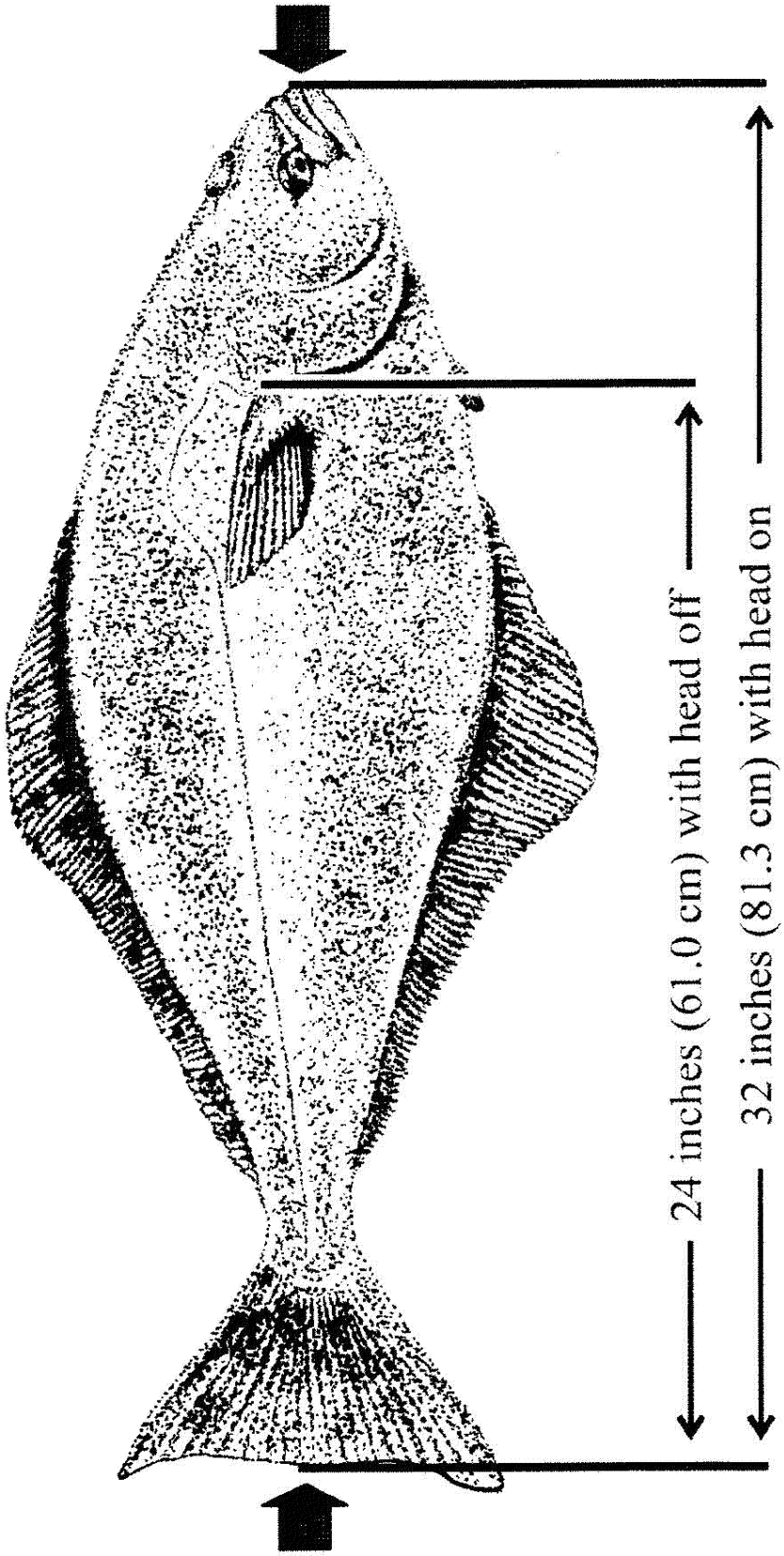

Figure 2. Minimum commercial size.

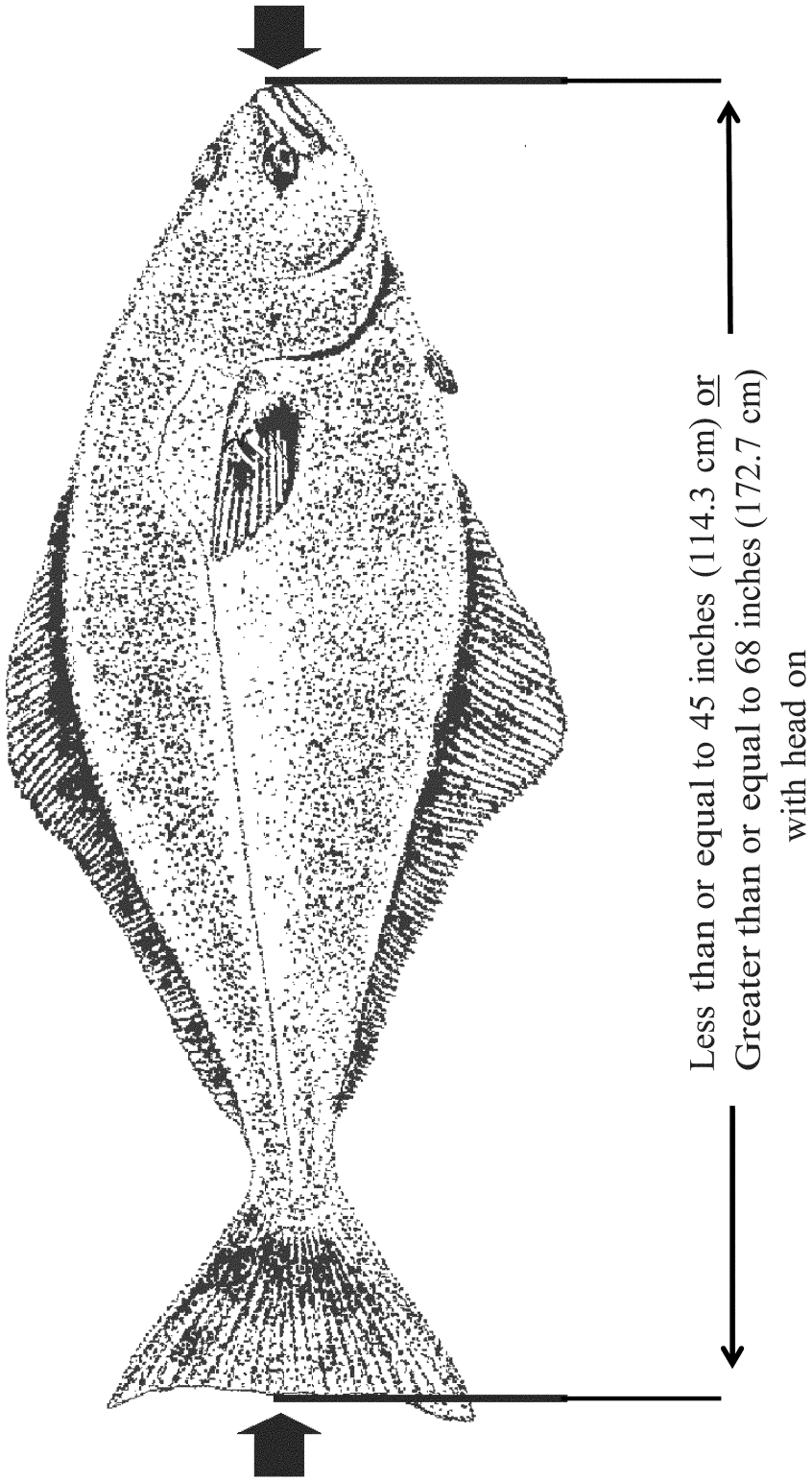

Figure 3. Recreational reverse slot limit for halibut onboard a charter vessel referred to in 50 CFR 300.65 and fishing in Regulatory Area 2C (see Section 28 paragraph 2(a)).

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Classification

IPHC Regulations

These IPHC annual management measures are a product of an agreement between the United States and Canada and are published in the **Federal Register** to provide notice of their effectiveness and content. The notice-and-comment and delay-in-effectiveness date provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to IPHC management measures because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). Furthermore, no other law requires prior notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this portion of the rule and none has been prepared.

2012 Area 2A Catch Sharing Plan, Annual Management Measures and Federal Regulations

Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Pacific Council's authority to allocate halibut catches among fishery participants in the waters in and off the U.S. West Coast.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for this action. A final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA. A copy of the FRFA is available from the NMFS Northwest Region (see **ADDRESSES**) and a summary of the FRFA follows:

The main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational (sport), and tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut and the needs of fishery participants in particular fisheries and fishing areas.

The changes to the CSP, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, and the codified regulations:

1. Adjust the primary fishery schedule for the Washington South coast subarea (section (f)(1)(iii)) to be open for the first 3 consecutive weeks Sunday and Tuesday and closed the following week.

2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early fishery and 20 percent for the late fishery, and adjust the Oregon contribution to the subarea quota to equal the Washington contribution.

3. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore fishery.

4. Make minor corrections to regulations at 300.63, to make the term ''sablefish primary fishery'' consistent through the halibut regulations and match the groundfish regulations where the term is defined. Current halibut regulations use inconsistent terms when referring to the same fishery.

Under the RFA, NMFS must identify the small entities impacted by this rule, describe that impact, and describe any alternatives considered. Under the Small Business Administration's (SBAs) regulations implementing the RFA, a fishing entity is considered ''small'' if it has gross annual receipts of less than $4 million. A governmental jurisdiction (i.e., town or community) is considered a small entity if it has fewer than 50,000 people.

Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the changes to the Plan, codified regulations and annual management measures will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this rule. However, charterboat operations and participants in the non-treaty directed commercial fishery off the coast of Washington, Oregon, and California, are small businesses that are directly regulated by this rule. In 2008, 570 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (296 licenses in 2008); incidental halibut caught in the salmon troll fishery (135 licenses in 2008); and the charterboat fleet (139 licenses in 2008). In 2011, 604 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A (147 licenses in 2011); incidental halibut caught in the salmon troll fishery (316 licenses in 2011); and the charterboat fleet (141 licenses in 2011). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut. Current Pacific Fishery Management Council estimates show that there are 44 tribal longline vessels. Therefore, the total estimate of affected entities is 648 vessels when tribal vessels are combined with IPHC licenses. The total estimated of the directed commercial fishery fleet for 2012 is 191 vessels (147 directed commercial fishery licenses plus 44 tribal vessels). In 2008, the total directed commercial fleet was about 340 vessels.

NMFS does not have the data to analyze the impacts of these regulations on the charterboat fleet. However, impacts on the directed commercial fleets can be estimated via changes in ex-vessel revenues. According to the Pacific States Marine Fisheries Commission PacFIN data reports (Report 307), halibut prices have varied significantly by year: 2008—$3.57/lb, 2009—$2.72/lb, and through November 2010—$4.01 per lb. At $4.01 per lb, the projected ex-vessel value of the 2012 commercial tribal (346,150 lbs) and non-tribal (203,783 lbs) fishery is about $2.2 million. Therefore, average ex-vessel revenue to potential participant in the directed commercial halibut fleet is expected to receive is about $12,000 ($2.2 million divided by 191 vessels). At $3.57/lb, the estimated ex-vessel value of the 2008 commercial tribal (397,000 lbs) and non-tribal (321,381 lbs) fishery is $2.6 million. With a directed commercial fleet of 340 vessels, the 2008 estimated average revenue per potential participating vessel is about $7,500 per vessel. Compared to 2008, despite the decline in the TAC, vessels are benefiting from higher prices and fewer competing vessels.

The RIR/FRFA relies on the analysis in the 2009 RIR, which used information from the Pacific Fishery

Management Council's Final Environmental Impact Statement (FEIS) (available at **ADDRESSES**) on the 2009–2010 Groundfish Biennial Harvest Specifications and Management Measures to make personal income impact projections of the TAC on coastal communities. Personal income is considered a key indicator of economic activity, and is used in economic analysis to evaluate distributional effects on local and regional economies associated with changes in regulations. Income impacts include the amount of employee salaries and benefits, business owner (proprietor) income, and property-related income (rents, dividends, interest, royalties, etc.) that result from commercial fishing and recreational expenditures. Using available analysis from the FEIS, the 2009 RIR estimated that the 2008 commercial, recreational, and tribal fisheries generated about $8.8 million in personal income for the coastal tribal and non-tribal communities. This 2008 estimate was based on a TAC of 1,220,000 lbs. For 2012, the TAC is 989,000 lbs, or about 81 percent of the 2008 TAC. On a proportional basis, this decline would suggest that the income impacts for 2012 would be about $7.0 million in 2008 dollars. Using the change in ex-vessel revenues as means of forecasting the change in community impact, the estimated 2012 income impact on coastal communities is about $7.5 million.)

NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities, because the limits and reporting requirements are determined by international negotiations. Thus, there are no other alternatives to the rule that minimize the impacts on small entities. The major economic effect on the fishery is from a change in the TAC which is set by international agreement. Given the TAC, the sport management measures implement the plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the plan's objectives. The measures will be very similar to last year's management measures.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (See **ADDRESSES**). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800–662–9825.

WDFW and ODFW held public meetings and crafted alternatives to adjust management of the sport halibut fisheries in their states. The states then narrowed the alternatives under consideration and brought the resulting subset of alternatives to the Council at the Council's September and November 2011 meetings. The Council and the States both considered a range of alternatives that could have similarly improved angler enjoyment of participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest. The range of alternatives that were considered, but ultimately rejected, includes alternate fishery structures, such as opening the sport fisheries on different days of the week than the final preferred alternative. Generally, because they have been through the state public review process by the time the alternatives reach the Council, there are not a large number of alternatives. Rather, the range of alternatives has generally been reduced to the proposed action and the status quo. The status quo alternative was rejected because it would fail to: align subarea quotas with recent participation, adjust season subarea quota splits to better match participation; and correct the codified regulations consistent with the groundfish regulations.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. Government formally recognizes that 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the CSP, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

NMFS NWR has initiated consultation on the halibut fishery under section 7 of the ESA because of the listing of yelloweye, canary, and bocaccio rockfish of the Puget Sound/Georgia Basin. Area 2A partially overlaps with the Distinct Population Segments (DPSs) for listed rockfish. NMFS completed a 7(a)(2)/7(d) determination memo under the Endangered Species Act (ESA) finding that bycatch in the 2012 fishery was not likely to be a significant impact on listed species, that direct effects of the fishery (e.g. direct takes) were not likely to jeopardize the continued existence of any listed species, and that in no way did the 2012 fishery make an irreversible or irretrievable commitment of resources by the agency. At this time the consultation is not completed.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, and Indian fisheries.

Dated: March 16, 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 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.63, paragraphs (b)(3), (d)(1)(ii), (d)(3), (d)(4), (d)(6), and (e)(2) are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(b) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the sablefish primary fishery north of 46°53.30' N. lat, (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.231. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt,) provided that a

minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the sablefish primary fishery north of 46°53.30′ N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30′ N. lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

* * * * *

(d) * * *

(1) * * *

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the sablefish primary fishery described at 50 CFR 660.231; or

* * * * *

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

* * * * *

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

(e) * * *

(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish primary fishery north of Pt. Chehalis, Washington, in Area 2A are required to fish outside of a closed area. Under Pacific Coast groundfish regulations at 50 CFR 660.230, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70(b).

* * * * *

[FR Doc. 2012–6858 Filed 3–19–12; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 56
Thursday, March 22, 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.

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

[NARA–12–0002]

Incorporation by Reference

AGENCY: Office of the Federal Register, National Archives and Records Administration.

ACTION: Extension of the comment period.

SUMMARY: On February 13, 2012, the Office of the Federal Register (OFR or we) received a petition to amend our regulations governing the approval of agency requests to incorporate material by reference into the Code of Federal Regulations. We published an announcement of the petition and request for comments on February 27, 2012. Since that time we have received one formal and several informal requests to extend the comment period. We are extending the comment period until June 1, 2012. We will not accept late comments.

DATES: We are extending the comment period until June 1, 2012. We will not accept late comments.

ADDRESSES: You may submit comments, identified using the subject line of this document, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Fedreg.legal@nara.gov.* Include the subject line of this document in the subject line of the message.
- *Mail:* the Office of the Federal Register (NF), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD.
- *Hand Delivery/Courier:* Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001.

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

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

SUPPLEMENTARY INFORMATION: The Office of the Federal Register (OFR or we) received a petition to revise our regulations at 1 CFR part 51 on February 13, 2012. We published an announcement of the petition and a request for comments on February 27, 2012. 77 FR 11414. You can view the petition and its suggested revisions to the regulations 1 CFR part 51 on *www.regulations.gov.* At the regulations.gov main page type NARA–12–0002 in the search box to find the docket for this petition.

Since we published the announcement, we have received several informal and one formal request to extend the comment period on the petition. After considering the requests, we have decided to extend the comment period to June 1, 2012. Because this extension gives commenters more than 90 days to consider the petition and submit comments on its merits, we will not accept comments received after June 1, 2012.

Michael L. White,

Acting Director, Office of the Federal Register.

[FR Doc. 2012–6935 Filed 3–21–12; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Part 7501

[Docket No. FR–5542–P–01]

RIN 2501–AD55

Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development; Republication

Republication

Editorial Note: Proposed rule document 2012–06177 was originally published on pages 14997 through 15003 in the issue of Wednesday, March 14, 2012. In that publication an incorrect version of the document was published. The corrected document is republished in its entirety.

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD), with the concurrence of the Office of Government Ethics (OGE), seeks comments on the proposed amendments to HUD's Supplemental Standards of Ethical Conduct, which are regulations for HUD officers and employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. To ensure a comprehensive and effective ethics program at HUD, and to address ethical issues unique to HUD, the proposed rule reflects statutory changes that were enacted subsequent to the promulgation of HUD's Supplemental Standards of Conduct regulation in 1996; significantly, the transfer of general regulatory authority over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from HUD to the Federal Housing Finance Agency (FHFA). In addition, the proposed rule revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs.

DATES: *Comment Due Date:* May 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All comments must be in writing and be addressed to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th St. SW., Room 10276, Washington, DC 20410–0500. 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 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: Robert H. Golden, Assistant General Counsel, Ethics Law Division, telephone number 202–402–6334, or Peter J. Constantine, Associate General Counsel for Ethics and Personnel Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number (202) 402–2377. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive-branch standards of conduct. On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as codified at 5 CFR part 2635. (See 57 FR 35006, as corrected at 57 FR 48557 and 57 FR 52583.) The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. Pursuant to this authority, HUD, with OGE's concurrence, published on July 9, 1996, a final rule to establish its supplementary standards of ethical conduct for HUD employees (61 FR 36246). HUD, with OGE's concurrence, now proposes to amend its supplemental standards in order to successfully implement HUD's ethics program in light of recent statutory changes to HUD's programs and operations. One of the most significant statutory changes to HUD programs and operations was made by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008). HERA transfers regulatory authority over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively referred to as the Government Sponsored Enterprises, or GSEs) from HUD to the Federal Housing Finance Agency (FHFA). Based on this transfer of regulatory authority, HUD has decided to remove provisions of its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD has decided to remove § 7501.106 of its Supplemental Standards of Conduct that apply to employees whose duties involve the regulation or oversight of the GSEs. Section 7501.106 prohibits covered employees from, among other things, owning financial interests in certain mortgage institutions and from performing any work, either compensated or uncompensated, for or on behalf of a mortgage institution. The removal of § 7501.106 is based on HUD's determination that this section is no longer necessary to ensuring the impartiality and integrity in the administration of HUD's programs.

In addition, this proposed rule revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. This rule also proposes to add a new § 7501.106 that clarifies the authority of the HUD OIG in the agency's ethics program and establishes it as a separate component as provided by 5 CFR 2635.203(a).

II. Amendments Proposed by This Rule

The following is a section-by-section overview of the amendments proposed by this rule.

Section 7501.101 Purpose

This section remains unchanged.

Section 7501.102 Definitions

Proposed § 7501.102 updates and clarifies key terms already in the current regulation. In addition, it adds new terms to reflect current HUD policy and removes terms that are no longer used in the regulation. Specifically, the proposed definitions of ''Agency designee'' and ''Designated Agency Ethics Official (DAEO)'' are revised to reflect updated office names and titles within the current HUD organization. Definitions of ''Bureau,'' ''Bureau Ethics Counselor,'' and ''Deputy Bureau Ethics Counselor,'' are proposed to clarify the Office of Inspector General's responsibilities in HUD's ethics program. Additionally, the reference to the Inspector General (IG) is removed from the definition of ''agency designee'' in favor of adding definitions for ''Bureau,'' ''Bureau Ethics Counselor,'' and ''Deputy Bureau Ethics Counselor.'' ''Bureau'' would be defined to mean the Office of the Inspector General (OIG). ''Bureau Ethics Counselor'' and ''Deputy Bureau Ethics Counselor'' would be defined to mean, respectively, the General Counsel for OIG and the OIG employees to whom the OIG General Counsel delegates responsibility to make determinations, issue explanatory guidance, or establish

procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for Bureau employees. HUD is proposing these amendments to make the structure of its ethics program more consistent with the structure used by other federal agencies and to more clearly describe the role and responsibilities of the IG in HUD's ethics program.

The proposed definition of ''employment'' is also clarified to provide that employment includes uncompensated activity, such as volunteer work for others while off-duty.

The terms ''assistance'' and ''security'' are proposed to be removed from § 7501.102, because these terms are no longer used in HUD's supplemental regulations.

Section 7501.103 Waivers

Proposed § 7501.103 clarifies the procedure for requesting a waiver, and makes other minor changes to make the section clearer. Proposed § 7501.103 adds the requirement that a waiver request be submitted in writing to an agency designee and should include the employee's office and division; a description of the employee's official duties; the nature and extent of the waiver; a detailed statement of facts to support the request; and the basis for the request, such as hardship. This amendment codifies HUD practice that a waiver request must be in writing, and provides direction to employees on what should be included in a waiver request for a thorough analysis to be conducted. The amendment further confirms HUD practice that hardship and other exigent circumstances are legitimate reasons for a waiver request, and such a request will be considered in light of HUD's need to ensure public confidence in the impartiality and objectivity with which HUD programs are administered. This section also proposes to delegate authority to the Bureau Ethics Counselor to waive provisions of this part.

The proposed section also makes minor textual changes in order to make the regulation easier to understand. These textual changes are not intended to change the meaning of the section.

Section 7501.104 Prohibited Financial Interests

Proposed § 7501.104 is amended to remove the reference to covered employees under § 7501.106(b)(1). This change reflects the proposed removal of § 7501.106 as discussed in more detail below in this preamble. The proposed regulation continues to apply to all HUD employees, except special government employees, and to the employee's spouse and minor children, because HUD has determined that ownership of the financial interests listed in this section by these individuals constitutes a significant risk of an apparent conflict of interest. Additionally, this section is revised to reflect the changes to HUD regulatory authority as the result of HERA, which transferred all general regulatory authority over Fannie Mae and Freddie Mac from HUD to the FHFA.

Existing § 7501.104(a)(1) is proposed to be removed. The prohibition in this section was promulgated in 1968 after Congress provided HUD with general regulatory authority over Fannie Mae through the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*). Under this 1968 statute, HUD was directed to establish housing goals for Fannie Mae, specifically a goal for low- and moderate-income housing and a goal for housing located in central cities. Beginning in 1968, HUD's Standards of Conduct prohibited employees from owning securities issued by Fannie Mae or securities collateralized by Fannie Mae securities. (See 24 CFR § 0.735.205(a)(3) (1968).) Section 7501.104(a)(1) is no longer necessary since HERA transferred the general regulatory functions over Fannie Mae to FHFA.

Existing § 7501.104(a)(2) is also proposed to be removed. In 1989, Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) and granted HUD essentially the same authority over Freddie Mac as it had over Fannie Mae. In response to this additional authority, HUD's standards of conduct were updated to include a prohibition against owning securities issued by Freddie Mac or securities collateralized by Freddie Mac securities. HUD has determined that the prohibition is no longer necessary because of HERA.

The remaining provisions are redesignated accordingly.

Proposed § 7501.104(a)(1) adopts language from the current § 7501.104(a)(3).

Proposed § 7501.104(a)(2) is based on current § 7501.104(a)(4), but is revised to add clarity. Specifically, the revised section replaces the phrase ''in a multifamily project or single family dwelling, cooperative unit, or condominium unit'' with the term ''project'' in order to cover all HUD subsidized or insured projects that exist or may come to exist in the future. Employee ownership of homes with mortgages insured under programs of the Federal Housing Administration (FHA) and the purchase by employees of HUD-owned homes, which was an exception within the prohibition of § 7501.104(a)(4), is now addressed in exceptions under proposed § 7501.104(b). All remaining HUD projects, including multifamily projects, assisted living facilities, nursing homes, and hospitals, are now included in the revised prohibition in § 7501.104(a)(2). Finally, proposed § 7501.104(a)(2) now uses the term ''financial interest'' to replace ''stock or other financial interest'' and references OGE regulations at 5 CFR 2635.403(c) for a complete definition of the term ''financial interest,'' including examples.

Proposed § 7501.104(a)(3) revises the language in current § 7501.104(a)(5). A new exception is proposed that allows all new HUD employees who already have a tenant receiving Section 8 subsidies to retain that tenant until the tenant terminates his or her lease. Proposed § 7501.104(a)(3)(i)(E) adds a new exception permitting HUD employees to receive a Section 8 subsidy for the rental of properties located in areas of Presidentially declared emergency or natural disaster with prior written approval from an agency designee. HUD's experience demonstrates that in rare instances (*e.g.,* Hurricane Katrina in 2005 or the 2008 flooding in Cedar Rapids, Iowa), there may be an extreme shortage of affordable housing in an area due to a natural disaster or other emergency. This exception would permit HUD employees with rentable properties in these areas to accept new tenants receiving Section 8 subsidies. These supplemental ethics regulations are intended to uphold the integrity of HUD's administration of the Section 8 program and are not intended to further restrict the availability of Section 8 housing, especially in times of acute housing shortages.

The exceptions provided by proposed § 7501.104(a)(3) continue as long as the tenant continues to reside in the property and as long as the rent charged the tenant is not increased above the annual rate adjustments permitted by the Section 8 program. This first condition codifies HUD's intent not to require an employee to terminate the rental arrangement early or require a Section 8 tenant to move based solely on these regulations. The second condition preserves the current language of the exceptions.

Current § 7501.104(a)(6) is proposed to be removed. The current prohibition against ''direct creditor interests'' is undefined and unclear.

Proposed § 7501.104(b), which provides exceptions to this section on

prohibited financial interests, is revised to add the phrase ''directly or indirectly receiving, acquiring or owning'' to ensure consistency with § 7501.104(a). Additionally, this section proposes to expand the exceptions by eliminating from current § 7501.104(b)(1) the prohibition on owning investment funds that concentrate in residential mortgages or mortgage-backed securities. This prohibition is no longer needed to maintain the integrity of HUD in light of the fact that HUD no longer has regulatory authority over Fannie Mae and Freddie Mac.

Proposed § 7501.104(b)(1) also provides an exception to the interests prohibited under proposed § 7501.104(a)(2). Section 7501.104(b)(1) allows the employee, or the employee's spouse or minor child, to have a financial interest in a publicly available or publicly traded investment fund that may include interests that are prohibited under § 7501.104(a)(2), as long as the employee, or the employee's spouse or minor child, neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund. This exception allows the employee, or the employee's spouse or minor child, to have an interest in an investment fund that may hold interests in HUD subsidized projects. HUD's experience has been that it is extremely difficult to determine which investment funds have interests in HUD-subsidized projects, since that information is not readily available. Therefore, HUD has decided that this type of interest does not present an appearance problem and is therefore permissible.

Current § 7501.104(b)(2) is proposed to be removed. Read literally, this exception had no possible application to a limited partnership holding. Also, limited partnerships create no less of an appearance issue than other legal entities that could be used as an investment vehicle and do not warrant the specific exception.

Proposed § 7501.104(b)(2) provides that a HUD employee may obtain mortgage insurance provided by FHA under section 203 of the National Housing Act (12 U.S.C. 1709) to assist in his or her purchase of a single-family home that serves as the employee's principal residence and of one other single-family residence. Proposed § 7501.104(b)(2) provides notice to HUD employees that they must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to obtain FHA insurance. This exception was previously found in § 7501.104(b)(3).

Proposed § 7501.104(b)(3) covers HUD employees' purchases of HUD-owned homes. This provision is currently an exception within the prohibition of § 7501.104(a)(4); however, since the provision is permissive, HUD has moved the exception to proposed § 7501.104(b), where the other exceptions to the prohibitions to § 7501.104(a) are located. Current § 7501.104(a)(4) notifies employees that the purchase of HUD-held properties must be consistent with an Office of Housing handbook that is now outdated. To avoid the codification of references to HUD handbooks that may become obsolete, and thus create a discrepancy with the supplemental standards, proposed § 7501.104(b)(3) does not reference a specific Office of Housing handbook, but simply provides notice to HUD employees that they must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property.

Proposed § 7501.104(b)(4) has been added to ensure that the employment compensation and benefits package for an employee's spouse is not covered as a prohibited financial interest if the employee's spouse is employed by an entity that may have interests in HUD projects that are prohibited under proposed § 7501.104(a)(2). For example, an employee's spouse is not restricted from earning a salary and other benefits as compensation for employment with a real estate development company that does multifamily business with HUD.

Proposed § 7501.104(b)(5) contains a revised provision that permits employees, or their spouses or minor children, to hold Government National Mortgage Association (GNMA) securities. The ownership of GNMA securities is currently addressed in § 7501.104(b)(1). Under this provision, an employee or the spouse or minor child of an employee may not own an interest in an investment fund that has an objective or practice of investing in residential mortgages or securities backed by residential mortgages except those of GNMA. Since HUD is proposing to revise § 7501.104(b)(1), the provision addressing ownership of GNMA securities is established as a separate exception.

Section 7501.105 Outside Activities

Proposed § 7501.105 governs the outside activities of HUD employees. This proposed section has been revised to account for changes in HUD's regulatory authority and to provide clarity on restricted real estate activities. The proposed rule is designed to balance several important ethical principles against an employee's right to engage in outside activities.

HUD has determined that maintaining the policy against employment in businesses related to real estate or manufactured housing is necessary to protect against questions regarding the impartiality and objectivity of employees in the administration of HUD programs. Allowing such activity would hinder HUD in meeting its missions if members of the public question whether HUD employees are using their public positions or HUD connections to advance their outside real estate-related employment. While HUD has determined that this concern remains valid, HUD has also concluded that implementing this rule in its current form has led to inconsistent application and confusion. Therefore, HUD is proposing a number of amendments to clarify the intent of the prohibition.

Proposed § 7501.105(a)(1) is amended by removing the phrase ''involving active participation'' with a real estate-related business. By removing this term, HUD does not intend to change the application of the prohibition contained in § 7501.105(a)(1) of the current rule; rather, HUD intends to make the prohibition less confusing and more transparent. The term ''involving active participation'' with a real estate-related business encompasses two prohibitions. First, it prohibits employment with a real estate-related business and, second, it prohibits ownership of a real estate-related business. The term led to some confusion in the application of these prohibitions by conflating the concepts of employment in a business related to real estate and the ownership activities of operating or managing investment properties. To rectify any confusion, HUD has separated the prohibition against the ownership activities of operating and managing a real estate-related business involving investment properties from the employment prohibition, by adding § 7501.105(a)(2), which prohibits the operation or management of investment properties to the extent that doing so rises to the level of a real estate business. To make the prohibition more transparent, HUD has decided to codify longstanding policy by listing several factors that it uses to consider whether the employee's actions of operating or managing investment properties rises to the level of a real estate business and falls within the prohibition. HUD first announced these factors in the 1995 preamble to the proposed version of the current rule. By listing these factors in the rule, HUD has not changed the scope of the current prohibition; rather, it has made the prohibition more transparent by

including in the rule the factors that are used to determine a violation of the prohibition. Therefore, HUD employees may continue to own or manage investment properties, so long as that ownership or management does not rise to the level of operation or management of a real estate-related business. In a further effort to make the rule more transparent, HUD has decided to codify existing policy by stating in § 7501.105(a)(2) that HUD will consider these situations on an individual basis.

Proposed § 7501.105(a)(3) is amended to prohibit outside employment with a registered lobbying organization that is registered to lobby HUD. The current regulation cites a repealed statute. The proposed change would incorporate the definition of a lobbyist under the Lobbying Disclosure Act (2 U.S.C. 1601, *et seq.*), although applying only to entities that lobby HUD. This change will allow easier compliance by employees and review by ethics staff because of the ease of checking the lobbying database of the U.S. House of Representatives and the U.S. Senate to determine if a potential employer is prohibited.

Proposed § 7501.105(a)(4) is amended to remove the specific restriction on employees having outside positions with Fannie Mae and Freddie Mac. As previously discussed, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. Further, under proposed § 7501.105(a)(1), employees would be prohibited from employment with a business related to real estate. This prohibition would cover employment with Fannie Mae and Freddie Mac. Therefore, a specific prohibition is not necessary.

Proposed § 7501.105(b)(1)(ii) is amended to clarify that the outside employment prohibitions do not prohibit employees from serving as a member of an employee's homeowners' association. HUD previously permitted serving on the board of a cooperative and condominium association, and HUD has determined that serving on the board of a homeowners' association does not create additional ethics concerns.

HUD has added § 7501.105(b)(2), which codifies HUD's longstanding policy that employees with a real estate agent's license may continue to hold such license. An employee may only use his or her license in relation to purchasing or selling a single-family property for use as the employee's primary residence, or for the primary residence of an immediate family of the employee. Employees seeking to use their real estate license for this purpose, however, must obtain the prior written approval of an agency ethics official. HUD has revised § 7501.105(c) to add the requirement for prior written approval from an agency ethics official for employees seeking to use their real estate license for this purpose.

Proposed § 7501.105(c)(1) would require an employee to receive written approval prior to accepting a position of authority with a prohibited source. This section had previously extended only to organizations that directly or indirectly received HUD assistance. This section has been expanded to include all prohibited sources, because HUD has determined that taking a position of authority with any prohibited source, not just those which receive HUD funding, could create the appearance of a conflict of interest and should therefore be examined by an agency ethics official. Further, the section will now be easier for employees to understand, because prohibited source is a term with which they are familiar. As discussed, HUD proposes to add the requirement at § 7501.105(c)(1)(iv) for prior written approval from an agency ethics official for employees seeking to use their real estate license in relation to purchasing or selling a single-family property for use as the employee's primary residence or as the primary residence of an immediate family member of the employee.

Proposed § 7501.105 would eliminate the reference to voluntary services. That section cited only other regulations, and HUD has determined that it is no longer needed to ensure public confidence in the impartiality and objectivity with which HUD programs are administered.

Proposed § 7501.105(d) incorporates HUD's policy regarding liaison representatives, which was previously provided as a Note. This change will avoid any confusion over the concept and its authority.

Section 7501.106 Bureau Instructions and Designation of Separate Agency Components

HUD proposes to remove this section as currently codified. As previously discussed in this preamble, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. In its place, HUD is proposing to add a new § 7501.106 that clarifies the authority of the Office of the Inspector General in the agency's ethics program and establishes it as a separate component as provided for by 5 CFR 2635.203(a).

In 1992, Congress enacted the Federal Housing Enterprise Financial Safety and Soundness Act (FHEFSSA) (12 U.S.C. 4501 *et seq.*), which revamped the statutory requirements and regulatory structure of the GSEs by separating the GSEs' financial regulation from its mission regulation. FHEFSSA also established the Office of Federal Housing Enterprise Oversight as an independent regulatory office within HUD to ensure the GSEs' financial safety and soundness, while the Secretary of HUD retained responsibility for the mission regulation and all other general regulatory powers. FHEFSSA also required HUD to prohibit the GSEs from discriminating in their mortgage purchases. The fair housing authority was twofold: first, to take remedial action against lenders found to have engaged in discriminatory lending practices and second, to periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure consistency with the Fair Housing Act (42 U.S.C. 3601 *et seq.*). In 2008, HERA transferred all regulatory oversight of the GSEs from HUD to FHFA, except for this fair housing component.

HUD's only remaining direct regulation of the GSEs is the periodic review of their underwriting and appraisal guidelines by the Office of Systemic Investigation of HUD's Office of Fair Housing and Equal Opportunity and by the Fair Housing Enforcement Division of HUD's Office of General Counsel. For employees involved in these compliance reviews, 18 U.S.C. 208, which prohibits employees from participating in matters that may affect their financial interests, would prohibit them from participating in official matters such as these reviews if the employee also owns a financial interest that could be affected by the review. Therefore, these employees would be required to recuse themselves from the official matter or divest their financial interest without the need for an additional HUD-specific regulation. The criminal statute is sufficient to insure against conflicts in those HUD employees when the periodic review is underway.

HUD has determined that the prohibitions in current § 7501.106 are unnecessary given HUD's very limited role regarding the GSEs. The current § 7501.106 prohibits certain employees that were involved with GSEs from owning securities in certain mortgage institutions that originate, insure, or service mortgages owned or guaranteed by the GSEs. However, HUD employees no longer regulate the GSEs in a way that could affect the stock value of these mortgage institutions.

Additionally, there are other regulations that cover an appearance issue that might arise for those employees working on fair housing compliance review of the GSEs.

Specifically, OGE regulations at 5 CFR 2635.502 would apply and would limit the activity that employees who are involved in the periodic review of the GSEs can engage in with respect to a financial interest in a mortgage institution that currently originates, insures, or services mortgages owned or guaranteed by the GSEs.

Accordingly removing these prohibitions would not compromise the integrity of HUD's functions.

The new proposed § 7501.106(a) delegates to the Bureau Ethics Counselor the authority to designate Deputy Bureau Ethics Counselors to make determinations, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for his or her bureau. The proposed rule also includes the concurrence of the Designated Agency Ethics Official on the delegation. This designation is consistent with 5 CFR 2635.105(c), more clearly describes the role and responsibility of the OIG in the agency's ethics program, and maintains the independence of the IG as provided for by the Inspector General Act, as amended.

Additionally, consistent with 5 CFR 2635.203(a), new proposed § 7501.106(b) designates the OIG as a separate agency component. HUD is designating the OIG as a separate agency component to make the structure its ethics program more consistent with the structure used by other federal agencies. HUD's changes are intended to more clearly describe the role and responsibility of the OIG in the agency's ethics program, and maintain the independence and authority of the IG. The designation as a separate agency component authorizes Bureau Ethics Counselors within the OIG to render legal ethics advice regarding the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed amendatory rulemaking, to be received by DATE section of this proposed rule. The comments will be carefully considered and appropriate changes will be made before a final rule is adopted and published in the **Federal Register**.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. Because this rule relates solely to the internal operations of HUD, this rule was determined to be not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because this rule pertains only to HUD employees.

Information Collection Requirements

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply to this regulation because it does not contain information collection requirements subject to the approval of OMB.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 on the private sector. Since it is only directed toward HUD employees, this rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA

List of Subjects in 5 CFR Part 7501

Conflicts of interests.

Accordingly, for the reasons described in the preamble, HUD, with the concurrence of OGE, proposes to amend 5 CFR part 7501, as follows:

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
7501.101 Purpose.
7501.102 Definitions.
7501.103 Waivers.
7501.104 Prohibited financial interests.
7501.105 Outside activities.
7501.106 Bureau instructions and designation of separate agency component.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Ethics and

Personnel Law, the Assistant General Counsel for the Ethics Law Division, and the HUD Regional Counsels.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Bureau means the Office of the Inspector General.

Bureau Ethics Counselor means the General Counsel for the Bureau.

Deputy Bureau Ethics Counselor means the Bureau employee or employees who the Bureau Ethics Counselor has delegated responsibility to act under § 7501.106 for the Bureau.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel for Operations in the absence of the General Counsel.

Employment means any compensated or uncompensated (including volunteer work for others while off-duty) form of non-Federal activity or business relationship, including self-employment, that involves the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

§ 7501.103 Waivers.

The Designated Agency Ethics Official, or the Bureau Ethics Counselor for a Bureau employee may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 and is not otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the Department's impartial and objective administration of its programs. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement. A waiver will be considered only in response to a written waiver request submitted to an agency ethics official. The waiver request should include:

(1) The requesting employee's Branch, Unit, and a detailed description of his or her official duties;

(2) The nature and extent of the proposed waiver;

(3) A detailed statement of the facts supporting the request; and

(4) The basis for the request, such as undue hardship or other exigent circumstances.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, the employee, or the employee's spouse or minor child, shall not directly or indirectly receive, acquire, or own:

(1) Federal Housing Administration (FHA) debentures or certificates of claim.

(2) A financial interest in a project, including any single family dwelling or unit, which is subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department. The definition of ''financial interest'' is found at 5 CFR 2635.403(c).

(3)(i) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), to or on behalf of a tenant of property owned by the employee or the employee's spouse or minor child. However, such subsidy is permitted when:

(A) The employee, or the employee's spouse or minor child acquires, without specific intent as through inheritance, a property in which a tenant receiving such a subsidy already resides;

(B) The tenant receiving such a subsidy lived in the rental property before the employee worked for the Department;

(C) The tenant receiving such a subsidy is a parent, child, grandchild, or sibling of the employee;

(D) The employee's, or the employee's spouse or minor child's, rental property has an incumbent tenant who has not previously received such a subsidy and becomes the beneficiary thereof; or

(E) The location of the rental property is in a Presidentially declared emergency or natural disaster area and the employee receives prior written approval from an agency designee.

(ii) The exception provided by paragraph (a)(3)(i) of this section continues only as long as:

(A) The tenant continues to reside in the property; and

(B) There is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments under the Section 8 program.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits the employee, or the employee's spouse or minor child from directly or indirectly receiving, acquiring, or owning:

(1) A financial interest in a publicly available or publicly traded investment fund that includes financial interests prohibited by paragraph (a)(2) of this section, so long as the employee neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund;

(2) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to obtain FHA insurance;

(3) Department-owned single family property. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property;

(4) Employment compensation and benefit packages provided by the employer of an employee's spouse that include financial interests prohibited by paragraph (a)(2) of this section; or

(5) Government National Mortgage Association (GNMA) securities.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the date of the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside activities.

(a) *Prohibited outside activities.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment with a business related to real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, title search services, construction, construction financing, land planning, or real estate development;

(2) The operation or management of investment properties to the extent that it rises to the level of a real estate-related business. HUD will determine whether an employee is operating or managing investment properties to an

extent that it rises to the level of a real estate business based on the totality of the circumstances, and will consider whether the employee maintains an office; advertises or otherwise solicits clients or business; hires staff or employees; uses business stationary or other similar materials; files the business as a corporation, limited liability company, partnership, or other type of business association with a state government; establishes a formal or informal association with an existing business; hires a management company; and the nature and number of its investment properties;

(3) Employment with a person or entity who registered as a lobbyist or lobbyist organization pursuant to 2 U.S.C. 1603(a) and engages in lobbying activity concerning the Department;

(4) Employment as an officer or director with a Department-approved mortgagee, a lending institution, or an organization that services securities for the Department; or

(5) Employment with the Federal Home Loan Bank System or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to:

(1) Serving as an officer or a member of the Board of Directors of:

(i) A Federal Credit Union;

(ii) A cooperative, condominium association, or homeowners association for a housing project that is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(iii) An entity designated in writing by the Designated Agency Ethics Official.

(2) Holding a real estate agent's license; however, use of the license is limited as provided by paragraph (c) of this section.

(c) *Prior approval requirement.* (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with a prohibited source, as defined at 5 CFR 2635.203(d);

(ii) With a state or local government;

(iii) In the same professional field as that of the employee's official position; or

(iv) As a real estate agent in relation to purchasing or selling a single family property for use as the employee's primary residence, or the primary residence of the employee's immediate family member.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Liaison representative.* An employee designated to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be designated to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Bureau instructions and designation of separate agency component.

(a) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official, the Bureau Ethics Counselor is authorized, consistent with 5 CFR 2635.105(c), to designate Deputy Bureau Ethics Counselors, to make a determination, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for the Bureau.

(b) *Designation of separate agency component.* Pursuant to 5 CFR 2635.203(a), the Office of the Inspector General is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

Dated: February 15, 2012.

Shaun Donovan,

Secretary.

Don W. Fox,

Principal Deputy Director, Office of Government Ethics.

[FR Doc. 2012–6177 Filed 3–13–12; 8:45 am]

Editorial Note: Proposed rule document 2012–06177 was originally published on pages 14997 through 15003 in the issue of Wednesday, March 14, 2012. In that publication an incorrect version of the document was published. The corrected document is republished in its entirety.

[FR Doc. R1–2012–6177 Filed 3–21–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

RIN 0551–AA70

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule, withdrawal.

SUMMARY: A proposed rule published in the **Federal Register** on March 8, 2012, proposing requirements to add reporting for pork (fresh, chilled, and frozen box/primal cuts) and distillers dried grain (DDG) to the Export Sales Reporting Requirements, is being withdrawn. The Foreign Agricultural Service (FAS) is currently awaiting approval for publication from the Office of Management and Budget.

DATES: As of March 22, 2012, the proposed rule published March 8, 2012 (77 FR 13990), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Contact Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone at (202) 720–3274; or by fax (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2012, a proposed rule was published in the **Federal Register** establishing new reporting requirements for pork (fresh, chilled, and frozen box/primal cuts) and distillers dried grain (DDG) to the Export Sales Reporting Requirements (77 FR 13990). Subsequent to publication, FAS ascertained that OMB clearance was not yet received, so the proposed rule needs to be withdrawn until such clearance is conveyed.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting and recordkeeping requirements.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Proposed Rule, as published in the **Federal Register** of March 8, 2012 (77 FR 13990) (FR Doc. 2012–05486), is hereby withdrawn.

Authority: 7 U.S.C. 5712.

Dated: March 14, 2012.

Suzanne Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2012–6820 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2011–BT–STD–0029]

RIN 1904–AC47

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposed to amend its energy conservation standards for several classes of commercial heating, air-conditioning, and water-heating equipment and to adopt new energy conservation standards for computer room air conditioners in a January 2012 notice of proposed rulemaking (January 2012 NOPR). The levels that DOE proposed to adopt were equivalent to the efficiency levels contained in the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1–2010 (ASHRAE Standard 90.1–2010). In addition, DOE proposed in the January 2012 NOPR to update the current Federal test procedures, or for certain equipment types adopt new test procedures, to incorporate by reference the most current versions of several relevant industry test procedures specified in ASHRAE Standard 90.1–2010. The amendments proposed in today's supplemental notice of proposed rulemaking (SNOPR) would modify the definition of ''computer room air conditioner'' initially proposed in the January 2012 NOPR and incorporate additional provisions to clarify the proposed test procedure provisions for commercial package air-conditioning and heating equipment and variable refrigerant flow systems. DOE is also proposing to include with modification certain provisions from Air-Conditioning, Heating, and Refrigeration Institute (AHRI) operations manuals in its test procedures that would clarify the application of the DOE test procedures and harmonize DOE testing with the testing performed by industry.

DATES: DOE will accept comments, data, and other information regarding this SNOPR no later than April 2, 2012. For details, see section V, ''Public Participation'' of this SNOPR.

ADDRESSES: Any comments submitted must identify the SNOPR on Energy Conservation Standards and Test Procedures for ASHRAE Standard 90.1 Products, and provide docket number EERE–2011–BT–STD–0029 and/or Regulatory Information Number (RIN) 1904–AC47. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
2. *Email: ASHRAE90.1–2011–STD–0029@ee.doe.gov*. Include docket number EERE–2011–BT–STD–0029 and/or RIN 1904–AC47 in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;po=0;D=EERE-2011-BT-STD-0029*. This Web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. Email: *Mohammed.Khan@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

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I. Introduction

The following section briefly discusses the statutory authority underlying today's supplemental notice of proposed rulemaking, as well as some of the relevant historical background related to the establishment of energy conservation standards and test procedures for ASHRAE Standard 90.1 equipment.

A. Authority

Title III, Part C[1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the commercial heating, air-conditioning, and water-heating equipment that is the subject of this rulemaking.[2] In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of equipment listed, each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must publish in the **Federal Register** an analysis of the energy savings potential of amended energy efficiency standards within 180 days of the amendment of ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(i)) EPCA further directs that DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more-stringent standard is justified under 42 U.S.C. 6313(a)(6)(A)(ii)(II), then it must establish such more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)) (In addition, DOE notes that pursuant to the EISA 2007 amendments to EPCA, under 42 U.S.C. 6313(a)(6)(C), the agency must periodically review its already-established energy conservation standards for ASHRAE products. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for a covered product.)

EPCA also requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines that the amended test procedure is not reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated operating costs of the ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4))

Additionally, the Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140) amended EPCA to require that at least once every 7 years, DOE must conduct an evaluation of the test procedures for all covered equipment and either amend test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6314(a)(2)–(3)) or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6314(a)(1)(A)) Under this requirement, DOE must review the test procedures for the various types of ASHRAE equipment not later than December 19, 2014 (*i.e.,* 7 years after the enactment of EISA 2007). Thus, the final rule resulting from this rulemaking will satisfy the requirement to review the test procedures for the certain types of ASHRAE equipment addressed in this rulemaking (*i.e.,* those equipment for which DOE has been triggered) within seven years.

On October 29, 2010, ASHRAE officially released and made public ASHRAE Standard 90.1–2010. This action triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined above. For a more complete discussion of authority, see DOE's January 17, 2012 NOPR. 77 FR 2356, 2359–61.

B. Background

1. ASHRAE Standard 90.1–2010

As noted, ASHRAE released a new version of ASHRAE Standard 90.1 on October 29, 2010. The ASHRAE standard addresses efficiency levels and test procedures for many types of commercial heating, ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA. ASHRAE Standard 90.1–2010 revised its efficiency levels for certain commercial equipment, but for the remaining equipment, ASHRAE left in place the preexisting levels (*i.e.,* the efficiency levels specified in EPCA or the efficiency levels in ASHRAE Standard 90.1–2007). Specifically, DOE determined in the January 2012 NOPR that ASHRAE updated its efficiency levels for small, large, and very large water-cooled and evaporatively-cooled commercial package air conditioners; variable refrigerant flow (VRF) water-source heat pumps less than 17,000 Btu/h; and VRF water-source heat pumps at or greater than 135,000 Btu/h. ASHRAE Standard 90.1–2010 also revised its scope to include certain commercial equipment used for industrial and process cooling, namely ''air conditioners and condensing units serving computer rooms.''

In addition, ASHRAE Standard 90.1–2010 updated the following referenced test procedures to the most recent version of the industry standards: AHRI 210/240–2008 (small commercial package air-conditioning and heating equipment); AHRI 340/360–2007 (large and very large commercial package air-conditioning and heating equipment); Underwriters Laboratories (UL) 727–2006 (oil-fired commercial warm-air furnaces); ANSI Z21.47–2006 (gas-fired commercial warm-air furnaces); and ANSI Z21.10.3–2004 (commercial water heaters). Lastly, ASHRAE Standard

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

90.1–2010 specified new test procedures for certain equipment, including: ASHRAE 127–2007 (computer room air conditioners); and AHRI 1230–2010 (variable refrigerant flow air conditioners and heat pumps).

2. Previous Rulemaking Documents

Subsequent to the release of ASHRAE Standard 90.1–2010, DOE published a notice of data availability (NODA) in the **Federal Register** on May 5, 2011 (May 2011 NODA) and requested public comment as a preliminary step required pursuant to EPCA when DOE considers amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1. 76 FR 25622. Specifically, in the May 2011 NODA, DOE presented a discussion of the changes found in ASHRAE Standard 90.1–2010, which included a description of DOE's evaluation of each ASHRAE equipment type in order for DOE to determine whether the amendments in ASHRAE Standard 90.1–2010 have increased efficiency levels. *Id.* at 25630–37. As an initial matter, DOE sought to determine which requirements for covered equipment in ASHRAE Standard 90.1, if any, were revised solely to reflect the level of the current Federal energy conservation standard (where ASHRAE is merely ''catching up'' to the current national standard), were revised but lowered, were revised to include design requirements without changes to the efficiency level, or had any other revisions made that did not increase the standard level, in which case, DOE was not triggered to act under 42 U.S.C. 6313(a)(6) for that particular equipment type. For those types of equipment in ASHRAE Standard 90.1 for which ASHRAE actually increased efficiency levels above the current Federal standard (*i.e.,* water-cooled and evaporatively-cooled air conditioners; two classes of VRF water-source heat pumps with and without heat recovery; and computer room air conditioners (which were not previously covered)), DOE subjected that equipment to the potential energy savings analysis for amended national energy conservation standards based on: (1) The modified efficiency levels contained within ASHRAE Standard 90.1–2010; and (2) more-stringent efficiency levels. DOE presented its methodology, data, and results for the preliminary energy savings analysis developed for the water-cooled and evaporatively-cooled equipment classes in the May 2011 NODA for public comment. *Id.* at 25637–46. For the remaining equipment classes, DOE requested data and information that would allow it to accurately assess the energy savings potential of those equipment classes. Additionally, for single package vertical air conditioners and heat pumps, although the levels in ASHRAE Standard 90.1–2010 were unchanged, DOE performed an analysis of their potential energy savings as required by 42 U.S.C. 6313(a)(10)(B). Lastly, DOE presented an initial assessment of the test procedure changes included in ASHRAE Standard 90.1–2010. *Id.* at 25644–47.

Following the NODA, DOE published a notice of proposed rulemaking in the **Federal Register** on January 17, 2012 (the January 2012 NOPR), and requested public comment. 77 FR 2356. In the January 2012 NOPR, DOE proposed amended energy conservation standards for small, large, and very large water-cooled and evaporatively-cooled commercial package air conditioners; variable refrigerant flow (VRF) water-source heat pumps less than 17,000 Btu/h; VRF water-source heat pumps at or greater than 135,000 Btu/h; and new energy conservation standards for computer room air conditioners. DOE presented its methodology, data, and results for its analysis of two classes of variable refrigerant flow water-source heat pumps and for its analysis of computer room air conditioners.

In addition, DOE's NOPR also proposed the adoption of amended test procedures for small commercial package air-conditioning and heating equipment; large and very large commercial package air-conditioning and heating equipment; commercial warm-air furnaces; and commercial water heaters. Furthermore, DOE proposed to adopt new test procedures for variable refrigerant flow equipment, single package vertical air conditioners and heat pumps, and computer room air conditioners. Following the publication of the NOPR, DOE held a public meeting on February 14, 2012 to receive feedback from interested parties on its proposals and analyses.

II. Summary of the Supplemental Proposed Rule

This supplemental notice of proposed rulemaking builds upon the January 17, 2012 NOPR, which DOE hereby affirms, except for those provisions that are modified by this supplemental proposal. In overview, in today's SNOPR, DOE proposes to modify the definition of ''computer room air conditioner'' that was initially proposed in the January 2012 NOPR. DOE also proposes to include with modification certain provisions from AHRI operations manuals (OMs) in its test procedures that would clarify the application of the test procedures and harmonize DOE testing with the testing performed by industry.

At the February 14, 2012 public meeting, DOE came to better understand the overlap between the markets for comfort conditioning and computer room air conditioning, as well as the difficulty in identifying physical or technological characteristics that would consistently differentiate between equipment used for these two types of applications in all cases. Accordingly, DOE is proposing a revised definition of ''computer room air conditioner'' that would focus on the equipment's use, its testing and certification under a test procedure specifically tailored to computer room air conditioners, and confirmation that the basic model is not a covered consumer product to which energy conservation standards apply. DOE believes that this revised approach would ensure that the computer room air conditioner equipment class does not improperly expand to other comfort-conditioning applications where other energy conservation standards apply. To assist in making these distinctions, the SNOPR's proposed definition of ''computer room air conditioner'' provides physical characteristics to help guide manufacturers in determining whether their equipment meets the definition of ''computer room air conditioner.'' DOE wishes to make clear that its proposal would do nothing to prevent properly rated and certified comfort-conditioning air conditioners from also being marketed and sold in computer room applications. However, DOE's proposed definition is intended to ensure that certification to the new computer room air conditioner standards remains limited to basic models devoted to such applications. These changes are discussed in further detail in section III.A of this SNOPR.

The proposed changes to the test procedures are described in detail in III.B of this SNOPR. Primarily, DOE proposes to further modify the DOE test procedures in order to provide clarifications of several test parameters that are not explicitly addressed in the previously proposed test procedures but are currently found in AHRI operations manuals, which guide the AHRI-member manufacturers in applying the DOE test procedures to their equipment. In some cases, DOE has made modifications to the wording that is used in AHRI's operations manuals. Specifically, DOE is proposing to adopt provisions to specify how manufacturers should determine the refrigerant charge and fans speeds/air flow rates for testing. Further, DOE is

proposing clarifications to the allowance of manufacturer involvement in VRF testing. DOE is also proposing to adopt refrigerant line length correction factors for variable refrigerant flow systems that are contained in the AHRI operations manual for that equipment with some limitations on their use. DOE also proposes modification to the regulatory text where necessary to reflect DOE's interpretation of the test procedure by clarifying several other testing issues described below, including certified rating tolerances, defective samples, test set-up, and enhancement devices. DOE tentatively determined in the January 2012 NOPR and reaffirms in today's SNOPR that none of the proposed changes would alter the measured efficiency of covered products.

III. Discussion

A. Definition of ''Computer Room Air Conditioner''

In the January 2012 NOPR, DOE tentatively concluded that because ASHRAE expanded the scope of Standard 90.1 to include air conditioners and condensing units serving computer rooms, the scope of DOE's obligations pursuant to EPCA with regard to ASHRAE products similarly expanded to encompass these products. 77 FR 2356, 2372 (Jan. 17, 2012). Thus, DOE analyzed the technological feasibility and economic justification of adopting efficiency levels for computer room air conditioners that are more stringent than those in ASHRAE Standard 90.1–2010, as required by EPCA, and proposed to adopt new standards for computer room air conditioners at the same levels as those specified in ASHRAE Standard 90.1–2010. *Id.* at 2416–18. The term ''computer room air conditioner'' had not been defined under DOE's regulations because such units had not previously been covered equipment. As a result, in the January 2012 NOPR, DOE proposed to adopt the following definition for ''computer room air conditioner'':

> *Computer Room Air Conditioner* means a unit of commercial package air conditioning and heating equipment that is advertised, marketed, and/or sold specifically for use in computer rooms, data processing rooms, or other precision cooling applications, and is rated for performance using ASHRAE Standard 127, (incorporated by reference, see § 431.95). Such equipment may not be marketed or advertised as equipment for any other space conditioning applications, and may not be rated for performance using AHRI Standard 210/240 or AHRI Standard 340/360 (incorporated by reference, see § 431.95).

77 FR 2356, 2425–26 (Jan. 17, 2012).

DOE presented the proposed definition at the February 2012 public meeting for the ASHRAE equipment NOPR, and received feedback from interested parties that indicated concerns about the proposed definition of ''computer room air conditioner.'' In particular, Panasonic indicated concern that the proposed definition might require the same equipment to be certified to multiple test methods—one for comfort cooling and one for computer room applications. (Panasonic, Public Meeting Transcript, No. 20 at p. 62) Mitsubishi expressed concern that the proposed definition would prevent equipment that is designed primarily for use in comfort conditioning (and thus not rated using ASHRAE Standard 127) but that may also be suitable for computer room service from being installed in all potential applications. (Mitsubishi, Public Meeting Transcript, No. 20 at pp. 60–61) In an attempt to alleviate these concerns, DOE is proposing modifications to this definition in today's SNOPR to assist manufacturers in determining what equipment is considered a ''computer room air conditioner'' under DOE's proposed regulations.

In developing a definition for ''computer room air conditioner,'' DOE first looked to existing industry definitions in ASHRAE Standard 90.1 and ASHRAE Standard 127. ASHRAE Standard 90.1–2010 does not provide a definition of ''computer room air conditioner,'' but rather, it defines a ''computer room,'' thereby clarifying the use/location but not the technology suitable for that location.[3] In terms of applying its efficiency levels, ASHRAE Standard 90.1–2010 states that ''[a]ir conditioners primarily serving computer rooms and covered by ASHRAE Standard 127 shall meet the requirements in Table 6.8.1K. All other air conditioners shall meet the requirements in Table 6.8.1A.'' Table 6.8.1K in ASHRAE Standard 90.1–2010 provides the minimum efficiency levels for computer room air conditioners that DOE proposed adopting in the January 2012 NOPR.

ASHRAE Standard 127–2007 (Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners) provides a definition for ''computer and data processing room (CDPR) unitary air conditioner.''[4] In addition, the first public review draft of proposed revisions to ASHRAE 127–2007 (*i.e.,* ASHRAE 127–2007R, Proposed Revision of Standard 127–2007, Method of Testing and Rating Computer and Data Processing Room Unitary Air Conditioners) defines ''CRAC''[5] [computer room air conditioner]. However, no part of the definition of either ''CRAC'' or ''CDPR unitary air conditioner'' clearly differentiates the design of CRACs from other direct expansion cooling equipment.

As discussed in the January 2012 NOPR, DOE was not able to identify any physical construction and/or component characteristic(s) of computer room air conditioners that distinguish those products from conventional comfort-cooling air conditioners. 77 FR 2356, 2382–83 (Jan. 17, 2012). After hearing the concerns raised at the February 2012 public meeting, DOE again attempted to develop a definition for ''computer room air conditioner'' that effectively distinguishes these products from other types of commercial air conditioners. DOE considered characteristics such as evaporator-to-condenser effective surface area ratio and delivered cubic feet per minute (CFM) per ton of capacity, as well as the presence of certain features such as an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. Based upon its review, DOE notes that many, but not all, computer room air conditioners may have features such as an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. However, DOE could not identify any single

[3] ASHRAE Standard 90.1–2010 defines ''Computer Room'' as ''a room whose primary function is to house equipment for the processing and storage of electronic data and that has a design electronic data equipment power density exceeding 20 watts/ft^2 of conditioned floor area.''

[4] ASHRAE Standard 127–2007 defines ''computer and data processing room (CDPR) unitary air conditioner'' as ''a computer and data processing room unitary air conditioner consisting of one or more factory-made assemblies, which include a direct expansion evaporator or chilled water cooling coil, an air-moving device, and air filtering devices. The air conditioner may include a compressor, condenser, humidifier, or reheating function. Where direct expansion equipment is provided in more than one assembly and the separate assemblies are to be used together, the requirements of rating outlined in this standard are based upon the use of matched assemblies. The functions of a CDPR air conditioner, either alone or in combination with a cooling and heating plant, are to provide air filtration, circulation, cooling, reheating, and humidity control.''

[5] ASHRAE Standard 127–2007R Proposed Revision of Standard 127–2007, Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners defines ''computer room air conditioner (CRAC)'' as ''computer room air conditioner; generally refers to computer-room cooling units that utilize dedicated compressors and refrigerant cooling coils rather than chilled-water coils.''

characteristic or combination of characteristics that would *consistently* differentiate between the two types of equipment, the same reasoning which led DOE to propose a definition in the January 2012 NOPR based upon how the equipment is marketed and/or sold for use, rather than upon physical characteristics.

At the February 2012 public meeting, Mitsubishi stated that the most distinguishing characteristic of CRAC equipment is that it has the ability to apply cooling operation at very low temperatures. (Mitsubishi, Public Meeting Transcript, No. 20 at p. 99) Although DOE recognizes that many computer room air conditioners are deemed ''mission critical'' equipment and are expected to operate year round regardless of the outdoor conditions, DOE is also aware that other types of commercial air conditioners can be designed to operate under low ambient temperature conditions (through the use of ''low ambient'' control packages). At the public meeting, Mitsubishi stated that certain comfort-cooling equipment it manufactures also has the ability to operate under low ambient conditions, and, thus, such equipment can be used in some computer room applications. (Mitsubishi, Public Meeting Transcript, No. 20 at p. 99) DOE notes that many self-contained water-cooled air conditioners and heat pumps also can operate under low ambient conditions. As a result, a commercial air conditioner's ability to apply cooling operation at very low temperatures is not a differentiating characteristic on which to base the definition, because it would not differentiate computer room air conditioners from other conventional comfort-conditioning air conditioners.

The Department considered all of these potential differentiating characteristics when developing a definition of ''computer room air conditioner'' but ultimately determined that none of these factors could be used to definitively distinguish computer room air conditioners from conventional comfort-conditioning air conditioners. However, upon considering the comments at the NOPR public meeting, DOE believes that specifying certain physical characteristics in the definition that may be present in computer room air conditioners will assist manufacturers in determining which equipment falls under the definition of ''computer room air conditioner'' and which equipment falls under the definitions for other types of commercial package air conditioners. Therefore, DOE has proposed in today's SNOPR to include some of the physical characteristics listed above in the revised definition of ''computer room air conditioner.''

Given the above-discussed difficulties in distinguishing computer room air conditioners from comfort-conditioning air conditioners based solely upon differences in physical construction and/or component characteristics, DOE is proposing to instead specify that products satisfying the definition of ''computer room air conditioner'' are (by definition) certified to DOE's test procedure for CRACs (see § 431.96), and any other covered comfort-conditioning air conditioners must still be rated and certified to their applicable test procedure and energy conservation standards (either residential or commercial).

By definition, ''industrial equipment'' (generally applicable to ASHRAE equipment) ''is not a 'covered product' as defined in section 6291(a)(2) * * *.'' (42 U.S.C. 6311(2)(A)(iii)) Under 42 U.S.C. 6291(2), the term ''covered product'' means a consumer product of a type listed in 42 U.S.C. 6292, *Coverage;* central air conditioners and central air conditioning heat pumps are specifically included at 42 U.S.C. 6292(a)(3). Furthermore, the definition of ''consumer product'' at 42 U.S.C. 6291(1) specifically captures a type of product, which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. Thus, if a basic model of central air conditioner is found to any significant extent in consumer applications, it would appropriately be a residential central air conditioner subject to 10 CFR 430.32(c).

For air-conditioning equipment that is properly classified as commercial and industrial equipment, DOE notes that there is already a comprehensive set of standards at 10 CFR 431.97 for a variety of types of commercial air-conditioning and heating equipment used in comfort-conditioning applications. Similar to the principle stated above, if a basic model of commercial air-conditioning equipment is found to any significant extent in comfort-conditioning applications, the manufacturer would be required to test and certify the basic model to the applicable comfort-conditioning air conditioner test procedure and standard under 10 CFR 431.97. If the manufacturer, at its discretion, wishes to make representations as to the basic model's performance as a comfort-conditioning air conditioner and a computer room air conditioner, then the basic model would need to be tested using the DOE test procedures for each equipment type. However, DOE believes that in most cases, the manufacturer would decide upon the primary purpose of each given basic model in its product offering and choose the equipment type associated with that basic model for the purposes of testing and certification.

Once the manufacturer identifies the applicable equipment type of the basic model, the applicable DOE test procedure provisions for rating, standards for compliance, and certification requirements should be easy to identify. DOE is not proposing to modify any certification requirements in this rulemaking. Nothing in DOE's proposal would bar a manufacturer from making representations of the same basic model performing as two equipment types as long as those ratings are based on testing using the DOE testing procedures for each equipment type.

In consideration of the above points, DOE is proposing to define ''computer room air conditioner'' as follows:

Computer room air conditioner means a basic model of commercial package air-conditioning and heating equipment that is: (1) Used in computer rooms, data processing rooms, or other purpose-specific cooling applications; (2) rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96; and (3) not a covered, consumer product under 42 U.S.C. 6291(1)–(2) and 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function.

Additionally, DOE clarifies that any basic model that meets the definition of ''commercial package air-conditioning and heat equipment'' must be classified as one of the equipment types (*e.g.,* small, large, or very large commercial package air-conditioning and heat equipment, packaged terminal air conditioners or heat pumps, variable refrigerant flow systems, computer room air conditioners, and single package vertical units) for the purposes of determining the applicable test procedure and energy conservation standard. While DOE is permitting manufacturers to make this election based on a comparison of each basic model with DOE's regulatory definitions for the various equipment types, DOE is adding a new section to the beginning of 10 CFR 431.97 to make it clear that each manufacturer of a basic model that meets this definition does have a regulatory obligation in terms of standards compliance. Accordingly, DOE is proposing the following revision to 10 CFR 431.97:

(a) All basic models of commercial package air-conditioning and heating equipment must be tested for performance using the applicable DOE test procedure in § 431.96, be

compliant with the applicable standards set forth in paragraphs (b) through (f) of this section, and be certified to the Department under 10 CFR part 429.

DOE believes that the amended definition of ''computer room air conditioner'' would not restrict any types of commercial air-conditioning equipment from being installed in computer rooms, but rather, that it clarifies which air conditioners must be tested and certified as computer room air conditioners under DOE's regulatory program. DOE seeks comment on its proposed definition of ''computer room air conditioner'' and the clarifications proposed to 10 CFR 431.97(a) regarding commercial package air-conditioning and heating equipment. These are identified as issues 1 and 2 in section V.B, ''Issues on Which DOE Seeks Comment.''

DOE would also like to take this opportunity to address another potential approach raised at the February 2012 public meeting. More specifically, several interested parties suggested use of the term ''precision'' air conditioner to identify this equipment class. Panasonic stated that it is opposed to this equipment being termed ''computer room air conditioning'' equipment, because there are other systems that could be used for computer rooms. (Panasonic, Public Meeting Transcript, No. 20 at p. 92) Danfoss stated that there could be a standard for precision computer room air conditioning equipment and one for conventional commercial air conditioning equipment. (Danfoss, Public Meeting Transcript, No. 20 at p. 103) Panasonic stated that the term ''precision air conditioning'' would be more appropriate for use, rather than computer room air conditioning, because precision air conditioning would not restrict the market. (Panasonic, Public Meeting Transcript, No. 20 at p. 105) Danfoss stated that specialized equipment might be used in a laboratory with very strict climate control needs, which might have the same type of requirements but not be a computer room. (Danfoss, Public Meeting Transcript, No. 20 at p. 105) Mitsubishi supported these comments and the use of the term ''precision air conditioner.'' (Mitsubishi, Public Meeting Transcript, No. 20 at p. 105)

As noted in the January 2012 NOPR, DOE believes ASHRAE Standard 90.1 does not cover commercial package air-conditioning and heating equipment used for industrial, manufacturing, or commercial processes, with the exception of the specific industrial equipment listed in the standard (*i.e.,* ''air conditioners and condensing units serving computer rooms''). 77 FR 2356, 2373 (Jan. 17, 2012). DOE intends its standards for commercial package air-conditioning and heating equipment to have the same scope as ASHRAE Standard 90.1 and to apply only to equipment used for comfort space conditioning, with the exception of those equipment types listed in ASHRAE Standard 90.1 that are used for commercial or industrial processes. See further discussion in the January 2012 NOPR regarding the ''Coverage of Commercial Package Air Conditioning and Heating Equipment That Are Exclusively Used as Part of Industrial or Manufacturing Processes.'' 77 FR 2356, 2372–2373 (Jan. 17, 2012).

ASHRAE Standard 90.1–2010 does not refer to or use the term ''precision air conditioner.'' The process cooling application that has been listed in ASHRAE Standard 90.1 specifically refers to cooling of computer rooms (*i.e.,* ''air conditioners and condensing units serving computer rooms''). Given these factors, DOE has tentatively concluded that DOE's proposed use of the term ''computer room air conditioner'' would be in line with the equipment covered by ASHRAE Standard 90.1–2010 and that use of the term ''precision air conditioner'' would not be appropriate.

B. Test Procedures

EPCA requires DOE to amend any test procedures for ASHRAE equipment to the latest version generally accepted by the industry or the rating procedures developed or recognized by industry, as referenced in ASHRAE/IES Standard 90.1, unless the Secretary determines that clear and convincing evidence exists that the latest version of the industry test procedure does not meet the requirements for test procedures described under 42 U.S.C. 6314(a)(2)–(3).[6] (42 U.S.C. 6314(a)(4)(A)–(B)) In the January 2012 NOPR, DOE proposed to adopt the updated industry test procedures for the following equipment: small commercial package air conditioners and heating equipment (AHRI 210/240–2008, *Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment*), large and very large commercial package air conditioners and heating equipment (AHRI 340/360–2007, *Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment*), commercial warm-air furnaces (UL 727–2006, *Standard for Safety for Oil-Fired Central Furnaces,* and ANSI Z21.47–2006, *Standard for Gas-Fired Central Furnaces*), and commercial water heaters (ANSI Z21.10.3–2004, *Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous*). In the May 2011 NODA and the January 2012 NOPR, DOE reviewed each of these test procedures and described the changes in comparison to the previous version of the test procedure. 76 FR 25622, 25634–37 (May 5, 2011) and 76 FR 2356, 2373–76 (Jan. 17, 2012).

Additionally, in the January 2012 NOPR, DOE proposed to adopt new test procedures for measuring the efficiency of variable refrigerant flow equipment (AHRI 1230–2010, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*), computer room air conditioners (ASHRAE 127–2007, *Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*), and single package vertical air conditioners and single package vertical heat pumps (AHRI 390–2003, *Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps)* An initial assessment of these test procedures is also presented in the January 2012 NOPR. 76 FR 2356, 2376–79 (Jan. 17, 2012).

DOE presented its proposed changes to the test procedures for ASHRAE equipment at the February 2012 public meeting. At the meeting, interested parties indicated that DOE should review the AHRI operations manuals[7] and, if necessary, adopt parts of the manuals that contain provisions relevant to testing that would impact or help clarify DOE's proposed test procedures. Specifically, AHRI commented that the organization has been running certification and verification programs for years, and in each program, there is an operations manual that describes the verification program and clarifies how to run the test procedure. AHRI encouraged DOE to look at these operations manuals and reference them in any way DOE can. (AHRI, Public Meeting Transcript, No. 20 at p. 48) Mitsubishi also commented that it would be essential for DOE to incorporate the operations manual in the case of VRF systems, because the operations manual has additional guidance on how to set up the systems and what the manufacturer requires in

[6] The relevant statutory provisions at 42 U.S.C. 6314(a)(2)–(3) state that test procedure shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment and shall not be unduly burdensome to conduct. If the test procedure is a procedure for determining estimated annual operating costs, such costs shall be calculated from measurements of energy use in a representative average-use cycle.

[7] For more information and to access those operations manuals, visit AHRI's Web site at: *http://www.ahrinet.org/ahri+certification+programs.aspx.*

order to do the testing. (Mitsubishi, Public Meeting Transcript, No. 20 at p. 48)

In response, DOE reviewed the industry operations manuals developed by AHRI to determine whether the manuals provide information that would help clarify the application of the DOE test procedures and those updates that were proposed in the January 2012 NOPR. In its review, DOE found that several AHRI operations manuals provide guidance that DOE believes could be useful in clarifying the DOE test procedures. This guidance, which is in part proposed for inclusion in DOE's test procedures, is presented in Table III.1 and discussed in detail in the subsections immediately below.

TABLE III.1—SUMMARY OF ISSUES IDENTIFIED THROUGH REVIEW OF AHRI OPERATIONS MANUALS

Issue	AHRI OM*	Relevant OM section	Summary of issue	Summary of response
Compressor Break-In Period.	Small Unitary OM Large Unitary OM. VRF OM. SPVU OM	3.8 (Break-in Operation of Test Units). 3.7 (Break-in Operation and Start-up of Test Units). 3.7 (Break-in Operation and Start-up of Test System). 3.7 (Optional ''Break-In'' Period).	Certain AHRI OMs allow manufacturers the option of ''breaking in'' equipment by running the unit before testing. Depending on the equipment, AHRI allows up to 16 hours, up to 24 hours, or a manufacturer-specified number of hours.	DOE is proposing to add a ''break-in'' provision to its test procedures for commercial air conditioning and heating equipment. However, DOE is only proposing to allow up to 16 hours to break in equipment, regardless of the equipment class.
Tolerances	Multiple OMs	N/A	Certain AHRI OMs and certain industry test methods provide tolerances to evaluate manufacturer efficiency ratings.	Compliance with DOE standards is based on a statistically valid set of samples, as specified at 10 CFR part 429, and DOE is not proposing to adopt tolerances from AHRI OMs in the final rule.
Defective Samples	Multiple OMs	N/A	Certain AHRI OMs provide criteria by which a unit would be considered defective.	DOE determines whether a unit is defective on a case-by-case basis as part of its regulatory program using the guidelines in 10 CFR part 429 and is not proposing to adopt AHRI's provisions for what constitutes a defective sample.
Test Set-Up	Commercial Furnaces OM. Commercial Water Heaters OM. SPVU OM.	3.3.5.4 (Sample Start-Up and Operation). 3.12 (Clarification in Running of the Test Procedure). 3.3.5.4 (Sample Start-Up and Operation). 3.10 (Clarification of Test Procedures). 3.6 (Test Set-up and Start-up Punch List).	Certain AHRI OMs allow the opportunity for a manufacturer or test lab to use a ''test procedure guideline'' or a ''punch list'' to help facilitate implementation of the DOE test procedure.	DOE is not proposing to adopt AHRI OM ''test procedure guidelines'' or to allow for the use of ''punch lists.'' DOE proposes to use only information found in the DOE test procedures in 10 CFR part 431 and in Installation and Operation (I&O) manuals when conducting testing.
Enhancement Devices.	Small Unitary OM Large Unitary OM	3.6 (System Manufacturer's Required Equipment Provisions). 3.7 (ICM's Required Equipment Provisions). 5.8 (Listing Equipment with Enhancement Components). 3.6 (Required Equipment Provisions).	Certain AHRI OMs state that manufacturers shall provide a complete system including ''other listed system enhancement devices.''	DOE will only consider those devices which are part of the rated basic model, are shipped with the unit, and are clearly described as enhancement devices in the I&O manuals.

TABLE III.1—SUMMARY OF ISSUES IDENTIFIED THROUGH REVIEW OF AHRI OPERATIONS MANUALS—Continued

Issue	AHRI OM*	Relevant OM section	Summary of issue	Summary of response
Refrigerant Charge	General OM ..... Small Unitary OM VRF OM.	9.11.1.1 (Test Sample Refrigerant Charge). 3.19 (Test Sample Refrigerant Charge). 3.15 (Test Sample Refrigerant Charge) and 3.15.1 (Refrigerant Charge Adjustment).	Certain AHRI OMs give the manufacturer additional guidance on how to charge the system for testing.	DOE proposes to add clarification to its test procedures that if a range of refrigerant charges is specified in the I&O manuals, then any charge in that range is acceptable for use in testing, unless a rating value is clearly specified in the I&O manual.
Fan Speeds and Air Flow Rates, Rated vs. Nominal.	General OM ..... Large Unitary OM	9.11.1.2 (Fan Speed). 3.11 (Indoor Coil Airflow Rate).	Certain AHRI OMs and the test procedures allow manufacturers to adjust the indoor air flow rate as long as it is under a specified limit and meets minimum external static pressure requirements.	DOE proposes to add clarification to its test procedures that the air flow rate to be used for testing should be clearly specified in the I&O manuals. If rated air flow values for DOE testing are not clearly identified then a default value of 400 standard cubic feet per minute (scfm) per ton will be used.
Manufacturer Involvement During VRF Testing.	VRF OM	3.8 (Duties of Testing Laboratory Personnel). 3.10 (System Stabilization for Testing).	The AHRI OM for VRF equipment allows manufacturers to lock in the compressor and fan motor speeds in order to achieve steady-state operation and allows manufacturers to assist in the set up and start up of this equipment during AHRI verification testing.	DOE proposes to allow limited manufacturer involvement in ensuring the system has been set up correctly, including setting the compressor speed during DOE regulatory testing, provided that the manufacturers document their set-up and record their fixed compressor speeds.
Correction Factors for VRF Refrigerant Line Lengths.	VRF OM	3.9 (Refrigerant Line Length Considerations).	The AHRI OM for VRF equipment provides a table of cooling capacity correction factors in the event that a testing laboratory exceeds the minimum refrigerant line length specified in AHRI 1230.	DOE proposes to adopt the correction factors but only in the instance where the physical limitations of the laboratory prevent it from setting up the test without exceeding the minimum refrigerant line lengths.

* Small Unitary OM means Unitary Small Air-Conditioners and Air-Source Heat Pumps (Includes Mixed-Match Coils) (Rated Below 65,000 Btu/h) Certification Program Operations Manual; Large Unitary OM means Unitary Large Equipment Certification Program Operations Manual; VRF OM means Variable Refrigerant Flow Multi-Split Air-Conditioners and Heat Pumps Certification Program (rated up to 760,000 Btu/h) Operations Manual; SPVU OM means Single Packaged Vertical Air-Conditioners and Heat Pumps Certification Program Operations Manual; Commercial Furnaces OM means Commercial Furnaces Certification Program Operations Manual; Commercial Water Heater OM means Commercial Water Heaters Certification Program Operations Manual.

1. Compressor Break-In Period

The DOE test procedure for commercial air-conditioning equipment does not provide for a compressor ''break-in'' period prior to initiating testing. According to several AHRI operations manuals for commercial air-conditioning equipment, manufacturers may direct AHRI to run the tested unit's compressor for a certain amount of time before running DOE's test procedure. In the January 2012 NOPR, DOE proposed to allow an optional compressor ''break-in'' period of no longer than 16 hours as part of the proposed adoption of AHRI 210/240–2008, AHRI 340/360–2007, AHRI 390–2003, and AHRI 1230–2010, and requested comment on allowing the break-in period for tests conducted using ASHRAE 127–2007. 77 FR 2356, 2374, 2376–78 (Jan. 17, 2012).

The 16-hour break-in limit aligns with the limit indicated in the AHRI operations manual for unitary large air conditioners and heat pumps.[8] Other AHRI operations manuals that provide for a compressor break-in period either specify a different time limit or allow the manufacturer to specify the break-in period. For example, the VRF Multi-Split Air-Conditioners and Heat Pumps Operations Manual allows for a compressor break-in period of up to 24 hours, and the operations manuals for unitary small air conditioners and heat pumps and for SPVUs do not specify a time limit for the ''break-in'' period, instead deferring to manufacturer specifications.

DOE reiterates the proposal set forth in the January 2012 NOPR, providing the manufacturer the option of breaking in the compressor for up to 16 hours for all equipment types. Due to the general similarities between the compressors used in large unitary equipment and other types of commercial air conditioning equipment, DOE believes that a compressor break-in time of up to 16 hours is adequate and appropriate to ensure test results that are representative of the energy efficiency of the basic model during average use.

For assessment and enforcement testing purposes, DOE would use the compressor break-in period used by the manufacturer, if any, when it performed certification testing, up to 16 hours. A manufacturer who elects to use an

[8] For more information, see section 3.7 of the AHRI Operations Manual for Unitary Large Equipment, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/ULE%20OM-2012.pdf.*

optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71. DOE seeks comment as to whether a longer break-in period is necessary for VRF systems, small air conditioners and heat pumps, and SPVUs, and why these types of equipment need a longer break-in period. This is identified as issue 3 in section V.B, ''Issues on Which DOE Seeks Comment.''

2. Certified Ratings

Many AHRI operations manuals and certain test procedures proposed in the January 2012 NOPR to be incorporated by reference into DOE regulations contain guidance on the tolerance that AHRI applies in its verification program to determine whether a given basic model is properly rated. For example, the AHRI operations manual for commercial furnaces [9] states in section 3.9 (Tolerances) that if a piece of equipment tests below 95 percent of its rated efficiency, then it fails its AHRI verification test. DOE has received numerous inquiries regarding the use of the AHRI tolerances in DOE's regulatory program as it may relate to certification, assessment, and/or enforcement testing. Consistent with the language in the January 2012 NOPR and DOE's current practice, current DOE regulations do not provide for a 5-percent tolerance across its regulatory program. Instead, DOE's regulations call for a statistical evaluation of a test sample, as explained below. As such, DOE is not proposing to adopt such provisions for a general 5-percent tolerance in the final rule and is proposing to explicitly exclude them from industry standards incorporated by reference.

Under current DOE regulations, a manufacturer must determine its certified ratings for its products and equipment from values derived pursuant to the applicable testing and sampling requirements set forth in 10 CFR parts 429, 430, and 431. For the products covered by this rulemaking, the sampling requirements incorporate a 95-percent confidence limit based on testing a sample of sufficient size (no less than 2 units per basic model). DOE's sampling plan for certification testing allows for some variation in the manufacturing and testing processes. More information on DOE's sampling plans can be found in 10 CFR part 429, more specifically at 10 CFR 429.43 for commercial HVAC equipment and at 10 CFR 429.44 for commercial water-heating equipment.

In the March 2011 final rule addressing certification, compliance, and enforcement, DOE reiterated its authority under the statute that DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s). *See* 10 CFR 429.104; 76 FR 12422, 12495 (March 7, 2011). For an ''assessment test,'' DOE obtains one or more units for testing, generally from retailors or distributors, and frequently performs the testing without the knowledge of the manufacturer. For an ''enforcement test,'' DOE issues a test notice requiring the manufacturer to provide units for testing. DOE uses the results of assessment testing as one tool when determining whether to pursue enforcement testing. DOE does not apply a tolerance to the results of an assessment test to determine whether to pursue enforcement testing. DOE may pursue enforcement testing if it has reason to believe that a basic model is not in compliance with applicable standards (10 CFR 429.110(a))—a determination that is informed but not necessarily driven by the assessment test results.

DOE has set forth different sampling plans for DOE enforcement testing of covered equipment and certain low-volume covered products, which include many of the products that are the subject of this rulemaking proceeding, including built-to-order products. These sampling plans utilize a test sample of no more than 4 units for low-volume, built-to-order basic models, which include many of the products that are the subject of this rulemaking proceeding. These sampling plans are set forth in Appendix B to subpart C to part 429.

3. Defective Samples

AHRI operations manuals contain guidance on determining whether a sample is defective. This determination typically is based on how closely the AHRI verification test results correlate to the product's rated performance. The AHRI general OM manual provides, ''A Defective Sample is one that fails a test due to the sample's inability to operate in accordance with the Participant's installation and operating instructions because it suffers an anomaly making it inconsistent with other samples of the same model. Unit design, unit assembly, quality control issues, and/or the Participant's inability to rate the product correctly will not be accepted by AHRI as causes for defect.''

DOE determines whether a unit is defective on a case-by-case basis as part of its certification and enforcement program. DOE's guidelines for determining whether a unit is defective are contained at 10 CFR 429.110(d)(3), which provides, ''A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions.'' DOE is retaining its current approach and will evaluate the circumstances regarding the enforcement test results on a per-unit basis for a given basic model on a case-by-case basis. In DOE's view, additional clarification may be overly restrictive and may result in a unit of a sample being determined defective due simply to high variability in the performance of a given basic model.

4. Test Set-Up

In many of AHRI's product-specific operations manuals, AHRI states that the start-up and operation of a unit shall be in accordance with the installation and operation instructions shipped with the sample. As DOE has previously stated in this rulemaking, DOE agrees and proposed to use the installation and operation instructions shipped with the sample. However, in some cases (*e.g.,* commercial water heaters and commercial warm-air furnaces), the AHRI OM provides for the use of a ''test procedure guideline'' intended to facilitate ''proper'' performance of the DOE test procedure. The operations manuals add that ''such guidelines shall not revise or modify the basic DOE test procedure * * * but shall seek to provide uniformity in interpretation of terms, measurements, and application of procedures.'' [10] Likewise, the operations manual for single package vertical air conditioners and heat pumps requires that manufacturers provide a ''punch list'' specific to performance testing that contains specific information needed to facilitate the testing of a given basic model (if any).

DOE has not proposed to incorporate by reference any industry test procedure guidelines or provisions for ''punch lists'' into its test procedures. DOE

[9] The AHRI Commercial Furnaces Operations Manual is available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/CFRN%20OM-2012.pdf.*

[10] For more information, see section 3.10 of the AHRI Commercial Water Heater Operations Manual, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/CWH%20OM-2012.pdf,* or section 3.12 of the AHRI Commercial Furnaces Operations Manual, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/CFRN%20OM-2012.pdf.*

reiterates that any provisions of the operations manuals, industry test procedure guidelines, or any other guidelines or provisions that are not in DOE's test procedure or issued as the Department's official interpretation of the regulations in the DOE guidance database [11] are not part of the DOE regulatory structure. Accordingly, DOE will not use any of these types of documents during DOE's assessment and enforcement testing. DOE will use the individual basic model's installation and operation manual. DOE accepts questions regarding the application of its test procedures when areas requiring clarification are identified or ambiguities arise. The DOE guidance database provides interested parties a way of submitting test procedure questions and industry-developed guidance for DOE review and response. DOE utilizes this guidance process as interim clarification until DOE's test procedure regulations can be periodically updated through rulemaking.

5. Enhancement Devices

The AHRI Operations Manuals for Unitary Small Air-Conditioners and Heat Pumps and Unitary Large Equipment provide that system manufacturers shall provide a complete system including ''other listed system enhancement devices'' for verification testing purposes.[12] While DOE is unclear exactly what is meant by ''other listed system enhancement devices,'' DOE will only consider a device to be part of a basic model for certification, assessment, and/or enforcement testing purposes if the device is a shipped with the unit from the point of manufacture and is clearly described as required equipment in the equipment's I&O manual. If an enhancement device is necessary for a basic model to meet minimum energy conservation standards, all units of the basic model must be shipped with any required enhancement device, and the installation and operational manual should include a description of the unit's operation with such a device.

6. Refrigerant Charge

AHRI's General Operations Manual states that the laboratory must ''determine the refrigerant charge at the Standard Rating Condition in accordance with instructions from the [manufacturer's] installation and operational manuals.'' [13] The operations manual also states that, ''for a given specified range of superheat, sub-cooling, or refrigerant pressure, the average of the range shall be used to determine the refrigerant charge. If multiple instructions are given, the [manufacturer] shall be asked to sign off on the preferred method.'' Similarly, the AHRI VRF Operations Manual states that in the event of a verification test failure, the manufacturer has the ''option to charge the unit between the minimum and maximum of the range. The Laboratory may consult with the [manufacturer] about the refrigerant charging procedures and make any needed corrections as long as they do not contradict the published installation instructions.'' [14]

DOE's current test procedures for commercial air conditioners and heat pumps greater than 65,000 Btu/h and for VRF systems do not provide a method for determining the refrigerant charge for testing if the manufacturer only specifies a range of refrigerant charges or in the event of an assessment and/or enforcement test failure. Thus, to provide clarity in its test procedures, DOE proposes that if a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its I&O manuals, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant for purposes of assessment and/or enforcement testing, unless the manufacturer clearly specifies a rating value in its I&O manuals. Note that in all cases, the laboratory conducting the assessment and/or enforcement test shall not ask the manufacturer to provide, and shall not consider, any instructions outside of those specified in the I&O manuals shipped with the unit.

7. Fan Speeds and Air Flow Rates, Rated Versus Nominal

AHRI's General Operations Manual states that ''unless specified in writing, Laboratory personnel shall not make adjustments to fan speed.'' Also, the Unitary Large Equipment Operations Manual states ''if the rated cfm is not obtained at the required external static pressure * * * the [manufacturer] shall change the cfm rating by adjusting the speed of the fan motor or supply alternate drives.''

The DOE test procedures specify only an upper limit to the indoor air flow rate based on nominal capacity. Manufacturers can adjust the indoor air flow rate to any point below that limit when conducting certification testing, provided that the system, as tested, maintains DOE's minimum external static pressure requirements throughout the duration of the test.

DOE has found that in most instances, manufacturers rate their equipment using an indoor airflow rate that differs from the nominal airflow rate (typically 400 cfm/ton) for a given basic model. While DOE understands that manufacturers may submit their rated air flow rate as part of AHRI's Certification, DOE will only use those test parameters and conditions, including air flow rate, that are set forth in the installation and operation manuals being shipped to the commercial customer with the basic model, are clearly identified in the installation and operation manuals as being used in the testing to generate the DOE performance ratings, and are allowed by the applicable DOE test procedure.

DOE reiterates its position from the January 2012 NOPR that if manufacturers have specific conditions or instructions used in generating their energy efficiency ratings, they must be clearly provided in the I&O manual shipped with the unit. 77 FR 2356, 2378 (Jan. 17, 2012). If DOE finds that the rated information, such as airflow rates, is not specified in the I&O manual shipped with the unit, DOE will test using a default value of 400 standard cubic feet per minute (scfm) per ton of cooling capacity. DOE realizes that testing under nominal, as opposed to rated, conditions may negatively impact the equipment's energy efficiency performance; however, in DOE's view, the commercial customer has a right to know the operating conditions that are used to generate the certified efficiency values, including rated airflow and rated capacity.

8. Manufacturer Involvement During Variable Refrigerant Flow Multi-Split Air-Conditioners and Heat Pumps Assessment and/or Enforcement Testing

The DOE test procedure incorporated by reference for Variable Refrigerant

[11] Available at: *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1*.

[12] For more information, see sections 3.6, 3.7, and 5.8 of the AHRI Operations Manual for Unitary Small Air-Conditioners and Air-source Heat Pumps, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/USE%20OM-2012.pdf*, and section 3.6 of the AHRI Operations Manual for Unitary Large Equipment, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/ULE%20OM-2012.pdf*.

[13] For more information, see section 9.11.1.1 of the AHRI General Operations Manual, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/2012%20General%20OM.PDF*.

[14] For more information, see section 3.15 of the AHRI Operations Manual for Variable Refrigerant Flow Multi-Split Air-Conditioners and Heat Pumps, available at: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/2012/VRF%20OM-2012.pdf*.

Flow Multi-Split Air-Conditioner and Heat Pumps (VRF), AHRI 1230–2010, states that ''if the equipment cannot be maintained at steady state conditions by its normal controls, then the manufacturer shall modify or over-ride such controls so that steady state conditions are achieved.'' The VRF Operations Manual provides that manufacturers are allowed to assist in the set up and start up of this equipment during AHRI verification testing, because skilled personnel with knowledge of the control software specific to the equipment being tested are required to ensure proper test set-up and valid test results. This provision in the VRF OM limits manufacturer involvement during start-up and testing to only regulating the compressor motor speed control. Similarly, the VRF OM states that if the equipment does not stabilize within two hours of fixing the compressor speed, the manufacturer may adjust the control operation of the system to meet the requirements of the standard.

DOE understands the complexity of the VRF systems and will allow a manufacturer representative to witness assessment and/or enforcement testing. DOE is proposing that the manufacturer representative will also be allowed to adjust the compressor speed during testing. Manufacturers should document their certification test set-up, including fixed compressor speeds, and maintain this documentation as part of their test data underlying certification so that DOE can request the documentation from the manufacturers on an as-needed basis. The documentation must be detailed enough about the set-up, such that it can be recreated by a laboratory technician without further manufacturer assistance. However, DOE acknowledges that a VRF manufacturer's representative will be allowed on-site for DOE-initiated testing to verify set-up per the documentation. DOE will only use set-up instructions from the testing underlying the manufacturer's certified ratings for DOE verification and enforcement testing. Also, the manufacturer must designate the maximum, minimum, and any intermediate speeds used during certification testing (as required under AHRI 1230–2010); these speeds should be documented in the test data underlying certification.

DOE does not typically allow manufacturers to witness or be involved in DOE-initiated assessment and/or enforcement testing of commercial air conditioning and heating equipment, and consequently, this allowance for VRF systems represents a departure of DOE's current practices. DOE has received comment that DOE is adopting an inequity between VRF systems and unitary systems. In response, DOE has tentatively concluded that there are unique circumstances governing the installation and operation of VRF systems that require intimate knowledge of the product control software in order to ensure that the system can operate properly during assessment and/or enforcement testing. Further, DOE believes that unlike the unitary market, a representative from the VRF manufacturer's company typically provides on-site expertise when product VRF system is being installed in a given commercial building in order to help ensure proper operation. DOE seeks additional comment from interested parties regarding its proposal to allow limited manufacturer involvement in the testing of VRF systems. This is identified as issue 4 in section V.B, ''Issues on Which DOE Seeks Comment.''

9. Correction Factors for VRF Refrigerant Line Lengths

The VRF OM provides correction factors for the cooling capacity of the VRF system in the event that the refrigerant line length used in the test set-up exceeds the length specified in AHRI 1230–2010. The VRF OM provides that if the test facility does not set up the test using the minimum required lengths, the test facility will apply a correction factor to the cooling capacity when establishing the certified ratings to correct for the lost capacity due to a longer-than-required refrigerant line. The correction factor makes test results more comparable across different laboratories and testing set-ups.

DOE is proposing to adopt correction factors as part of the DOE test procedures for commercial VRF systems to a limited extent. DOE proposes to limit the use of the correction to instances in which the physical constraints of the laboratory prevent it from setting up a given basic model for test in accordance with the piping lengths specified in Table 3 of AHRI 1230–2007, thereby making it a matter of necessity. In all other circumstances, DOE expects laboratories to use proper refrigerant line lengths as a matter of course.

Table III.2 shows the refrigerant line length correction factors DOE proposes to adopt, which are equivalent to those found in AHRI's VRF OM. DOE believes that the correction factors would allow manufacturers to produce test results that are a better representation of the average energy efficiency for this equipment and are more comparable to results of testing across test facilities.

TABLE III.2—REFRIGERANT LINE LENGTH CORRECTION FACTORS

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction, %
0> X ≤20	0> Y ≤6.1	1
20> X ≤40	6.1> Y ≤12.2	2
40> X ≤60	12.2> Y ≤18.3	3
60> X ≤80	18.3> Y ≤24.4	4
80> X ≤100	24.4> Y ≤30.5	5
100> X ≤120	30.5> Y ≤36.6	6

DOE is seeking comment on its proposal to incorporate into its test procedures the refrigerant line length correction factors. This is identified as issue 5 in section V.B, ''Issues on Which DOE Seeks Comment.''

10. Corrections to the January 2012 Notice of Proposed Rulemaking

In the January 2012 NOPR, DOE inadvertently referenced incorrect titles for certain industry test procedure standards by improperly identifying the year of the standard. Specifically, DOE referenced ''ANSI Z21.10.3–2006'' at certain places in the January 2012 NOPR, but intended to reference ''ANSI Z21.10.3–2004,'' which is the latest version of the standard referenced in ASHRAE Standard 90.1–2010. Additionally, DOE referenced ''AHRI 340/360–2004'' in some places in the January 2012 NOPR, but intended to reference ''AHRI 340/360–2007,'' which

is the latest version of the standard referenced in ASHRAE Standard 90.1–2010. DOE is clarifying in this SNOPR that it proposes to adopt ANSI Z21.10.3–2004 for commercial water heaters and AHRI 340/360–2007 for large and very large commercial package air conditioners and heat pumps.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 17, 2012 NOPR remain unchanged for this SNOPR. 77 FR 2356, 2419–22. The additional changes proposed in this SNOPR (a refined definition of ''computer room air conditioner'' and updates to the DOE test procedures based on information found in industry operations manuals) would not be expected to increase testing burden beyond what is specified in the January 17, 2012 NOPR.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this SNOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The www.regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a compact disc (CD), if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comment on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The proposed definition of ''computer room air conditioner.''

2. The clarifications proposed to 10 CFR 431.97(a) regarding commercial package air-conditioning and heating equipment.

3. Whether a longer break-in period is necessary for VRF systems, small air conditioners and heat pumps, and SPVUs, and, if so, why these equipment require a longer break-in period.

4. The proposal to allow limited manufacturer involvement in the testing of VRF systems.

5. The proposal to incorporate applicable industry refrigerant line length correction factors into the DOE test procedure.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's supplemental notice of proposed rulemaking.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 19, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.92 is amended by adding the definition ''Computer room air conditioner'' in alphabetical order to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Computer room air conditioner. (1) Means a basic model of commercial package air-conditioning and heating equipment that is:

(i) Used in computer rooms, data processing rooms, or other purpose-specific cooling applications;

(ii) Rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96; and

(iii) Not a covered, consumer product under 42 U.S.C. 6291(1)–(2) and 6292.

(2) A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function.

* * * * *

3. Revise § 431.96 to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

(a) *Scope.* This section contains test procedures for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow systems, and single package vertical air conditioners and single package vertical heat pumps.

(b) *Testing and calculations.* Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in the rightmost column of Table 1 of this section along with any additional testing provisions set forth in paragraphs (c), (d), and (e) of this section, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. Note, the omitted sections of the test procedures listed in the rightmost column of Table 1 of this section shall not be used.

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures[1] in
Small Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI Standard 210/240–2008 (omit section 6.5).
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER and COP	AHRI Standard 340/360–2007 (omit section 6.3).
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI Standard 210/240–2008 (omit section 6.5).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI Standard 340/360–2007 (omit section 6.3).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).
Large Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER and COP	AHRI Standard 340/360–2007 (omit section 6.3).
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI Standard 340/360–2007 (omit section 6.3).
Very Large Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI Standard 340/360–2007 (omit section 6.3).
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI Standard 340/360–2007 (omit section 6.3).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI Standard 310/380–2004 (omit section 5.6).

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures[1] in
Computer Room Air Conditioners.	AC	<760,000 Btu/h	SCOP	ASHRAE Standard 127–2007 (omit section 5.11).
Variable Refrigerant Flow Multi-split Systems.	AC and HP	<760,000 Btu/h	EER and COP	AHRI Standard 1230–2010 (omit sections 5.1.2 and 6.6).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI Standard 390–2003 (omit section 6.4).

[1] Incorporated by reference, see § 431.95.

(c) *Optional break-in period for tests conducted using AHRI 210/240–2008, AHRI 340/360–2007, AHRI 1230–2010, and AHRI 390–2003.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 16 hours, to operate the equipment under test prior to conducting the test method specified by AHRI 210/240–2008, AHRI 340/360–2007, AHRI 1230–2010, or AHRI 390–2003. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

(d) *Refrigerant line length corrections for tests conducted using AHRI 1230–2010.* For test setups where it is physically impossible for the laboratory to use the required line length listed in Table 3 of the AHRI 1230–2010 Standard, then the actual refrigerant line length used by the laboratory may exceed the required length and the following correction factors are applied:

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction, %
0> X ≤20	0 > Y ≤ 6.1	1
20 > X ≤40	6.1> Y ≤12.2	2
40 > X ≤60	12.2> Y ≤18.3	3
60 > X ≤80	18.3> Y ≤24.4	4
80 > X ≤100	24.4> Y ≤30.5	5
100 > X ≤120	30.5> Y ≤36.6	6

(e) *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Paragraphs (e)(1) through (e)(3) of this section provide specifications for addressing key information typically found in the installation and operation manuals.

(1) If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual in which case the specified rating value shall be used.

(2) The air flow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated air flow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton shall be used.

(3) For VRF systems, the test set-up and the fixed compressor speeds (i.e., the maximum, minimum, and any intermediate speeds used for testing) should be recorded and maintained as part of the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

(f) *Manufacturer involvement in assessment or enforcement testing for variable refrigerant flow systems.* A manufacturer's representative will be allowed to witness assessment and/or enforcement testing for VRF systems. The manufacturer's representative will be allowed to inspect and discuss set-up only with a DOE representative and adjust the compressor speed during testing in the presence of a DOE representative. Only previously documented specifications for set-up as specified under paragraphs (d) and (e) of this section will be used.

4. In § 431.97, redesignate paragraphs (a), (b), (c), (d), and (e) as proposed January 17, 2012, at 77 FR 2427, as paragraphs (b), (c), (d), (e), and (f) respectively and add a new paragraph (a) to read as follows:

§ 431.97 Energy efficiency standards and their effective dates.

(a) All basic models of commercial package air-conditioning and heating equipment must be tested for performance using the applicable DOE test procedure in § 431.96, be compliant with the applicable standards set forth in paragraphs (b) through (f) of this section, and be certified to the Department under 10 CFR part 429.

* * * * *

[FR Doc. 2012–7022 Filed 3–20–12; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0503; Airspace Docket No. 11–ASO–19]

Proposed Amendment of Class E Airspace; Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Orlando, FL, as new Standard Instrument Approach Procedures have been developed at Orlando Executive Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before May 7, 2012. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0503; Airspace Docket No. 11–ASO–19, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0503; Airspace Docket No. 11–ASO–19) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0503; Airspace Docket No. 11–ASO–19.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Orlando Executive Airport, Orlando, FL, and for continued safety and management of IFR operations at the airport.

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

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Orlando Executive Airport, Orlando, FL.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASO FL E5 Orlando, FL [Amend]

Orlando Executive Airport, FL
(Lat.28 °32′44″ N., long. 81°19′58″ W.)
Orlando VORTAC
(Lat. 28°32′34″ N., long. 81°20′06″ W.)
Orlando International Airport
(Lat. 28°25′44″ N., long. 81°18′57″ W.)
Kissimmee Municipal Airport
(Lat. 28°17′24″ N., long. 81°26′14″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Orlando Executive Airport and within 3.1-miles each side of Orlando VORTAC 067° radial, extending from the 7-mile radius to 9.5-miles northeast of the VORTAC and within a 7-mile radius of Orlando International Airport and within 3 miles each side of Orlando VORTAC 176° radial extending from the 7-mile radius to 19 miles south of the VORTAC, and within a 7-mile radius of Kissimmee Municipal Airport.

Issued in College Park, Georgia, on March 14, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–6846 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2012–C–0224]

E. & J. Gallo Winery; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E. & J. Gallo Winery has filed a petition proposing that the color additive regulations be amended to provide for the expanded safe use of mica-based pearlescent pigments as color additives in certain distilled spirits.

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1272.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 2C0294) has been filed by E. & J. Gallo Winery, c/o Keller and Heckman LLP, One Embarcadero Center, Suite 2110, San Francisco, CA 94111. The petition proposes to amend the color additive regulations in 21 CFR 73.350 to provide for the safe use of mica-based pearlescent pigments prepared from titanium dioxide and mica as color additives in distilled spirits containing not less than 18% and not more than 23% alcohol by volume but not including distilled spirits mixtures containing more that 5% wine on a proof gallon basis.

The Agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 13, 2012.

Francis Lin,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–6854 Filed 3–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 114, 116, 118

[Docket No. USCG–2008–1188]

RIN 1625–AB36

General Bridge Regulation; Amendment

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its rulemaking concerning amendments to the general bridge regulations. The rulemaking was initiated to clarify the statutory responsibilities of bridge owners to remove their bridges from navigable waterways when they are no longer being used for land transportation functions. The Coast Guard will initiate a new rulemaking on this matter when an appropriate methodology, which might include an investigation and meetings, to be used in determining whether an unused bridge is an unreasonable obstruction to navigation is developed.

DATES: The proposed rule is withdrawn on March 22, 2012.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2008–1188 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Chris Jaufmann, Bridge Program, U.S. Coast Guard, telephone 202–372–1511, email *Josef.C.Jaufmann@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

There were no documents published in the **Federal Register** for this rulemaking, but this rulemaking was announced in the Unified Agenda of Regulatory and Deregulatory Actions beginning in fall agenda 2009. The Coast Guard does not currently have regulations describing the processes of requiring alteration or removal of unused bridges. This rulemaking would have proposed making amendments to the general bridge regulations to articulate the responsibility of the bridge owner to alter or remove unused bridges, and to describe the Coast Guard processes to require alteration or removal of those bridges.

Withdrawal

The Coast Guard is withdrawing this rulemaking in order to ascertain the appropriate due process, which might include an investigation and meetings, to be used in determining whether an

unused bridge is an unreasonable obstruction to navigation. The Coast Guard will initiate a new rulemaking when an appropriate methodology is developed.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525; Department of Homeland Security Delegation No. 0170.1.

Dated: March 9, 2012.

Dana A. Goward,

Director, Maritime Transportation Systems, United States Coast Guard.

[FR Doc. 2012–6861 Filed 3–21–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0883, FRL- 9650–4]

Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the Alaska SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA is proposing to approve revisions submitted by Alaska to update the SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, federal Prevention of Significant Deterioration (PSD) program changes to regulate NOx as a precursor to ozone, and provisions to satisfy CAA section 128 conflict of interest disclosure requirements.

DATES: Comments must be received on or before April 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0883, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0883. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

Table of Contents

I. What action is EPA proposing?
II. What is the background for the action that EPA is proposing?
III. What infrastructure elements are required under CAA sections 110(a)(1) and (2)?
IV. What is the scope of action on infrastructure submittals?
V. What is EPA's analysis of Alaska's submittal?
VI. Scope of Proposed Action
VII. Proposed Action
VIII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the Alaska SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure'' elements of section 110(a)(2). The Alaska Department of Environmental Conservation (ADEC) submitted a SIP to EPA on March 2, 2012, certifying that Alaska's SIP meets the infrastructure obligations for the 1997 ozone NAAQS, 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 ozone NAAQS, and 2008 lead NAAQS. The submittal included an attachment analyzing Alaska's SIP as it relates to each section of the infrastructure requirements. The state has requested parallel processing on the March 2, 2012 submittal. Under this procedure, the state submits the SIP revision to EPA before final adoption by

the state. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes its notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is completing its rulemaking action. ADEC provided a schedule to EPA for finalizing the March 2, 2012 SIP submittal, including public review, state adoption, and submittal of the final SIP package to EPA. If changes are made to the SIP submittal after this proposal, such changes will be described in EPA's final rulemaking action and, if such changes are significant, EPA may re-propose the action and provide an additional public comment period.

At this time, EPA is acting on the infrastructure SIP submittal for the 110(a)(2) required elements as they relate to the 1997 8-hour ozone NAAQS. This action does not address infrastructure requirements with respect to the 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 ozone NAAQS, and 2008 lead NAAQS which EPA intends to act on at a later time. This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which were previously approved by EPA on October 15, 2008 (73 FR 60955).

EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. On April 9, 2010 ADEC submitted a SIP revision to EPA which includes, among other things, revisions to Alaska Administrative Code Chapter 50 ''Air Quality Control'' to include recent changes to the NAAQS for $PM_{2.5}$, ozone, and lead; federal reference and interpretation methods for monitoring and measuring $PM_{2.5}$, ozone and lead in ambient air; and definitions for $PM_{2.5}$ and ozone. EPA is proposing to approve the portions of this SIP revision which update the Alaska SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, and a general definition of ozone. On November 19, 2010, ADEC submitted a SIP revision which, among other things, contains updates to Alaska's PSD program. EPA is proposing to concurrently approve the Alaska PSD program revisions to regulate NO_X as a precursor to ozone. On March 2, 2012, ADEC submitted the above-described infrastructure certification, in addition to state conflict of interest and financial disclosure regulations for purposes of meeting the requirements of CAA 128 and rule changes to meet federal requirements related to nitrogen dioxide, fine particulate matter and lead. In this action, EPA is proposing to approve the Alaska state conflict of interest and financial disclosure regulations as meeting the requirements of CAA section 128. EPA will act on the remainder of these SIP revisions in future actions.

II. What is the background for the action that EPA is proposing?

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standard created uncertainty about how to proceed, and many states did not provide the required infrastructure SIP submissions for the newly promulgated standard.

To help states meet this statutory requirement for the 1997 ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[1] This guidance provides that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's federally-approved SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

III. What infrastructure elements are required under CAA sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA's 2007 guidance clarified that two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007 (2007 Guidance).

nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or 110(a)(2)(I).

This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which was approved by EPA on October 15, 2008 (73 FR 60955). Furthermore, EPA interprets the section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

IV. What is the scope of action on infrastructure submittals?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[2] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP for the 1997 8-hour ozone NAAQS submittal from Alaska.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the 1997 8-hour ozone infrastructure SIP for Alaska.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP

[2] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[3] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[4]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[5] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[6] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[7]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

EPA's 2007 Guidance provided recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[10] For the

[3] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[4] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[5] See, e.g., *Id.,* 70 FR 25,162, at 63–65 (May 12, 2005)(explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[7] For example, implementation of the 1997 PM*2.5* NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[8] *Id.,* at page 2.

[9] *Id.,* at attachment A, page 1.

[10] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[11] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the 1997 8-hour ozone infrastructure SIP for Alaska.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[14]

V. What is EPA's analysis of Alaska's submittal?

110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. EPA notes that the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of Section 172, not the timing requirement of Section 110(a)(1).

Alaska's submittal: Alaska's SIP submittal cites an overview of the Alaska environmental and air quality laws found at AS 46.03 and AS 46.14 and regulations found at AAC Title 18 Environmental Conservation, Chapter

[11] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[13] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21,2010)(proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011)(final disapproval of such provisions).

50 Air Quality Control. The regulations include statewide ambient air quality standards, major and minor permits, transportation conformity and fees, among others. A detailed discussion of the relevant laws and regulations can be found in the technical support document (TSD) in the docket for this action.

EPA analysis: Alaska's SIP meets the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS. Furthermore, Alaska has no areas designated nonattainment for the 1997 8-hour ozone NAAQS. As a result, Alaska primarily regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs.

The current federally-approved Alaska ambient air quality standards rule at 18 AAC 50.010 contains the previously promulgated one-hour ozone standard, but not the 1997 ozone standard at an 8-hour averaging period. Alaska submitted a SIP revision to EPA on April 9, 2010, which includes a number of updates to incorporate recent federal ozone regulatory changes. The SIP revision updates Alaska's ambient air quality standards at 18 AAC 50.010 to include the 2008 ozone standard of 0.075 ppm at an 8-hour averaging period. This revision inherently satisfies the requirements for the 1997 8-hour ozone NAAQS because the 2008 8-hour ozone NAAQS of 0.075 ppm is more stringent than the 1997 8-hour ozone NAAQS of 0.080 ppm. The SIP revision also adds a basic definition of ozone at 18 AAC 50.990(129). In addition, the April 9, 2010, SIP revision revises the lead-in language of 18 AAC 50.010 to reference analytical methods adopted by reference at 18 AAC 50.035. The SIP revision then incorporates by reference these analytical methods (40 CFR part 50, appendix P: Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone) at 18 AAC 50.035(b)(1) and adds a reference to 40 CFR part 50 appendix P at 18 AAC 50.215(a)(2). EPA is proposing to approve these portions of the April 9, 2010, SIP revision in order to update Alaska's SIP to reflect the most recent changes to the ozone NAAQS and related analytical methods. EPA is also proposing to concurrently approve Alaska's SIP as meeting the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the Clean Air Act and existing EPA guidance [15] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the Clean Air Act and existing EPA guidance (52 FR 45109), November 24, 1987, and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the Clean Air Act and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Alaska's submittal: Alaska's SIP submittal references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations relevant to the ozone NAAQS. The submittal also describes Memoranda of Understanding between ADEC and the Municipality of Anchorage (MOA) and Fairbanks North Star Borough (FNSB) to operate air quality control programs in their respective jurisdictions. ADEC's Air Non-Point Mobile Source Program and Air Monitoring & Quality Assurance Program work with MOA and FNSB to prepare Alaska's annual ambient air monitoring network plan, the most recent of which is the 2011 Alaska Air Monitoring Network Plan at *http://www.dec.state.ak.us/air/am/index.htm.* There are no nonattainment areas for 1997 8-hour ozone standard in Alaska. ADEC has recently implemented monitoring for ozone in the Anchorage area, as outlined in the above-referenced monitoring network plan.

Alaska's SIP submittal states that Alaska collects and validates State and Local Air Monitoring Stations and Special Purpose Monitoring ambient air quality monitoring data and reports the data to EPA through the Air Quality System (AQS) on a quarterly basis. The submittal notes that ADEC's revised ''Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program'' can be found at *http://www.dec.state.ak.us/air/doc/ADEC_AMQA_QAPP_23FEB10-final.pdf.*

EPA analysis: A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58 was submitted by Alaska to EPA on January 18, 1980 (40 CFR 52.70) and approved by EPA on April 15, 1981. This air quality monitoring plan has been subsequently updated and submitted to EPA. The most recent plan is dated July 1, 2011, and was approved by EPA on October 5, 2011. This plan includes, among other things, the locations for ozone monitoring. The plan is available for public review at *http://www.dec.state.ak.us/air/am/index.htm.*

As discussed above, Alaska submitted a SIP revision to EPA on April 9, 2010, which includes, among other things, the incorporation by reference of 40 CFR part 50, appendix P: Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone. EPA is proposing to approve the incorporation by reference of these analytical methods for ozone. Based on the foregoing, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

Alaska's submittal: Alaska's SIP submittal refers to ADEC's statutory authority to regulate stationary sources via an air permitting program established in AS 46.14 Air Quality Control, Article 01 General Regulations and Classifications and Article 02 Emission Control Permit Program. In addition, Alaska's SIP submittal states that a violation of these prohibitions or any permit condition can result in civil actions, administrative penalties, or

[15] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' Memorandum to EPA Air Division Directors, August 11, 1999.

criminal penalties. In addition, Alaska's SIP submittal refers to regulations pertaining to compliance orders and enforcement proceedings found in 18 AAC Chapter 95 Administrative Enforcement. Please see the TSD in the docket for this action for a detailed description.

EPA analysis: As discussed above, EPA is not evaluating nonattainment related provisions in this action, such as the nonattainment NSR program required by part D of the CAA. In addition, Alaska has no nonattainment areas for the 1997 ozone NAAQS. EPA believes the cited Alaska SIP-approved provisions provide ADEC with the authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or environment. Enforcement cases may be referred to the State Department of Law. Therefore, EPA is proposing to approve the Alaska SIP as meeting the requirements of section 110(a)(2)(C) relating to enforcement for the 1997 8-hour ozone NAAQS.

EPA believes Alaska's PSD program generally meets the requirements for the 1997 8-hour ozone standard, with the exception discussed below. EPA recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). However, in order for Alaska's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must also properly regulate nitrogen oxides as a precursor to ozone. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS, which includes requirements for PSD programs to treat nitrogen oxides as a precursor to ozone (72 FR 71612). The phase 2 implementation rule accordingly updated the regulations at 40 CFR 51.166 and 40 CFR 52.21 to meet these requirements, effective January 30, 2006. This effective date is after the July 1, 2004 date of incorporation by reference of 40 CFR 51.166 and 40 CFR 52.21 by the current federally-approved Alaska SIP. In other words, Alaska's current federally-approved PSD program does not meet the requirements of the phase 2 ozone implementation rule.

On November 19, 2010, Alaska submitted a SIP revision that includes, among other things, updates to the state's incorporate by reference dates of federal PSD regulations. Specifically, the SIP revision updates the Alaska SIP to incorporate by reference revised federal definitions of several terms referenced by the Alaska PSD program including ''major stationary source,'' ''major modification,'' ''significant'' and ''regulated NSR pollutant.'' As a result of this updated incorporation by reference, Alaska's federally-approved PSD program will meet the requirement to regulate NOx as a precursor to ozone. Therefore, EPA is proposing to approve the portion of Alaska's November 19, 2010, SIP revision that updates the incorporation by reference dates for 40 CFR 51.166 and 40 CFR part 52 as revised as of August 2, 2010, at 18 AAC 50.040(h) for purposes of the four definitions listed above. EPA is also proposing to approve the parts of 18 AAC 50.990 which also reference these federal definitions: 18 AAC 50.990(52) ''major stationary source,'' 18 AAC 50.990(53) ''major modification,'' and 18 AAC 50.990(92) ''regulated NSR pollutant.'' As a result, EPA is proposing to approve the Alaska SIP as meeting the requirements of 110(a)(2)(C) as they relate to PSD for the 1997 8-hour ozone standard, conditioned upon the approval of the SIP revisions pertaining to the PSD definitions identified above.

EPA is also proposing to approve Alaska's SIP for the 1997 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements for major sources. EPA most recently approved changes to Alaska's NSR program, including NSR Reform, on August 14, 2007 (72 FR 45378).

Alaska's SIP-approved minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates ozone and its precursors. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources. Based on the above analysis, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

110(a)(2)(D): Interstate Transport

Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. As noted above, this action does not address the requirements of 110(a)(2)(D)(i) for the 8-hour ozone NAAQS, which were approved by EPA on October 15, 2008 (73 FR 60955). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). In general, ADEC incorporates by reference the federal PSD rules at 40 CFR 52.21. In some cases, ADEC adopted provisions of 40 CFR 51.166 rather than the comparable provisions of 40 CFR 52.21 because 40 CFR 51.166 was a better fit for a SIP-approved PSD program. At 18 AAC 50.306(b), Alaska's federally-approved SIP incorporates by reference 40 CFR 51.166(q)(2), with certain modifications, to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by the emissions of sources subject to PSD.

As a result, Alaska's PSD regulations provide for notice consistent with the requirements of the EPA PSD program. The state also has no pending obligations under section 115 or 126(b) of the Act. Therefore, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

Alaska's submittal: Alaska's SIP submittal certifies that ADEC maintains adequate personnel, funding, and authority to implement the SIP. Alaska refers to existing SIP provisions to address this infrastructure element. Please see the TSD in this action for a detailed description. Specifically, Alaska refers to AS 46.14.030 ''State Air Quality Plan'' which provides ADEC the statutory authority to act for the state in any negotiations related to the state air quality control plan developed under the Clean Air Act and provides authority for ADEC to adopt regulations necessary to implement the SIP. 18 AAC 50.030 ''State Air Quality Control Plan'' provides the regulatory authority to implement and enforce the SIP.

With regards to CAA section 128 requirements, Alaska's submittal states that ADEC is submitting existing state regulations for approval into the SIP for purposes of meeting CAA 128. Specifically, Alaska submitted Title 2—Administration; Chapter 50—Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying; Article 1—Public Official Financial Disclosure (2 AAC 50.010—2 AAC 50.200) and Title 9—Law; Chapter 52—Executive Branch Code of Ethics (9 AAC 52.010—9 AAC 52.990). Copies of these regulations are included in the March 2, 2012 SIP revision and are being adopted into the Alaska SIP for purposes of meeting CAA 128, through the parallel process previously described. ADEC states it is submitting these regulations to meet CAA 110(a)(2)(E) and CAA 128 for this CAA Section 110(a)(1) and (2) infrastructure certification and for all future infrastructure certifications.

There are no relevant air quality boards in Alaska, however, the ADEC commissioner, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually by March 15th of each year with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office. Alaska's Public Officials Financial Disclosure Forms and links to Alaska's financial disclosure regulations can be found at the APOC Web site: *http://doe.alaska.gov/apoc/home.html.*

With regard to assurances that the state has responsibility for ensuring adequate implementation of the plan where the state has relied on local or regional government agencies, Alaska states in its submittal that ADEC insures local programs have adequate resources and documents this in the appropriate SIP section. Statutory authority for establishing local air pollution control programs is found at AS 46.14.400 ''Local Air Quality Control Programs.'' In addition, ADEC's submittal states it provides technical assistance and regulatory oversight to the Municipality of Anchorage (MOA), Fairbanks North Star Borough (FNSB) and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the MOA and FNSB that allows them to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the MOA and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the air-shed common to the two jurisdictions. In addition, ADEC indicates the department works closely with local agencies on nonattainment plans.

EPA analysis: The above-listed laws and regulations provide Alaska with adequate authority to carry out SIP obligations with respect to the 1997 8-hour ozone NAAQS. Alaska receives sections 103 and 105 grant funds from EPA and provides state matching funds necessary to carry out Alaska's SIP requirements. Alaska has no state boards responsible for approving air permits or enforcement orders in Alaska. However, the ADEC commissioner, as head of an executive agency that approves permits and enforcement orders, must disclose potential conflicts of interest as required by CAA section 128. In Alaska's March 2, 2012 SIP revision, Alaska submitted conflict of interest disclosure and ethics regulations (2 AAC 50.010–50.200 and 9 AAC 52.010—9 AAC 52.990) for purposes of meeting the infrastructure requirement to comply with CAA section 128. EPA has reviewed these regulations and is proposing to approve the Alaska submittal as meeting the requirements of CAA section 128 and CAA section 110(a)(2)(E)(ii). Finally, Alaska's March 2, 2012 submittal provides assurances of adequate state authority when relying on local agencies to implement certain provisions of the SIP. Therefore EPA is proposing to find that Alaska's SIP meets the requirements of CAA section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

Alaska's submittal: Alaska's SIP submittal asserts that ADEC has general statutory authority to regulate stationary sources via an air permitting program which includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. Alaska's submittal states ADEC has regulatory authority to determine compliance with these statutes via information requests and ambient air quality investigations. Monitoring protocols and test methods for stationary sources have been adopted by reference including the federal reference and interpretation methods for ozone.

Alaska's submittal states the Alaska PSD/NSR program was originally approved on February 16, 1995 (60 FR 8943) and most recently approved on August 14, 2007 (72 FR 45378). Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis. Alaska refers to specific laws and regulations in the federally-approved SIP which are

described in detail in the TSD in the docket for this action.

EPA analysis: The provisions cited by Alaska provide for monitoring, recordkeeping and reporting requirements for sources subject to major source permitting. EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). As noted above, EPA is proposing to concurrently approve portions of a SIP revision submitted to EPA by ADEC on November 19, 2010, which update the Alaska PSD program to regulate NOx as a precursor to ozone. Alaska also requires minor sources subject to permitting under 18 AAC 50 Article 5 to install, use and maintain monitoring equipment, sample emissions according to prescribed methods and procedures, provide source test reports, monitoring data, and emissions data, keep data and make periodic reports to ADEC. Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

110(a)(2)(G): Emergency Episodes

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Alaska's submittal: The Alaska submittal cites air quality laws and regulations which provide authority to adopt air quality regulations to control, prevent, and abate air pollution, including emission control regulations and stationary source monitoring and reporting requirements. Please refer to the TSD in this action for a detailed discussion. The Alaska submittal also cites provisions which provide ADEC with authority to act during air episodes and advisories. The submittal also indicates that three major municipalities in Alaska (Municipality of Anchorage, Fairbanks North Star Borough, and Juneau) also have ordinances, codes, or regulations that enable them to declare emergencies in the case of poor air quality. ADEC personnel remain in close contact with each municipality when an air emergency is declared, assisting with air monitoring and analysis, and implementing safety and control measures, as needed.

EPA analysis: Alaska's statute AS 46.03.820 ''Emergency Powers'' provides for emergency order authority consistent with CAA section 303. As noted in EPA's 2007 Guidance, the significant harm level for the 8-hour ozone NAAQS shall remain unchanged at 0.60 ppm ozone, 2 hour average, as indicated in 40 CFR 51.151. EPA believes that the existing ozone-related provisions of 40 CFR part 51, subpart H remain appropriate. Alaska's SIP-approved regulations at 18 AAC 50.245 are consistent with the requirements of 40 CFR 51.151. Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

Alaska's submittal: Alaska's SIP submittal refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) and AS 46.14.010(a). Alaska's submittal also refers to regulatory authority to implement provisions of the Clean Air Act at 18 AAC 50.010. ADEC states the department strives to establish regulations and update Alaska's SIP in a timely fashion as new NAAQS are promulgated by EPA. Please see the TSD in the docket for this action for a detailed description.

EPA analysis: EPA believes that the provision cited by Alaska provide the state with the requisite authority to update the SIP, and as a matter of practice, Alaska regularly updates the SIP to incorporate changes to the NAAQS and other federal regulatory changes. EPA approved numerous changes to Alaska's SIP on February 5, 2007 (72 FR 5232) which included adoption by reference of updated EPA rules. EPA most recently approved changes to Alaska's SIP on February 9, 2011, to update the state's PSD program to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in section 110(a)(2) not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As discussed earlier, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment NSR or section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation. Section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, Section 110(a)(2)(J) requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Alaska's submittal: Alaska's SIP submittal refers to statutory authority to consult and cooperate with officials of local governments, state and federal agencies, and non-profit groups found at AS 46.030.020(3), (8). Please see the TSD in the docket for this action for a detailed description. Alaska's submittal states that municipalities and local air quality districts seeking approval for a local air quality control program shall enter into a cooperative agreement with ADEC according to AS 46.14.400(d). ADEC can adopt new CAA regulations only after a public hearing as per AS 46.14.010(a). In addition, Alaska's submittal states that public notice and public hearing regulations for SIP submittals and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, Alaska's

submittal also includes reference to the state's PSD/NSR program originally approved on February 16, 1995 (60 FR 8943), and most recently approved on August 14, 2007 (72 FR 45378). The submittal states that Alaska's PSD program implements the 1997 ozone NAAQS and relevant requirements of the phase 2 ozone implementation rule. Alaska submitted its Regional Haze SIP on April 4, 2011, to meet the requirements of 40 CFR 51.308.

EPA analysis: EPA finds that Alaska's SIP contains provisions for consulting with government officials as specified in CAA 121. ADEC routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. Alaska regularly participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the U.S. EPA whose purpose is to understand current and evolving regional air quality issues in the West. EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for consultation with government officials for the 1997 8-hour ozone NAAQS.

ADEC is a partner in EPA's AIRNOW and Enviroflash Air Quality Alert programs. Alaska provides the daily air quality index to the public on their Web site at *https://fortress.wa.gov/ecy/aaqm/Default.htm* and provides air quality advisory information at *https://myalaska.state.ak.us/dec/air/airtoolsweb/Advisories.aspx.* ADEC also provides guidelines on how to minimize air quality impacts from open burning and how residents can protect themselves from the health effects of wildfires. EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for public notification for the 1997 8-hour ozone NAAQS.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, EPA has evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting. EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). EPA also approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). As described above, EPA is proposing in this action to approve portions of a SIP revision submitted by ADEC on November 19, 2010, which updates Alaska's federally-approved SIP to regulate NO_X as a precursor to ozone. Alaska has no nonattainment areas for the 1997 8-hour ozone standard. EPA is also proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for PSD for the 1997 8-hour ozone NAAQS.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation triggered under section 110(a)(2)(J) when a new NAAQS becomes effective. As a result of the above analysis, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

Section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Alaska's submittal: Alaska's SIP submittal states that air quality modeling is conducted under 18 AAC 50.215(b), ambient air quality analysis methods. Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040(f). This regulation allows some provisions to exclude concentrations attributable to temporary construction activity for a new or modified source, or to new sources outside the United States. Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020.

EPA analysis: EPA previously approved Alaska's regulations on air quality modeling into the SIP. We most recently approved 18 AAC 50.215 ''Ambient Air Quality Analysis Methods'' (except (a)(3)) and 18 AAC 50.040(f) which incorporates by reference EPA regulations at 40 CFR part 51, appendix W (Guidelines on Air Quality Models) revised as of July 1, 2004, on September 13, 2007 (72 FR 45378). While Alaska has no nonattainment areas for the 1997 ozone standard, Alaska has submitted modeling data to EPA related to other pollutants. For example, Alaska submitted the Fairbanks Carbon Monoxide Maintenance Plan to EPA on June 21, 2004, supported by air quality modeling. The maintenance plan and supporting modeling was approved by EPA as a SIP revision on July 27, 2004 (69 FR 44605). Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

110(a)(2)(L): Permitting Fees

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the state's title V operating permit program.

Alaska's submittal: Alaska's SIP submittal states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 and AS 46.14.250. The permit fees for Title V stationary sources are assessed and collected by the Air Permits Program according to 18 AAC Article 4. The Air Permits Program is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410). The submittal states that ADEC's most recent emission fee evaluation report was completed in October 2010 and that the next emission fee review is scheduled for 2014.

EPA analysis: EPA fully approved Alaska's title V program on July 26, 2001 (66 FR 38940) with an effective data of September 24, 2001. EPA regularly reviews ADEC's title V fee program to determine if the fee structure is adequate to pay for the program and assure the funding is only going toward title V implementation. While Alaska's operating permit program is not formally approved into the state's SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Alaska's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR

70.9(b)(2)(i). Accordingly, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(L) for the 1997 8-hour ozone NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Alaska's submittal: Alaska's SIP submittal cities AS 46.03.020 ''Powers of the Department'' which provides authority to ADEC to consult with and cooperate with ''officials and representatives of any nonprofit corporation or organization in the state'' and ''persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state.'' This section also provides authority to ADEC to ''advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter.'' Please see the TSD in the docket for this action for a detailed description.

EPA analysis: AS 46.03.020 provides authority for local and regional authorities to participate and consult in the SIP development process. In addition, AS 46.14.400(d) provides authority for local air quality control programs and requires cooperative agreements between ADEC and local air quality control programs that specify the respective duties, funding, enforcement responsibilities, and procedures. Therefore EPA proposes to find that Alaska's SIP meets the requirements of CAA Section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

VI. Scope of Proposed Action

The SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. EPA will continue to implement the CAA in Indian Country in Alaska because ADEC has not adequately demonstrated authority over sources and activities located within the exterior boundaries of the Annette Island Reserve and other areas of Indian Country in Alaska.

VII. Proposed Action

EPA is proposing to approve the SIP submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Alaska for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA is proposing to approve revisions submitted by the state to revise the Alaska SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, federal Prevention of Significant Deterioration (PSD) program changes to regulate NO_X as a precursor to ozone, and regulations to meet CAA section 128. This action is being taken under section 110 and part C of the CAA.

VIII. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 9, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–6923 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R02–OAR–2012–0032, FRL -9651–4]

Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution, submitted to EPA by the Puerto Rico Environmental Quality Board (PREQB) on July 13, 2011. This action proposes to approve revisions to Rules 102, 111, 115, 116, 609 and Appendix A. Generally the revisions to the regulations involve administrative

changes which improve the clarity of the rules contained in the Commonwealth's Implementation Plan and Operating Permits Program. They do not change the emission limitations nor add significant new requirements. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 23, 2012.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Region 2 Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: January 30, 2012.

Judith A. Enck,

Regional Administrator Region 2.

[FR Doc. 2012–6919 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–R06–OPPT–2011–0989; FRL–9649–6]

Lead Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Arkansas's Authorization Application, Notice of Self-Certification Program Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of program authorization; request for comments.

SUMMARY: On July 8, 2011, the State of Arkansas submitted an application for EPA approval for the Arkansas Department of Health (ADH) to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Previously Arkansas Department of Environmental Quality (ADEQ) was approved to administer this program in Arkansas, but the Arkansas Legislature revoked the State's prior statute establishing the Arkansas lead-based paint program and passed a new statute establishing a State lead-based paint program and changing the implementing state agency from ADEQ to ADH. By this action, we are withdrawing our prior authorization of Arkansas with ADEQ as the implementing agency and authorizing Arkansas for the lead-based paint program pursuant to the Arkansas July 8, 2011, request with the ADH as the implementing state agency. This document announces the receipt of Arkansas's rules established pursuant to its new 2011 statutory authority, and provides a 45-day public comment period and an opportunity to request a public hearing on the application for the ADH's program and on the withdrawal and termination of the prior program administered in Arkansas by ADEQ. Arkansas has provided a certification that their program for implementation by ADH meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program submitted by Arkansas on behalf of the ADH is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, the EPA Administrator will disapprove the program, at which time a document will be issued in the **Federal Register** and the Federal program will be established.

DATES: Public comments on the authorization application must be submitted on or before May 7, 2012. Public hearing requests must be submitted on or before April 6, 2012.

If a public hearing is requested and granted, the hearing will be held on April 24, 2012, 1:30 p.m., at the Arkansas Department of Health, Center for Public Health Practice, 4815 West Markham St., Little Rock, Arkansas. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Cindy Parker (name, telephone number, and address are provided in the **FOR FURTHER INFORMATION CONTACT** section of this document) before the April 24, 2012, public hearing date.

Comments, identified by Docket Control Number EPA–R06–OPPT–2011–0989, must be received on or before May 7, 2012. In addition, a public hearing request must be submitted on or before April 6, 2012.

ADDRESSES: You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is important that you identify Docket Identification Number EPA–R06–OPPT–2011–0989 in the subject line on the first page of your response. Submit your comments by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *By mail:* Submit your comments and hearing requests to: Cindy Parker, Toxics Section, 6PD–T, US EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733.

3. *By person or courier:* Deliver your comments and hearing requests to: Toxics Section, Multimedia Planning and Permitting Division, US Environmental Protection Agency, Region 6, 1445 Ross Avenue, Ste 700, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

4. *By fax:* 214–665–6655.

5. *By email:* You may submit your comments and hearing requests electronically by email to: *parker.cindy@epa.gov,* or mail your computer disk to the address identified above. Do not submit any information electronically that you consider Confidential Business Information (CBI).

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

Instructions: Direct your comments to Docket ID Number EPA–R06–OPPT–2011–0989. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy.

Do not submit this information to EPA through regulations.gov or email. Clearly mark on each page 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 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 as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Cindy Parker, Lead-Based Paint Program, Toxics Section, United States Environmental Protection Agency Region 6, 1445 Ross Avenue, Ste 1200, Dallas, Texas 75202. The telephone number where Ms. Parker can be reached is: (214) 665–7291. Ms. Parker can be contacted via electronic mail at *parker.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background
III. State Program Description Summaries
IV. Federal Overfiling
V. Withdrawal of Authorization

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities or if you operate a training program for individuals who perform any of these activities. ''Target housing'' is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, the combined annual visits last at least 60 hours.

Potentially-affected entities can include, but are not limited to:

- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**

B. How can I get additional information, including copies of this document or other related documents?

1. *Electronically:* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/* or from *http://www.regulations.gov/*. You can also go directly to the **Federal Register** listings at *http://www.gpoaccess.gov/fr/*.

2. *In person:* The State submittal is also available for public inspection during official business hours, by appointment, at the Arkansas Department of Health, Center for Public Health Practice, Applied Epidemiology Branch, Environmental Epidemiology Section, 4815 West Markham St., Little Rock, Arkansas. You may also read this document, and certain other related documents, by visiting the United States Environmental Protection Agency, Region 6 Office, 1445 Ross Avenue, Ste 700, Dallas, Texas 75202–2733. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Also, EPA has established an official record for this action under Docket Control Number EPA–R06–OPPT–2011–0989. The official record consists of the documents specifically referenced in this action, this notice, the State of Arkansas program authorization applications, any public comments received during an applicable comment

period, and other information related to this action.

C. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you use.
3. Provide copies of any technical information and/or data you use that support your views.
4. If you estimate potential burden or costs, explain how you arrive at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, identify the Docket Control Number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What action is the agency taking?

Originally, on March 29, 1999, the State of Arkansas submitted and EPA approved an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). That application and approval stated Arkansas' lead-based paint program was to be administered by the Lead-Based Paint Section of the Arkansas Department of Environmental Quality (ADEQ).

On May 19, 1999, EPA Region 6 published a notice announcing receipt of the State of Arkansas program authorization application. In the application, Arkansas provided a certification that their program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program was deemed authorized as of the date of submission, which was March 29, 1999. (See, 64 FR 27266, May 19, 1999).

In 2011, the Arkansas State Legislature, in the Regular Session of the 88th General Assembly, passed the Lead-Based Paint Hazard Act of 2011 revoking the prior state statutory authority and creating a new State statutory authority for the lead-based program. The only substantive difference between the prior law and the current law is that the Legislature transferred the authority to operate the lead-based paint program from the Arkansas Department of Environmental Quality to the Arkansas Department of Health, effective July 1, 2011. (See, Ark. Code Ann. §§ 20–27–2401—2409). Because the Arkansas Legislature revoked the statutory authority which formed the basis for our May 19, 1999, approval, EPA is considering this revocation of state authority a request by the State to voluntarily return the program to EPA and therefore EPA is withdrawing its May 19, 1999, lead-based paint approval. Since the Arkansas Legislature, by this same statute, established a new authority for a lead-based paint program and designated the Arkansas Department of Health as the new state agency to implement the program we also are approving in this action Arkansas' newly submitted program.

On July 8, 2011, the State of Arkansas submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Arkansas's rules, and provides a 45-day public comment period and an opportunity to request a public hearing on the application. Arkansas has provided a certification that their program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established. The State program became effective with EPA's receipt of Arkansas' certification on July 8, 2011. Submit comments on the authorization application and withdrawal and termination of the May 19, 1999, program on or before May 7, 2012.

Public hearing requests must be submitted on or before April 6, 2012. If a public hearing is requested and granted, the hearing will be held on April 24, 2012, 1:30 p.m., at the Arkansas Department of Health, Center for Public Health Practice, 4815 West Markham St., Little Rock, Arkansas. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Cindy Parker (name, telephone number, and address are provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice) before the April 24, 2012, public hearing date.

B. What is EPA's authority for taking this action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), entitled ''Lead Exposure Reduction.'' Section 402 of TSCA authorizes EPA to promulgate final regulations governing lead-based paint activities. Lead-based paint activities are defined in section 402(b) of TSCA and authorizes EPA to regulate lead-based paint activities in target housing, public buildings built prior to 1978, commercial buildings, bridges and other structures or superstructures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA instituted the Federal program in States or Indian Country without an authorized program, as provided by section 404(h) of TSCA.

States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal

program, and provides adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the authorization.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Arkansas's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. Arkansas has provided a self-certification letter from the Governor and Attorney General that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in Arkansas.

III. State Program Description Summaries

The following program summary is from Arkansas' self-certification application:

Arkansas Department of Health, TSCA Section 402 Lead-Based Paint Training and Certification Program Summary

The Arkansas Department of Health is seeking authorization to administer the Environmental Protection Agency Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities program as provided by Section 402 of the Toxic Substances Control Act and as promulgated into rule in 40 CFR Section 745 and this document serves as notification of this intent to seek authorization.

Currently, the Arkansas Department of Health has statutory authority pursuant to Arkansas Code Annotated §§ 20–27–2401–2409 to administer the Lead-based Paint Hazards Act of 2011. This Act ensures that lead-based paint activities conducted in target housing or child-occupied facilities in the state of Arkansas are performed by trained and certified individuals who are employed by licensed lead-based paint firms. The Act also ensures that the individuals are trained by lead-based paint training providers who teach the curriculum outlined in 40 CFR Section 745 and that the training providers receive review and approval prior to receiving a license and are audited to maintain a standard of instruction. Finally, the Act ensures that certified individuals, as well as licensed firms, perform lead-based paint activities according to work practices approved by 40 CFR Section 745. The Lead-based Paint Hazard Act of 2011 is as protective of human health and the environment as the provisions of 40 CFR Section 745.

The Lead-based Paint Hazard Act of 2011 also provides for the promulgation of the Arkansas Board of Health Rules pertaining to Lead-based Paint Activities. These Rules specifically detail provisions for becoming a lead-based paint training provider. This includes a review of the training and experience of the persons offering the training and the type of facility within which the training will be conducted. The Rules pertaining to Lead-based paint Activities also requires that the training adhere to a course curriculum as specified in 40 CFR Section 745. Finally, the Rules allow for course audit and, if necessary, disciplinary actions that may include suspension; revocation; modification; or injunction; or pursuit of criminal prosecution.

Arkansas Board of Health Rules pertaining to Lead-based Paint Activities also provide that individuals apply for certification and firms apply for licensing prior to conducting lead-based paint activities in the state of Arkansas. The certification process ensures that individuals received training from a training provider accredited by the State of Arkansas, or a training provider approved by the Environmental Protection Agency, or a state or tribal program approved by the Environmental Protection Agency. Further, the certification process ensures that individuals in certain disciplines have proven a certain level of proficiency by achieving a passing score on an examination not conducted in conjunction with the training course test administered by the training provider. These Rules also mandate refresher courses for the lead-based paint professionals.

Lead-based paint firms are also required to submit to an application process in which the firm assures that only trained and certified lead-based paint professionals will be employed to conduct lead-based paint activities in the state of Arkansas. Both firms and individuals are subject to disciplinary action for submitting false information; failing to comply with worker practice standards; employing uncertified individuals; and failing to comply with record-keeping requirements. This disciplinary action may include suspension; revocation; modification; injunction; or pursuit of criminal prosecution.

Arkansas Board of Health Rules pertaining to Lead-based Paint Activities provides standards for work practice of lead-based paint activities in the state of Arkansas and specifically references the standards stated in 40 CFR Section 745. In conjunction with the work practice standards, the Rules mandate all laboratory testing be conducted by a laboratory approved by the Environmental Protection Agency pursuant to the National Lead Laboratory Accreditation Program (NLLAP).

The Rules and the Act are administered by the Applied Epidemiology Branch of the Arkansas Department of Health. The Branch includes personnel who review notifications of lead-based paint abatements; inspect lead-based paint abatements—including reviewing work practices, certifications, and licensures; conduct public outreach; review applications by individuals and firms; audit training providers; and conduct enforcement actions for violations.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a State or Indian tribal renovation, repair and painting program, and/or a lead-based paint pre-renovation education program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures U.S. EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: March 7, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–6933 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–51; RM–11647; DA 12–325]

Radio Broadcasting Services; Westfield, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Connoisseur Media of Erie, LLC, proposing the allotment of Channel 265A at Westfield, New York, as its first local service. The proposed allotment of Channel 265A at Westfield accommodates the hybrid application, proposing the substitution of Channel 285B1 for Channel 265B1 at North East, Pennsylvania, and modification of the license of Station WRKT(FM) to reflect this change. *See* File No. BPH–20110509AAL. Channel 265A can be allotted to Westfield consistent with the minimum distance separation requirements of the Rules with a site restriction 3.4 kilometers (2.1 miles) west of the community. The reference coordinates are 42–18–51 NL and 79–37–04 WL. The allotment of Channel 265A at Westfield is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

DATES: Comments must be filed on or before April 23, 2012, and reply comments on or before May 8, 2012.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Brendan Holland, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue NW., Suite 800, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 12–51, adopted March 1, 2012, and released March 2, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Westfield, Channel 265A.

[FR Doc. 2012–6959 Filed 3–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–53; RM–11658; DA 12–328]

Radio Broadcasting Services; Dermott, AR, and Cleveland, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR Section 73.202(b). The Commission requests comment on a petition filed by Delta Radio Network, LLC, proposing to amend the Table of Allotments by substituting Channel 224A for vacant Channel 289A, at Dermott, Arkansas, and by substituting Channel 226C2 for Channel 225C2 at Cleveland, Mississippi. The proposal is part of a contingently filed ''hybrid'' application and rule making petition. Channel 224A can be allotted at Dermott, Arkansas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 km (2.2 miles) southeast of Dermott, at 33–30–23 North Latitude and 91–24–19 West Longitude. Channel 226C2 can be allotted at Cleveland, Mississippi, in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.4 km (15.8 miles) northwest of Cleveland, at 33–55–25 North Latitude and 90–53–40 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: The deadline for filing comments is April 23, 2012. Reply comments must be filed on or before May 8, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner as follows: Larry J. Fuss, President, Delta Radio Network, LLC, 9408 Grand Gate Street, Las Vegas, NV 89143–1397.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 12–53, adopted February 29, 2012, and released March 2, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room

CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended as follows:

a. Under Arkansas, by removing 289A and adding 224A at Dermott.

b. Under Mississippi, by removing 225C2 and adding 226C2 at Cleveland.

[FR Doc. 2012–6960 Filed 3–21–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 77, No. 56

Thursday, March 22, 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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: Thursday, April 12, 2012, 8:45 a.m. to 1 p.m.

PLACE: African Development Foundation, Conference Room, 1400 I Street NW., Suite 1000, Washington, DC 20005.

DATE: Thursday, April 12, 2012.

STATUS:

1. Open session, Thursday, April 12, 2012, *8:45 a.m. to 11:45 a.m.;* and
2. Closed session, Thursday, April 12, 2012, *12 p.m. to 1 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Sarah Conway at (202) 233–8811 or *sconway@usadf.gov* of your request to attend by 5 p.m. on Thursday, April 5, 2012.

Lloyd O. Pierson,

President & CEO, USADF.

[FR Doc. 2012–6920 Filed 3–21–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

March 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DEPARTMENT OF AGRICULTURE

AGENCY: Farm Service Agency.

ACTION: Notice; Correction.

SUMMARY: The Department of Agriculture published a document in the **Federal Register** of March 19, 2012, concerning a request for comments on the information collection ''Direct Loan Servicing—Special'' OMB control number 0560–0232. The document contained an incorrect OMB control number. The correct OMB control number should be 0560–0233.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–6915 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on April 4, 2012 to review the annual program of work, finalize key items for the fall field meetings, and listen to a presentation on the Deschutes County wetlands inventory. The meeting will also provide updates on the Collaborative Forest Landscape Restoration Act (CFLRA) and the sustainable recreation subcommittee. Members will meet at the Deschutes National Forest Supervisors office (63095 Deschutes Market Road, Bend, Oregon) from 9 a.m. until 1 p.m. All Deschutes Provincial Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Michael Keown, Province Liaison, Sisters Ranger District, Pine Street and Highway 20, Sisters, Oregon 97759, Phone (541) 549–7735.

John Allen,

Deschutes National Forest Supervisor.

[FR Doc. 2012–6770 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–12–0011; NOP–12–05]

National Organic Program Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for a new information collection: National Organic Program (NOP); NOP Import Certificate.

DATES: Comments on this notice must be received by May 21, 2012 to be assured of consideration.

ADDRESSES: Interested parties are invited to submit written comments concerning this notice. Comments may be sent to Meg Kuhn, Agricultural Marketing Specialist, National Organic Program, AMS/USDA, 1400

Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268, or by Internet: *http://www.regulations.gov.* Written comments responding to this notice should be identified with the document number AMS–NOP–12–0011; NOP–12–05. It is USDA's intention to have all comments concerning this notice, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov Internet site (*http://www.regulations.gov*). Comments submitted in response to this notice will also be available for viewing in person at USDA/AMS/National Organic Program, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250 from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m. Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this notice are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Cheri Courtney, Acting Director, Accreditation and International Activities Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program (NOP); NOP Import Certificate.

OMB Number: 0581–NEW.

Expiration Date of Approval: Three years from OMB approval date.

Type of Request: New information collection.

Abstract: The National Organic Program regulates the use of the term ''organic,'' on agricultural products sold in the United States per 7 CFR part 205. On February 15, 2012, the U.S. Department of Agriculture (USDA) and the European Union Commission signed an organic equivalence arrangement.[1] Beginning June 1, 2012, this partnership will allow organic products produced, processed or packaged in the United States (U.S.) or European Union (EU) to be sold as ''organic'' in both countries without additional certification. Leading up to the signing of the arrangement, USDA and EU officials conducted thorough on-site audits to ensure that their programs' regulations, quality control measures, certification requirements, and labeling practices were compatible. USDA determined that EU organic products are produced and handled under an organic certification program that provides safeguards and guidelines that are at least equivalent to the requirements set forth in the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522).

Prior to June 1, 2012, EU organic producers and handlers wishing to export organic products to the U.S. must obtain certification by an NOP-accredited certifying agent. After the EU–U.S. Organic Equivalence Arrangement becomes effective on June 1, 2012, these additional certification requirements are no longer necessary. Instead, the terms of the equivalency arrangement require that EU organic products be accompanied by an NOP Import Certificate.

EU designated certification entities. Each EU Member State has designated a number of public authorities and/or approved private certification agencies to carry out organic certification under the EU organic standards. These EU designated certification entities operate under the supervision of the central competent authorities of the Member States. There are 205 EU designated certification entities operating in the 27 EU Member States.

NOP Import Certificate. An NOP Import Certificate issued by an EU designated certification entity must accompany each shipment of organic product from the EU to the U.S. This certificate documents that the organic products were certified under the EU organic regulations and met the terms of the equivalency arrangement for export to the U.S. The terms of the arrangement include: (1) Agricultural products derived from animals treated with antibiotics cannot be marketed as organic in the U.S.; (2) Aquatic animals (e.g., fish, shellfish) are not included within the scope of the arrangement; and (3) The arrangement is limited to organic products certified under the EU organic system and either grown in the EU, produced in the EU, or where the final processing or packaging occurs in the EU. Under the terms of the EU–U.S. Organic Equivalency Arrangement, we estimate that EU designated certification entities will issue 4,010 NOP Import Certificates annually or 20 NOP Import Certificates per entity.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: EU Designated Certification Entities.

Estimated Number of Respondents: 205 respondents.

Estimated Total Annual Responses: 4,010 responses.

Estimated Number of Responses per Respondent: 20 responses per respondent.

Estimated Total Annual Burden on Respondents: 1,002.5 hours.

Recordkeeping Burden

Estimate of Burden: Public recordkeeping burden is estimated to be an annual total of approximately 0.33 hours per respondent.

Respondents: EU Designated Certification Entities.

Estimated Number of Respondents: 205.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 65.60 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Meg Kuhn, Agricultural Marketing Specialist, National Organic Program, AMS/USDA, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268, or by Internet: *http://www.regulations.gov.* Written comments responding to this notice should be identified with the document number AMS–NOP–12–0011; NOP–12–05. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6522.

Dated: March 16, 2012.

Ruihong Guo,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–6906 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–02–P

[1] Details including the scope, requirements and documentation for the EU–U.S. Organic Equivalency Arrangement are available on the NOP Web site at: *http://www.ams.usda.gov/NOPTradeEuropeanUnion.*

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0004]

Notice of Request for Revision of a Current Information Collection (Petitions for Rulemaking)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision and extension of a currently approved information collection regarding petitions for rulemaking. FSIS is revising this information collection to increase the estimate of total burden hours. The Agency also is requesting an extension of the OMB approval for this information collection, which will expire on July 31, 2012.

DATES: Comments on this notice must be received on or before May 21, 2012.

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

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

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Petitions for Rulemaking.

OMB Control Number: 0583–0136.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled.

The Administrative Procedure Act requires that Federal agencies give interested persons the right to petition for issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)).

FSIS has regulations to govern the submission to the Agency of petitions for rulemaking (9 CFR Part 392). These regulations are designed to encourage the filing of well-supported petitions that contain information that the Agency needs to evaluate a requested rulemaking in a timely manner. FSIS uses the information associated with petitions to assess the merits of a requested action and to determine whether to issue, amend, or repeal regulations in response to a petition.

FSIS is requesting a revision of an approved information collection addressing paperwork requirements regarding the petitions submitted to the Agency. FSIS is increasing its estimate of the number of petitions for rulemaking that will be submitted to the Agency, and hence also the total number of burden hours, based on a review of the number of petitions submitted to FSIS in the last few years.

Estimate of Burden: FSIS estimates that it takes respondents an average of 40 hours per year to complete and to submit a petition.

Respondents: Official establishments, official plants, firms, trade associations, and public interest groups.

Estimated No. of Respondents: 10.

Estimated No. of Annual Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 400 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6065, South Building, Washington, DC 20250; (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is

communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on March 19, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–6900 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0006]

Notice of Request for Extension and Revision of a Currently Approved Information Collection (Consumer Complaint Monitoring System and the Food Safety Mobile Questionnaire)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request an extension and revision of an approved information collection regarding both its Consumer Complaint Monitoring System (CCMS) web portal and its electronic Food Safety Mobile questionnaire. The approval for this information collection is due to expire. FSIS is revising the total annual burden hours from 138 hours to 513 hours due to the increased use of the CCMS web portal. The public may comment on either the entire information collection or on one of its two parts.

DATES: Comments on this notice must be received on or before May 21, 2012.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Docket Clerk, Patriots Plaza 3, 355 E. Street SW., 8–163A, Mailstop 3782, Washington, DC 20250–3700.

All submissions received must include the Agency name and docket number FSIS–2012–0006. Documents referred to in this notice, and all comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

Individuals who do not wish FSIS to post their personal contact information—mailing address, email address, and telephone number— on the Internet may leave this information off of their comments.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065 South Building, Washington, DC 20250–3700; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaint Monitoring System; the Food Safety Mobile Questionnaire.

OMB Control Number: 0583–0133.

Expiration Date: 7/31/2012.

Type of Request: Extension and revision of an approved information collection.

Abstract: FSIS, by delegation (7 CFR 2.18, 2.53), exercises the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS tracks consumer complaints about meat, poultry, and egg products. Consumer complaints are usually filed because the food made the consumer sick, caused an allergic reaction, was not properly labeled (misbranded), or contained a foreign object. FSIS has developed a web portal to allow consumers to electronically file a complaint with the Agency about a meat, poultry, or egg product. FSIS uses this information to look for trends that will enhance the Agency's food safety efforts.

FSIS uses a Food Safety Mobile—or Food Safety Discovery Zone Mobile—a vehicle that travels throughout the continental United States, to educate consumers about the risks associated with the mishandling of food and the steps they can take to reduce their risk of foodborne illness. Organizations can request a visit from the FSIS Food Safety Mobile, although its availability is limited. To facilitate the scheduling of the Food Safety Mobile's visits when it is available, the Agency has put an electronic questionnaire on its web site. The questionnaire solicits information about the person or organization requesting the visit, the timing of the visit, and the type of event at which the Food Safety Mobile is to appear.

FSIS is requesting a revision of an approved information collection addressing paperwork and recordkeeping requirements regarding the Agency's CCMS web portal and regarding its electronic Food Safety Mobile questionnaire. FSIS is planning to increase the total annual burden hours from 138 hours to 513 hours because of the increased use of the CCMS web portal.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .446 hours per response.

Respondents: Consumers and organizations.

Estimated Number of Respondents: The CCMS web portal will have approximately 1,000 respondents. The Food Safety Mobile questionnaire will have approximately 150 respondents.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: The total annual burden time is estimated to be around 500 hours for respondents using CCMS web portal, and 13 hours for respondents using the Food Safety Mobile questionnaire. Thus, the total annual burden time for these two systems is 513 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence

Avenue SW., Room 6065 South Building, Washington, DC 20250–3700; (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

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

Done at Washington, DC, on March 19, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–6902 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0011]

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Food

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on April 23, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 20th Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) of the Codex Alimentarius Commission (Codex), which will be held in San Juan, Puerto Rico from May 7–11, 2012. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 20th Session of the CCRVDF, and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, April 23, 2012, from 1–4 p.m.

ADDRESSES: The public meeting will be held at the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 20th Session of the CCRVDF will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/*.

Kevin Greenlees, U.S. Delegate to the 20th Session of the CCRVDF, invites U.S. interested parties to submit their comments electronically to the following email address: *Kevin.Greenlees@fda.hhs.gov*.

Call-In Number:

If you wish to participate in the public meeting for the 20th Session of the CCRVDF, by conference call, please use the call-in number and participant code listed below to connect to the public meeting on Monday, April 23, 2012, from 1–4 p.m.:

Call-in Number: 1–888–858–2144.

Participant code: 6208658.

FOR FURTHER INFORMATION ABOUT THE 20TH SESSION OF THE CCRVDF CONTACT: Kevin Greenlees, Senior Advisor for Science & Policy, Office of New Animal Drug Evaluation, HFV–100, FDA, Center for Veterinary Medicine, 7520 Standish Place, Rockville, MD 20855, Telephone: (240) 276–8214, Fax: (240) 276–9538, Email: *Kevin.Greenlees@fda.hhs.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Kenneth Lowery, US CODEX Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Telephone: (202) 690–4042, Fax: (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCRVDF is responsible for determining priorities for the consideration of residues of veterinary drugs in food, recommending maximum levels of such substances, developing codes of practice as may be required, and considering methods of sampling and analysis for the determination of veterinary drug residues in foods.

The CCRVDF is hosted by the United States of America.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 20th Session of the CCRVDF will be discussed during the public meeting:

- Matters Referred by Codex and other Codex Committees and Task Forces.
- Matters Arising from FAO/WHO and from the 75th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA).
- Report of the World Organization for Animal Health (OIE) Activities, Including the Harmonization of Technical Requirements for Registration

of Veterinary Medicinal Products (VICH).

- Proposed Amendments to the Terms of Reference of the CCRVDF.
- Draft Maximum Residue Limits (MRLs) for Veterinary Drugs (at Step 7).
- Proposed Draft MRLs for Veterinary Drugs (at Step 3).
- Proposed Amendments to the Risk Analysis Principles Applied by the CCRVDF.
- Proposed Revision of Risk Analysis Principles Applied by the CCRVDF and the Risk Assessment Policy for the Setting of Maximum Limits for Residues of Veterinary Drugs in Foods.
- Proposed Draft Sampling Plans for Residue Control for Aquatic Animal Products and Derived Edible Products of Aquatic Origin.
- Proposed Draft Guidelines on Performance Characteristics for Multi-Residue Methods.
- Draft Priority List of Veterinary Drugs Requiring Evaluation or Re-Evaluation by JECFA.
- Database on Need for MRLs for Developing Countries.
- Risk Management Recommendations for the Veterinary Drugs for Which No Acceptable Daily Intake (ADI) or MRL has been Recommended by JECFA Due to Specific Human Health Concerns.
- Discussion Paper on the Policy for the Establishment of MRLS or Other Limits in Honey.
- Discussion Paper on the Extrapolation of MRLs to Additional Species and Tissues.
- Other Business and Future Work.
- CCRVDF Current Problems and Solutions.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (see **ADDRESSES**).

Public Meeting

At the April 23, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 20th Session of the CCRVDF, Kevin Greenlees (see **ADDRESSES**). Written comments should state that they relate to activities of the 20th Session of the CCRVDF.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on March 19, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–6893 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. FSIS–2012–0010]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice is announcing that the U.S. Department of Agriculture (USDA) is soliciting nominations for membership to fill 16 vacancies on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF).

NACMCF is seeking members with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), toxicology, risk assessment, infectious disease, biostatistics, and other related sciences. NACMCF is seeking applications from persons from academia, industry, consumer groups, State governments, and the Federal Government, as well as all other interested persons with such expertise.

Please note that federally registered lobbyists cannot be considered for USDA advisory committee membership. Members can only serve on one USDA advisory committee at a time. All nominees will undergo a USDA background check.

Members who are not Federal government employees will be appointed to serve as non-compensated special government employees (SGEs). SGEs will be subject to appropriate conflict of interest statutes and standards of ethical conduct.

To receive consideration for serving on the NACMCF, a nominee must submit a resume and USDA Advisory Committee Membership Background Information form AD–755. The resume or curriculum vitae must be limited to five one-sided pages and should include educational background, expertise, and a list of select publications. For submissions received that are more than five one-sided pages in length, only the first five pages will be reviewed. USDA Advisory Committee Membership Background Information form AD–755 is available online at: *http://www.ocio.usda.gov/forms/doc/AD-755.pdf.*

DATES: Nominations including a cover letter to the Secretary, and the nominee's typed resume or curriculum vitae and a completed USDA Advisory Committee Membership Background

Information form AD–755 must be received by April 23, 2012. Self nominations are welcome.

ADDRESSES: Nomination packages including a cover letter to the Secretary accompanied by a resume and AD–755 form can be sent by mail to: Tom Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250, Attn: National Advisory Committee on Microbiological Criteria for Foods.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Thomas-Sharp, Advisory Committee Specialist, by telephone at 202–690–6620 or by email *karen.thomas-sharp@fsis.usda.gov.*

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site (*http://www.regulations.gov*) provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Follow the online instructions at that site for submitting comments.

Mail, including CD–ROMS: Send to Docket Clerk, USDA, FSIS Docket Room, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.

Hand- or courier-delivered items: Deliver to the Docket Clerk, USDA, FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0010. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF and other information about the Committee are available for viewing to the public on the FSIS Web site at: *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp.*

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the Committee take into account the needs of the diverse groups served by the Department.

Given the complexity of issues, the full Committee expects to meet at least once a year by teleconference or in-person, and the meetings will be announced in the **Federal Register**. The subcommittees will meet as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. Subcommittees also may meet through teleconference or by computer-based conferencing (Webinars). Subcommittees may invite technical experts to present information for consideration by the subcommittee. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update, available online at *http://www.fsis.usda.gov/news_&_events/Constituent_Update/index.asp.*

NACMCF holds subcommittee meetings in order to accomplish the work of NACMCF; all subcommittee work is reviewed and approved during a public meeting of the full Committee, as announced in the **Federal Register**. All data and records available to the full Committee are expected to be available to the public when the full Committee reviews and approves the work of the subcommittee.

Advisory Committee members have a two-year term, renewable for two consecutive terms. Members are expected to attend all in-person meetings for the smooth functioning of this advisory committee. However, the Advisory Committee realizes that unexpected events or extenuating circumstances (e.g., a personal or family emergency) may result in a member's inability to attend an in-person meeting and that attendance through teleconferencing may be necessary. Some meetings may be held through teleconferencing and or Webinars exclusively.

Members must be prepared to work outside of scheduled Committee and subcommittee meetings and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel expenses and per diem reimbursement are available.

Regarding Nominees Who Are Selected

All SGE and Federal government employee nominees who are selected must complete the Office of Government Ethics (OGE) 450 Confidential Financial Disclosure Report before rendering any advice or prior to their first meeting. All members will be reviewed for conflict of interest pursuant to 18 U.S.C. 208 in relation to specific NACMCF work charges. Financial disclosure updates will be required annually. Members must report any changes in financial holdings requiring additional disclosure. OGE 450 forms are available on-line at: *http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/OGE-Form-450/.*

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or

delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC, on March 19, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–6895 Filed 3–21–12; 8:45 am]

BILLING CODE 3410–DM–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: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Surfclam and Ocean Quahog Individual Transfer Quota (ITQ) Administration.

OMB Control Number: 0648–0240.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 170.

Average Hours per Response: Application to shuck at sea, 30 minutes; individual transferable quota (ITQ) allocation or cage tag transfer, 5 minutes.

Burden Hours: 33.

Needs and Uses: National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic surfclam and ocean quahog fisheries of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648.70.

The recordkeeping and reporting requirements at § 648.74 and § 648.75 form the basis for this collection of information. NMFS Northeast Region requests information from Atlantic surfclam and ocean quahog ITQ allocation holders in order to process and track requests from the allocation holders to transfer quota allocation to another entity. The region also requests information from Atlantic surfclam and ocean quahog permit holders in order to track and properly account for Atlantic surfclam and ocean quahog harvest that is shucked at sea. Because there is not a standard conversion factor for estimating unshucked product from shucked product, NMFS requires vessels that choose to shuck product at sea to carry on board the vessel a NMFS-approved observer to certify the amount of Atlantic surfclam and ocean quahog harvested. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

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 *OIRA_Submission@omb.eop.gov.*

Dated: March 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6868 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–22–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: U.S. Census Bureau.

Title: Current Population Survey, June Fertility Supplement.

OMB Control Number: 0607–0610.

Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Burden Hours: 500.

Number of Respondents: 30,000.

Average Hours Per Response: 1 minute.

Needs and Uses: The purpose of this request for review is to obtain clearance for the supplemental inquiry concerning fertility to be conducted biennially in conjunction with the June Current Population Survey (CPS).

The 2012 Fertility Supplement will ask fertility questions and questions on marital and cohabitation status of females 15–50 years of age. The new questions on marital and cohabitation status will provide additional information about mothers' living arrangements at the time of the first birth. The June Fertility Supplements, June 2010 and 2008, both asked women about the birth of the last child, which differ from the June 1998 and the June 1995 supplements because they only included fertility items. The 1998 supplement contained fertility and birth expectations items. The 1995 supplement contained fertility and marital history items.

The data collected from this supplement are used primarily by government and private analysts to project future population growth, to analyze childbearing patterns, and to assist policymakers in making decisions that are affected by changes in family size and composition. Past studies have documented profound changes to historical patterns that have occurred in fertility rates, family structures, premarital births, and the timing of the first birth. The data collected from the new questions on marital and cohabitation status will be used by government and private analysts to analyze mother's living situations at the time of the first birth; the data will also fill a need for information that is not available in other Census Bureau surveys.

The CPS characteristics, such as family income, household relationships,

and labor force status, when matched with fertility data, can produce estimates of potential needs families may have for governmental assistance; for example, aid to families with dependent children, childcare, and maternal health care for single-parent households. The fertility data also assist researchers and analysts who explore such important issues as premarital childbearing and postponement of childbirth because of educational or occupational responsibilities and goals. As a result of the rapid changes in the economy, the June Fertility supplement offers analysts with a key indicator of family economic resources, namely, the employment status of women with infant children.

Discontinuance of the Fertility Supplement would interrupt a data series, which is built upon previous surveys first collected in June 1971. Without current fertility data for the most recent female cohorts (age 18–24) would be missing in fertility projections. The statistics and projections from these data are useful for legislators in the public sector and businesses that make policy and resource decisions about childcare, development, and changes in family life.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 19, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–6944 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 22, 2012.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the countervailing duty order on corrosion-resistant carbon steel flat products (CORE) from Korea.[1] On August 1, 2011, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order.[2] In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review on October 3, 2011, for the January 1, 2010, through December 31, 2010, period of review (POR).[3] The preliminary results for this review are currently due no later than May 2, 2012.

Extension of Time Limits for Preliminary Results

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 an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. 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.

Because the Department will require additional time to review and analyze supplemental information concerning new subsidy programs alleged by petitioners, and may issue further supplemental questionnaires, it is not practicable to complete this review by the original deadline (*i.e.,* May 2, 2012). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than August 30, 2012, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 16, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–6942 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 45773 (August 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 76 FR 61076 (October 3, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB104

New England Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold five public hearings to solicit Scoping comments on Draft Amendment 19 to the Northeast Multispecies Fishery Management Plan (FMP).

DATES: The public hearings will be held from April 9 through April 16, 2012. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Council will take comments at public meetings in Lakewood, NJ; Riverhead, NY; Plymouth, MA; Portsmouth, NH and Providence, RI. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments should be sent to Paul Howard, Executive Director, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–3116 or submitted via

email to *comment@nefmc.orgmailto:amendment 15@noaa.gov* with ''Comment on Small Mesh Multispecies Amendment 19'' in the subject line. Requests for copies of the public hearing document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. The public hearing document is also accessible electronically via the Internet at *http://www.nefmc.org/mesh/index.html*.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: Council staff will provide information on the status of Amendment 19 to the Northeast Multispecies FMP. The draft alternatives include annual limits on catch and landings by fishery program and/or stock, in-season and post-season accountability measures including incidental possession limits, year round red hake possession limits, and monitoring and specification setting procedures. Final alternatives will be recommended for approval at the April 24–26 Council meeting. There will be time available for questions and answers.

Written comments on the draft amendment must be received by 12 p.m. EST, Monday, April 16, 2012 and may be mailed to the Council office at the address above, faxed to (978) 465–3116 or emailed to: *comment@nefmc.org* (attention/subject line: Comment on Small Mesh Multispecies Amendment 19).

The dates, times, locations and telephone numbers of the hearings are as follows:

Monday, April 9, 2012 at 5 p.m.—Hilton Garden Inn, 1885 Route 70, Lakewood, NJ 08701; telephone: (732) 262–5232;

Tuesday, April 10, 2012 at 5 p.m.—Hotel Indigo East End, 1830 West Main Street, Route 25, Riverhead, NY 11901; telephone: (631) 369–2200;

Wednesday, April 11, 2012 at 5 p.m.—Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900;

Thursday, April 12, 2012 at 5 p.m.—Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300;

Monday, April 16, 2012 at 5 p.m.—Hotel Providence, 139 Mathewson Street, Providence, RI 02903; telephone: (401) 861–8000.

Special Accommodations

These hearings are physically accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 19, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6898 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB108

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, its Ecosystem and Ocean Planning Committee, and its Research Set-Aside (RSA) Committee will hold public meetings.

DATES: The meetings will be held Tuesday, April 10, 2012 through Thursday, April 12, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Sanderling, 1461 Duck Road, Duck, NC 27949; telephone: (252) 261–4111.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Tuesday, April 10, 2012

1 p.m. until 3 p.m.—The Executive Committee will meet in a closed session.

3 p.m. until 5 p.m.—The Ecosystem and Ocean Planning Committee will meet.

5 p.m. until 6 p.m.—There will be a public listening session.

Wednesday, April 11, 2012

9 a.m. until 11 a.m.—The Executive Committee will meet.

11 a.m. until 12 p.m.—The RSA Committee will meet.

1 p.m.—The Council will convene. Swearing in of the new member will be at 1 p.m.

1 p.m. until 2 p.m.—The Council will discuss Surfclams and Ocean Quahogs.

2 p.m. until 3:30 p.m.—Finalization of Tilefish Management Measures for 2013–15 will be held.

3:30 p.m. until 5 p.m.—An Atlantic sturgeon discussion will be held.

Thursday, April 12, 2012

9 a.m. until 10 a.m.—Approval of Spiny Dogfish alternatives will be held.

10 a.m. until 10:30 a.m.—Framework 5 to Squid, Mackerel, and Butterfish will be discussed.

10:30 a.m. until 11 a.m.—Framework 6 to Squid, Mackerel, and Butterfish will be discussed.

11 a.m. until 1 p.m.—The Council will hold its regular Business Session to approve the February minutes, receive Organizational Reports, the South Atlantic Liaison Report, Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Tuesday, April 10—The Executive Committee will meet in a closed session. The Ecosystem and Ocean Planning Committee will receive a presentation from the New England Fishery Management Council (NEFMC) and the South Atlantic Fishery Management Council (SAFMC) on Deep Sea Coral and discussion of Mid-Atlantic Council action will follow. The public listening session will focus on BOEM (Bureau of Ocean Energy Management—formerly BOEMRE) and wind power.

On Wednesday, April 11—The Executive Committee will discuss an Ecosystem/Ecosystem-Based Fishery Management (EBFM) document, finalize goals and objectives, purpose and need, discuss transition strategies to move EBFM, and Standardized Bycatch Reporting Methodology (SBRM) next steps. The RSA Committee will review a response letter from NOAA General Counsel, discuss integration of the Scientific and Statistical Committee (SSC) into the RSA research prioritization process, and discuss alternatives to improve the RSA program and develop recommendations to the Council. The Council will convene to swear in a new Council member. The Council will discuss

reopening Georges Bank, identify any harvest restrictions, and discuss PSP testing. The Council will finalize and adopt Tilefish Management Measures for 2013–15 by reviewing the SSC and the Tilefish Monitoring Committee's recommendations for 2013–15 harvest levels and management measures. The Council will discuss potential actions to reduce Atlantic sturgeon bycatch in the Mid-Atlantic fisheries.

On Thursday, April 12—The Council will approve alternatives for analysis to Spiny Dogfish Amendment 3. The Council will take action to modify vessel hold certification requirements in Framework 5 to the Squid, Mackerel, and Butterfish FMP (Meeting 2). The Council will take action to revise a provision of Council risk policy on Framework 6 to the Squid, Mackerel, and Butterfish FMP (Meeting 2). The Council will hold its regular Business Session to approve the February 2012 minutes, receive Organizational Reports, the South Atlantic Liaison Report, the Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new 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 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 aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 19, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6905 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB099

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 29 assessment webinars for Highly Migratory Species (HMS) blacktip shark (*Carcharhinus limbatus*).

SUMMARY: The SEDAR 29 assessment of HMS blacktip shark will consist of a workshop and series of webinars. This notice is for webinars associated with the workshop portion of the SEDAR process.

DATES: The SEDAR 29 webinars will be held between April 12th and May 24th, 2012. Please see list below for exact dates and times. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the times established by this notice.

Webinar	Date	Day	Time (central)
1	April 12, 2012	Thursday	10 a.m.–1 p.m.
2	April 26, 2012	Thursday	10 a.m.–1 p.m.
3	May 24, 2012	Thursday	10 a.m.–1 p.m.

ADDRESSES: The meetings will be held via webinar. The webinar is open to the public. Those interested in participating should contact Julie A. Neer at SEDAR (See Contact Information Below) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 29 Assessment webinar series:

Using datasets and initial assessment analysis recommended from the Workshop, Panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Panelists will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

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 10 business days prior to the meeting.

Dated: March 19, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6897 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seat on the Olympic Coast National Marine Sanctuary Advisory Council: Coastal Marine Resources Committees. Applicants must be members of either the Grays Harbor or North Pacific Coast marine resources committees. Applicants are chosen for both primary and alternate positions based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's charter.

DATES: Applications are due by Friday, May 4, 2012.

ADDRESSES: Application kits may be obtained from Norma Klein, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362 *(norma.klein@noaa.gov)*. Completed applications should be sent via mail or email to the same address.

FOR FURTHER INFORMATION CONTACT: Carol Bernthal, Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362, 360.457.6622 x11, *carol.bernthal@noaa.gov* or Liam Antrim, Acting Council Coordinator, 360.457.6622 x16, *liam.antrim@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Olympic Coast National Marine Sanctuary (OCNMS) Advisory Council seats are for a three-year term and have a designated primary member and an alternate. The OCNMS Advisory Council meets bi-monthly in public sessions in communities in and around Olympic Coast National Marine Sanctuary.

The OCNMS Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, six Federal government agencies serve as non-voting, ex officio members. Since its establishment, the advisory council has played a vital role in advising OCNMS and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, council members serve as a communication bridge between constituents and OCNMS staff.

Authority: 16 U.S.C. Sections 1431, et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Daniel J. Basta,

Director Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–6890 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Patent Processing (Updating)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2012.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0031 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, by telephone at (571) 272–7728, or by email to *Raul.Tamayo@uspto.gov* with ''Paperwork'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 to examine an application for patent and, when appropriate, issue a patent. Also, the USPTO is required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code (''eighteen-month publication''). Certain situations may arise which require that additional information be supplied in order for the USPTO to further process the patent or application. The USPTO administers the statutes through various sections of the rules of practice in 37 CFR Part 1.

The information in this collection can be used by the USPTO to continue the processing of the patent or application to ensure that applicants are complying with the patent regulations and to aid in the prosecution of the application.

Modifications to this collection since the previous renewal include: three requests for non-substantive change; separately accounting for two requirements; the deletion of an item from the collection, and adding electronic equivalents for the majority of the paper forms. The USPTO is also planning to move items out of 0651–0031 into two new collections.

The three requests for non-substantive change include one in August of 2010 making two changes to an existing form (PTOL–413A); and a second in November of 2010 adding a form for an item that was currently approved (Petition to Withdraw an Application

from Issue). The third request for non-substantive change involved six items being deleted from this collection in December of 2011 that had been moved into a new ICR, 0651–0059 Certain Patent Petitions Requiring a Fee. These items include Petitions for Extension of Time under 37 CFR 1.136(b)(PTO/SB/23); Petition for Express Abandonment to Avoid Publication under 1.138(c)(PTO/SB/24a); Petition for Request for Documents in a Form Other Than That Provided by 1.19; Petitions under 37 CFR 1.17(g); Petitions under 37 CFR 1.17(h); and Petition to Make Special under Accelerated Examination Program (PTO/SB28).

The two items being separately accounted for in this collection are (i) Rule 1.130, 1.131, and 1.132 Affidavits or Declarations and (ii) Amendments and Responses.

One item is being deleted from the collection, Request for Processing of Replacement Drawings in Any Patent Application Publication. The USPTO phased out these requests over the last several years due to IT upgrades.

Currently, notices of appeal, requests for oral hearing, and pre-appeal brief requests for review are covered under this collection. The USPTO has determined that it would be beneficial to assign these items to their own collection. The USPTO is planning to submit a request to the OMB for a new collection, Matters Related to Patent Appeals, and is planning to ultimately transfer these three notices and requests out of the 0651–0031 inventory and into this new collection upon approval by OMB.

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011 (See Pub. L. 112–29, 125 Stat. 284 (2011)). The USPTO published a notice of proposed rulemaking titled ''Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act'' (RIN 0651–AC66) in the **Federal Register**. In the notice, the USPTO proposed to rewrite 37 CFR 1.501 to reflect the amendment to 35 U.S.C. 301 by section 6(g)(1) of the Leahy-Smith America Invents Act. Proposed 37 CFR 1.501 provides that a submission can include prior art and claim scope statements of the patent owner. In light of the proposed rulemaking, the USPTO submitted a request for a new information collection, Post Patent Public Submissions, and requested that the existing item ''Information Disclosure Citation in a Patent'' (PTO/SB/42) be transferred out of the 0651–0031 Patent Processing (Updating) approved inventory and into this new collection when this new collection is approved by OMB.

II. Method of Collection

In general, the items in this collection can be submitted to the USPTO on paper by mail, facsimile, or hand delivery, or electronically through EFS–Web, the USPTO's Web-based electronic filing system.

III. Data

OMB Number: 0651–0031.

Form Number(s): PTO/SB/08/08a/08b, PTO/SB/17i, PTO/SB/21–22, PTO/SB/24–27, PTO/SB/24B, PTO/SB/30–33, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 4,777,532 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public an average of 1 minute, 48 seconds (0.03 hours) to 10 hours to complete the collections of information described in this submission, depending on the nature of the information. This includes time to gather the necessary information, create the documents, and mail the completed request, depending upon the complexity of the situation. The time estimates shown for the electronic forms are based on the average amount of time needed to complete and electronically file the associated forms.

Estimated Total Annual Respondent Burden Hours: 11,972,777 hours.

Estimated Total Annual Respondent Cost Burden: $3,573,910,186. The USPTO expects that attorneys and paraprofessionals will complete and submit this information. The estimated hourly rate for attorneys is $340 and the paraprofessional rate is $122.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
EFS–Web IDS (Information Disclosure Statements) that do not require the fee set forth in 37 CFR 1.17(p).	2 hours	500,000	1,000,000
Information Disclosure Statements that do not require the fee set forth in 37 CFR 1.17(p)	2 hours	40,000	80,000
EFS–Web IDS (Information Disclosure Statements) that require the fee set forth in 37 CFR 1.17(p).	2 hours	100,000	200,000
Information Disclosure Statements that require the fee set forth in 37 CFR 1.17(p)	2 hours	10,000	20,000
Electronic Transmittal Form	2 hours	1,020,000	2,040,000
Transmittal Form	2 hours	80,000	160,000
Electronic Petition for Extension of Time under 37 CFR 1.136(a)	6 minutes	295,000	29,500
Petition for Extension of Time under 37 CFR 1.136(a)	6 minutes	20,100	2,010
Electronic Express Abandonment under 37 CFR 1.138	12 minutes	6,500	1,300
Express Abandonment under 37 CFR 1.138	12 minutes	500	100
Electronic Disclaimers	12 minutes	40,000	8,000
Disclaimers	12 minutes	5,000	1,000
Electronic Request for Expedited Examination of a Design Application	6 minutes	370	37
Request for Expedited Examination of a Design Application	6 minutes	30	3
Electronic Notice of Appeal	12 minutes	34,900	6,980
Notice of Appeal	12 minutes	2,600	520
Electronic Information Disclosure Citation in a Patent	10 hours	930	9,300
Information Disclosure Citation in a Patent	10 hours	70	700
Electronic Petition for Revival of an Application for Patent Abandoned Unavoidably	8 hours	330	2,640
Petition for Revival of an Application for Patent Abandoned Unavoidably	8 hours	30	240
Electronic Petition for Revival of an Application for Patent Abandoned Unintentionally	1 hour	7,400	7,400
Petition for Revival of an Application for Patent Abandoned Unintentionally	1 hour	600	600
Electronic Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing.	1 hour	230	230

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing.	1 hour	20	20
Electronic Requests to Access, Inspect and Copy	12 minutes	121,000	24,200
Requests to Access, Inspect and Copy	12 minutes	9,000	1,800
Electronic Deposit Account Order Form	12 minutes	90	18
Deposit Account Order Form	12 minutes	10	2
Electronic Certificates of Mailing, Transmission	1 minute, 48 seconds	930,000	27,900
Certificates of Mailing, Transmission	1 minute, 48 seconds	70,000	2,100
Electronic Statement Under 37 CFR 3.73(b)	12 minutes	140,000	28,000
Statement Under 37 CFR 3.73(b)	12 minutes	10,000	2,000
Electronic Non-publication Request	6 minutes	21,500	2,150
Non-publication Request	6 minutes	1,500	150
Electronic Rescission of Previous Non-publication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii)).	6 minutes	1,000	100
Rescission of Previous Non-publication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii)).	6 minutes	100	10
Electronic Filing System (EFS) Copy of Application for Publication	2 hours, 30 minutes	1	3
Copy of File Content Showing Redactions	4 hours	1	4
Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not).	2 hours	20	40
EFS–Web Request for Continued Examination (RCE) Transmittal	12 minutes	150,000	30,000
Request for Continued Examination (RCE) Transmittal	12 minutes	10,000	2,000
Electronic Request for Oral Hearing Before the Board of Patent Appeals and Interferences	12 minutes	1,100	220
Request for Oral Hearing Before the Board of Patent Appeals and Interferences	12 minutes	100	20
Electronic Request for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d).	12 minutes	560	112
Request for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d).	12 minutes	40	8
EFS–Web Request for Voluntary Publication or Republication	12 minutes	650	130
Request for Voluntary Publication or Republication	12 minutes	50	10
Electronic Applicant Initiated Interview Request Form	24 minutes	1,900	760
Applicant Initiated Interview Request Form	24 minutes	100	40
Electronic Processing Fee Under 37 CFR 1.17(i) Transmittal	5 minutes	3,300	264
Processing Fee Under 37 CFR 1.17(i) Transmittal	5 minutes	200	16
Electronic Request to Retrieve Electronic Priority Application(s) Under 37 CFR 1.55(d)	8 minutes	60,000	7,800
Request to Retrieve Electronic Priority Application(s) Under 37 CFR 1.55(d)	8 minutes	5,000	650
Electronic Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h).	6 minutes	19,000	1,900
Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h).	6 minutes	1,000	100
Electronic Petition for Express Abandonment to Obtain a Refund	12 minutes	2,000	400
Petition for Express Abandonment to Obtain a Refund	12 minutes	100	20
Electronic Pre-Appeal Brief Request for Review	5 hours	14,700	73,500
Pre-Appeal Brief Request for Review	5 hours	1,100	5,500
EFS–Web Request for Corrected Filing Receipt	5 minutes	22,000	1,760
Request for Corrected Filing Receipt	5 minutes	2,000	160
Electronic Request for First Action Interview (Pilot Program)	2 hours, 30 minutes	1,500	3,750
Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.105(c)(1) (EFS–Web only).	2 hours	2,300	4,600
Rule 1.130, 1.131, and 1.132 Affidavits or Declarations	10 hours	50,000	500,000
Electronic Amendments and Responses	8 hours	893,000	7,144,000
Amendments and Responses	8 hours	67,000	536,000
Totals		4,777,532	11,972,777

Estimated Total Annual (Non-Hour) Respondent Cost Burden: $357,380,557. This collection has postage costs and filing fees.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. Therefore, the USPTO estimates that up to 386,271 submissions per year may be mailed. The USPTO estimates that the average submission will be mailed in a standard manila envelope with a weight of 3 ounces at a cost of $1.28, resulting in a total postage cost of $494,427 per year for this collection.

There is annual (non-hour) cost burden in the way of filing fees associated with this collection of $356,886,130, as shown in the accompanying table.

Item	Responses (yr) (a)	Filing fee $ (b)	Total non-hour cost burden (a × b) (c)
EFS-Web Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	100,000	$180.00	$18,000,000.00
Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	10,000	180.00	1,800,000.00
Transmittal Forms	1,100,000	None	0.00
One-month extension of time under 37 CFR 1.136(a)	110,000	150.00	16,500,000.00
One-month extension of time under 37 CFR 1.136(a) (small entity)	40,000	75.00	3,000,000.00
Two-month extension of time under 37 CFR 1.136(a)	50,000	560.00	28,000,000.00
Two-month extension of time under 37 CFR 1.136(a) (small entity)	21,000	280.00	5,880,000.00
Three-month extension of time under 37 CFR 1.136(a)	50,000	1,270.00	63,500,000.00
Three-month extension of time under 37 CFR 1.136(a) (small entity)	31,000	635.00	19,685,000.00
Four-month extension of time under 37 CFR 1.136(a)	3,300	1,980.00	6,534,000.00
Four-month extension of time under 37 CFR 1.136(a) (small entity)	2,500	990.00	2,475,000.00
Five-month extension of time under 37 CFR 1.136(a)	3,800	2,690.00	10,222,000.00
Five-month extension of time under 37 CFR 1.136(a) (small entity)	3,500	1,345.00	4,707,500.00
Express abandonment under 37 CFR 1.138	7,000	None	0.00
Statutory Disclaimer	35,500	160.00	5,680,000.00
Statutory Disclaimer (small entity)	9,500	80.00	760,000.00
Request for expedited examination of a design application	400	900.00	360,000.00
Electronic Notice of Appeal	27,900	620.00	17,298,000.00
Electronic Notice of Appeal (small entity)	7,000	310.00	2,170,000.00
Notice of Appeal	2,100	620.00	1,302,000.00
Notice of Appeal (small entity)	500	310.00	155,000.00
Information Disclosure Citations	1,000	None	0.00
Petition to Revive Unavoidably Abandoned Application	120	620.00	74,400.00
Petition to Revive Unavoidably Abandoned Application (small entity)	240	310.00	74,400.00
Petition to Revive Unintentionally Abandoned Application	3,800	1,860.00	7,068,000.00
Petition to Revive Unintentionally Abandoned Application (small entity)	4,200	930.00	3,906,000.00
Petition for revival of an application for patent abandoned for failure to notify the office of a foreign or international filing	200	1,860.00	372,000.00
Petition for revival of an application for patent abandoned for failure to notify the office of a foreign or international filing (small entity)	50	930.00	46,500.00
Requests to Access, Inspect and Copy	130,000	None	0.00
Deposit Account Order Form	100	None	0.00
Certificates of Mailing/Transmission	1,000,000	None	0.00
Statement under 37 CFR 3.73(b)	150,000	None	0.00
Non-publication Request	23,000	None	0.00
Rescission of Previous Non-publication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii))	1,100	None	0.00
EFS Copy of Application for Publication	1	None	0.00
Copy of File Content Showing Redactions	1	130.00	130.00
Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	20	None	0.00
Request for Continued Examination (RCE) Transmittal	131,000	930.00	121,830,000.00
Request for Continued Examination (RCE) Transmittal (small entity)	29,000	465.00	13,485,000.00
Electronic Request for Oral Hearing	900	1,240.00	1,116,000.00
Electronic Request for Oral Hearing (small entity)	200	620.00	124,000.00
Request for Oral Hearing	60	1,240.00	74,400.00
Request for Oral Hearing (small entity)	40	620.00	24,800.00
Processing fee for requests for suspension of action or deferrals of examination under 37 CFR 1.103(b),(c),or(d)	600	130.00	78,000.00
Request for voluntary publication or republication under 37 CFR 1.221(a)	300	430.00	129,000.00
Applicant initiated interview request form	2,000	None	0.00
Processing fee under 37 CFR 1.17(i) transmittal	3,500	130.00	455,000.00
Request to retrieve electronic priority application(s) under 37 CFR 1.55(d)	65,000	None	0.00
Authorization to permit access to application by participating offices under 37 CFR 1.17(h)	20,000	None	0.00
Petition for express abandonment to obtain a refund	2,100	None	0.00
Electronic Pre-Appeal Brief Request for Review	11,700	None	0.00
Electronic Pre-Appeal Brief Request for Review (small entity)	3,000	None	0.00
Pre-Appeal Brief Request for Review	900	None	0.00
Pre-Appeal Brief Request for Review (small entity)	200	None	0.00
Request for Corrected filing receipt (electronic)	22,000	None	0.00
Request for Corrected filing receipt	2,000	None	0.00
Electronic Request for First Action Interview (Pilot Program)	1,500	None	0.00
Petition to Make Special Based on Age for Advancement of Examination Under 37 CFR 1.105(c)(1) (EFS–Web only)	2,300	None	0.00
Rule 1.130, 1.131, and 1.132 Affidavits or Declarations	50,000	None	0.00
Electronic Amendments and Responses	893,000	None	0.00
Amendments and Responses	67,000	None	0.00

Item	Responses (yr)	Filing fee $	Total non-hour cost burden (a × b)
TOTAL	4,237,132		356,886,130.00

The USPTO estimates that the total (non-hour) respondent cost burden for this collection in the form of postage costs and filing fees will be $357,380,557.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 19, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–6888 Filed 3–21–12; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0009]

Request for Comment on Payday Lending Hearing Transcript

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice; request for comment.

SUMMARY: On January 19, 2012, the Bureau of Consumer Financial Protection (Bureau) held a field hearing on payday lending. The Bureau invites the public to review the transcript and provide additional feedback on the issues raised in it.

DATES: Comments must be received by April 23, 2012.

ADDRESSES: You may submit comments, identified by docket number *CFPB–2012–0009,* by any of the following methods.

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand delivery/courier:* Monica Jackson, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

In general, all comments received will posted without change to *www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Monica Jackson, Office of the Executive Secretary, by telephone at (202) 435–7275 or by email at *monica.jackson@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) vested the Bureau of Consumer Financial Protection (Bureau) with supervisory and rulemaking authority over nonbank covered persons that offer or provide payday loans to consumers. In an effort to listen, learn, and gather information on the ground that will to help the Bureau better understand this market, the Bureau held a public field hearing on short-term, small-dollar loans, such as payday loans and bank ''deposit advances'' on January 19, 2012 in Birmingham, Alabama.

Payday lending products are typically marketed to bridge a cash flow shortage between pay or benefits checks. They generally have three features: The loans are small dollar amounts; borrowers must repay the loan quickly; and they require that a borrower give lenders access to repayment through a claim on the borrower's deposit account. The Bureau held the Birmingham field hearing to gather information and input from experts and the public on the payday-lending market to help determine the right approach to protect consumers and ensure that they have access to a small-loan market that is fair, transparent, and competitive. A number of questions were raised on which the Bureau is interested in gathering additional public feedback. For example, does the impact of payday loans and deposit-advance products vary by the type of consumer? Who is helped and who is harmed by deposit-advance and payday products? Does the answer vary depending on whether the product is provided by a storefront, a bank, or online? How are small-dollar loans and products marketed?

The transcript of the hearing has been posted on the Bureau's Web site at *http://consumerfinance.gov.* The Bureau invites the public to review the transcript and submit additional comment on the subjects discussed at the hearing.

Dated: March 13, 2012.

Meredith Fuchs,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2012–6851 Filed 3–21–12; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

Federal Register Citation of Previous Announcement: Vol. 77, No. 52, Friday, March 16, 2012, page 15737.

ANNOUNCED TIME AND DATE OF MEETING: Wednesday, March 21, 2012, 10 a.m.–11 a.m. *Meeting Canceled.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: March 20, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–7032 Filed 3–20–12; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, March 28, 2012, 10 a.m.–12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matters To Be Considered

1. *Decisional Matter:* Fiscal Year 2012 Operating Plan.
2. *Briefing Matter:* § 1112: Lab Withdrawal, Codification & Audit Provisions.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast*. 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 20, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–7083 Filed 3–20–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0037]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the reinstated information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 21, 2012.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, Attn: Ms. Peggy Hinson, DS–Q, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703) 767–7103.

Title; Associated Form; and OMB Number: Day Care Facility Registrant, Applicant and Enrollee Records. DLA Form 1854. OMB Control Number: 0704–TBD.

Needs and Uses: The Application of Child Care Services Form, DLA Form 1854, is used to request child care services provided by DLA managed facilities. Enrollee records are provided to the Child and Youth Programs Coordinator, the CDP Director, and the Headquarters DLA Inspection Team upon request for the purpose of ensuring safe and effective services.

Waiting List Applicant records include the names of the sponsor and spouse (when applicable); home and electronic mail addresses; work, home, cell telephone numbers; place of employment; rank or civilian pay grade; child's name and birth date documentation of any special needs or health concerns regarding the child, to include documentation of food restrictions; physical abilities and limitations; physical, emotional, or other special care requirements (including restrictions or special precautions concerning diet); special services Individual Development Plans (IDP) when special needs have already been diagnosed.

Enrollee records include all items listed above plus names and phone numbers of emergency points of contact; medical, dental and insurance provider data; medical examination reports, health assessments and screening results; immunization, allergy and medication information; documentation of Special Needs Resource Team (SNRT) meetings (when applicable)as well as serious event/incident report forms; symptom records; and other records used to provide effective services.

Affected Public: Children of contractor personnel who are enrolled in, or have applied for admission to, a DLA-managed child care facility.

Annual Burden Hours: 10.

Number of Respondents: 30.

Responses Per Respondent: 1

Average Burden per Response: 0.33 hours (20 minutes)

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Enrollment data is collected to effectively manage a DLA Child Care facility. Information collected includes the names of the sponsor and spouse (when applicable); contact information; place of employment; rank or civilian pay grade; child's name and birth date, documentation of any special needs or health concerns regarding the child, as well as other documentation (as stated above) necessary to provide quality child care services.

Dated: March 19, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6899 Filed 3–21–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2012–0005]

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete Fifteen Systems of Records; correction.

SUMMARY: On March 7, 2012 (77 FR 13571–13573) DoD published a notice announcing its intent to delete fifteen Department of the Army Privacy Act System of Records Notices. One of the system deletions had an incorrect ''Reason'' paragraph. This notice provides a corrected ''Reason'' paragraph for the deletion of A0600–8–104b AHRC, Official Military Personnel Record (August 18, 2004, 69 FR 51271).

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3827 or by phone at 703–428–6185.

SUPPLEMENTARY INFORMATION: The ''Reason'' paragraph for the deletion of A0600–8–104b AHRC, Official Military Personnel Record (August 18, 2004, 69 FR 51271) should have identified the Privacy Act Systems of Records Notice that now covers these active records. These records are active and covered under A0600–8–104 AHRC, Military Personnel Records Jacket Files (MPRJ) (January 6, 2004, 69 FR 790).

Correction

In the notice (FR Doc. 2012–5516) published on March 7, 2012 (77 FR 13571–13573), on page 13572, in the third column, for SORN A0600–8–104b AHRC, revise the ''Reason'' paragraph to read as follows:

Reason:

These records are active and covered under system of records notice A0600–8–104 AHRC, Military Personnel Records Jacket Files (MPRJ) (January 6, 2004, 69 FR 790). Records are transferred to the National Personnel Records Center when the NARA retention has been met.

Dated: March 19, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6884 Filed 3–21–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325D.

DATES:

Applications Available: March 22, 2012.

Deadline for Transmittal of Applications: May 7, 2012.

Deadline for Intergovernmental Review: July 5, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel in special education, related services, early intervention, and regular education to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel

Background

The purpose of the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel priority is to support programs that prepare special education, early intervention, and related services personnel at the graduate level who are well-qualified for, and can act effectively in, leadership positions in universities, State educational agencies (SEAs), lead agencies (LAs), local educational agencies (LEAs), early intervention services programs (EIS programs), or schools.

Over the last two decades, there has been a need for leadership personnel who are prepared at the doctoral and postdoctoral levels to fill faculty positions in special education, early intervention, and related services (Sindelar & Taylor, 1988; Smith & Lovett, 1987; Smith, Pion, & Tyler, 2004; Smith, Robb, West and Tyler, 2010; Woods & Snyder, 2009). These leaders teach evidence-based practices to special education, early intervention, and related services professionals who work in a variety of educational settings and provide services directly to children and youth with disabilities. They also conduct research to increase the knowledge of effective interventions and services for these children (Smith et al., 2010).

State and local agencies also need leadership personnel who are prepared at the graduate level (i.e., master's, education specialist, and doctoral degrees, depending on State certification requirements) to fill special education and early intervention administrator positions. These administrators supervise and evaluate the implementation of evidence-based instructional programs to make sure that State or local agencies are meeting the needs of children with disabilities. Administrators also ensure that schools and programs meet Federal, State, and local requirements for special education, early intervention, and related services (Lashley & Boscardin, 2003).

Federal support can increase the supply of personnel who have the necessary knowledge and skills to assume leadership positions in special education, early intervention, and related services in universities, SEAs, LAs, LEAs, EIS programs, or schools. Critical competencies for special education, early intervention, and related services personnel vary depending on the type of personnel and the requirements of the preparation program but can include, for example, skills needed for postsecondary instruction, administration, policy development, professional practice, leadership, or research. However, all leadership personnel need to have current knowledge of effective interventions and services that improve outcomes for children with disabilities, including high-need children with disabilities.

Priority

The purpose of the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel priority is to support programs that prepare special education, early intervention, and related services personnel at the graduate level who are well-qualified for, and can act effectively in, leadership positions in universities, SEAs, LAs, LEAs, EIS programs, or schools. This priority supports two types of programs:

Type A programs are designed to prepare special education, early intervention, or related services personnel to serve as higher education faculty. Type A programs culminate in a doctoral degree or provide postdoctoral learning opportunities.

Note: Preparation programs that lead to clinical doctoral degrees in related services (e.g., a Doctor of Audiology (AuD) degree or Doctor of Physical Therapy (DPT) degree) are not included in this priority. These types of preparation programs are eligible to apply for funding under the Personnel Preparation in Special Education, Early Intervention, and Related Services priority (CFDA 84.325K) that the Office of Special Education Programs (OSEP) intends to fund in FY 2012.

Type B programs are designed to prepare special education or early intervention administrators to work in SEAs, LAs, LEAs, EIS programs, or schools. Type B programs prepare personnel for positions such as SEA special education administrators, LEA or regional special education directors, school-based special education directors, preschool coordinators, and early intervention coordinators. Type B programs culminate in a master's, education specialist, or doctoral degree.

Note: OSEP intends to fund in FY 2012 at least three high-quality applications proposing Type B programs and may fund applications out of rank order.

Note: The preparation of school principals is not included in this priority.

Note: Applicants must identify the specific program type, A or B, for which they are applying for funding as part of the competition title on the application cover sheet (SF form 424, item 15). Applicants may not submit the same proposal for more than one program type.

To be considered for funding under the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel absolute priority, all program applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

The requirements of this priority are as follows:

(a) Demonstrate, in the narrative section of the application, under ''Significance of the Project'' how—

(1) The project addresses national, State, or regional needs for leadership personnel to administer programs or provide, or prepare others to provide, interventions and services that improve outcomes of children with disabilities, ages birth through 21, including high-need children with disabilities.[1] To address this requirement, the applicant must—

(i) Present appropriate and applicable national, State, or regional data demonstrating the need for the leadership personnel the applicant proposes to prepare; and

(ii) Present data on the effectiveness of the graduate program to date in areas such as: the effectiveness of program graduates as educators of teachers, service providers, or administrators; the average amount of time it takes for program graduates to complete the program; the percentage of program graduates finding employment directly related to their preparation; and the professional accomplishments of program graduates (e.g., public service, honors, or publications) that demonstrate their leadership in special education, early intervention, or related services; and

Note: Data on the effectiveness of a graduate program should be no older than five years from the start date of the project proposed in the application. When reporting percentages, the denominator (i.e., the total number of students) must be provided.

(2) Scholar competencies to be acquired in the program relate to knowledge and skills needed by the leadership personnel the applicant proposes to prepare. To address this requirement, the applicant must—

(i) Identify the competencies needed by leadership personnel in postsecondary instruction, administration, policy development, professional practice, leadership, or research in order to administer programs or provide, or prepare others to provide, interventions and services that improve outcomes of children with disabilities, ages birth through 21, including high-need children with disabilities; and

(ii) Provide the conceptual framework of the leadership preparation program, including any empirical support, that will promote the acquisition of the identified competencies needed by leadership personnel and where applicable, how these competencies relate to the project's specialized preparation area.

(b) Demonstrate, in the narrative section of the application, under ''Quality of the Project Services,'' how—

(1) The project will recruit and support high-quality scholars. The narrative must—

(i) Describe the selection criteria the applicant will use to identify high-quality applicants for admission in the program;

(ii) Describe the recruitment strategies the applicant will use to attract high-quality applicants and any specific recruitment strategies targeting high-quality applicants from traditionally underrepresented groups; and

(iii) Describe the approach the applicant will use to help scholars complete the program; and

(2) The project is designed to promote the acquisition of the competencies needed by leadership personnel to administer programs or provide, or prepare others to provide, interventions and services that improve outcomes of children with disabilities. To address this requirement, the applicant must—

(i) Describe how the components of the project, such as coursework, internship or practicum experiences, research requirements, and other opportunities provided to scholars to analyze data, critique research and methodologies, and practice newly acquired knowledge and skills, will enable the scholars to acquire the competencies needed by leadership personnel for postsecondary instruction, administration, policy development, professional practice, leadership, or research in special education, early intervention, or related services;

(ii) Describe how the components of the project are integrated in order to support the acquisition and enhancement of the identified competencies needed by leadership personnel in special education, early intervention, or related services;

(iii) Describe how the components of the project prepare scholars to administer programs or provide, or prepare others to provide, interventions and services that improve outcomes of children with disabilities in a variety of settings, including in high-need LEAs,[2] high-poverty schools,[3] low-performing

[1] For the purpose of this priority, ''high-need children with disabilities'' refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, (7) are English learners, (8) are pregnant or parenting teenagers, (9) are new immigrants, (10) are migrant, or (11) are not on track to being college- or career-ready by graduation.

[2] For purposes of this priority, the term ''high-need LEA'' means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[3] For purposes of this priority, the term ''high-poverty school'' means a school in which at least 50 percent of students are eligible for free or

schools, including persistently lowest-achieving schools,[4] priority schools (in the case of States that have received the Department's approval of a request for ESEA flexibility),[5] and early childhood programs located within the geographical boundaries of a high-need LEA; and

(iv) Describe the approach that faculty members will use to mentor scholars with the goal of helping them acquire competencies needed by leadership personnel and promote career goals in special education, early intervention, or related services.

(c) Demonstrate, in the narrative section of the application, under ''Quality of the Project Evaluation,'' how—

(1) The applicant will evaluate the effectiveness of the proposed leadership project. The applicant must describe the outcomes to be measured for both the project and the scholars, particularly the acquisition of scholar competencies; the evaluation methodologies to be employed, including proposed instruments, data collection methods, and possible analyses; and the proposed standards or targets for determining effectiveness;

(2) The applicant will collect and use data on current scholars and scholars who graduate from the program to improve the proposed program on an ongoing basis; and

(3) The grantee will report the evaluation results to OSEP in its annual and final performance reports.

(d) Include, in the narrative under ''Required Project Assurances,'' or appendices as directed, that the following program requirements are met. The applicant must—

(1) Include in the application appendix—

(i) Course syllabi for all coursework in the major and any required coursework for a minor;

(ii) Course syllabi for all research methods, evaluation methods, or data analysis courses required by the degree program and elective research methods, evaluation methods, or data analysis courses that have been completed by more than one student enrolled in the program in the last five years; and

(iii) For new coursework, proposed syllabi;

(2) Ensure that all scholars recruited into the program can graduate from the program by the end of the grant's project period. The described scholar recruitment strategies, the program components and their sequence, and proposed budget must be consistent with this project requirement;

(3) Ensure that the project will meet the statutory requirements in section 662(e) through 662(h) of IDEA;

(4) Ensure that at least 65 percent of the total requested annual budget will be used for scholar support or provide justification in the application narrative for any designation less than 65 percent. Examples of sufficient justification for proposing less than 65 percent of the budget for scholar support include—

(i) A project servicing rural areas that provides long-distance coursework, and requires information technology personnel, adjunct professors, or site-based mentors to operate effectively; and

(ii) A project that expands or adds a new area of emphasis to special education, early intervention, or related services, and includes data on the need for the expansion and information on how these expanded or new areas will be sustained once Federal funding ends.

(5) Ensure that the institution will not require scholars enrolled in the program to work (e.g., as graduate assistants) as a condition of receiving a scholarship, unless the work is specifically related to the acquisition of scholars' competencies and the requirements for completion of their personnel preparation program. Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA;

(6) Ensure that the budget includes attendance of the project director at a three-day Project Directors' meeting in Washington, DC, during each year of the project. The budget may also provide for the attendance of scholars at the three-day Project Directors' meeting in Washington, DC;

(7) Ensure that if the project maintains a Web site, relevant information and documents are in a format that meets government or industry-recognized standards for accessibility; and

(8) Ensure that annual data will be submitted on each scholar who receives grant support. Applicants are encouraged to visit the Personnel Development Program Scholar Data Report Web site at: *http://oseppdp.ed.gov* for further information about this data collection requirement. Typically, data collection begins in January of each year, and grantees are notified by email about the data collection period for their grant. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following 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.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award 5 points to an application that meets this priority.

This priority is:

Applicants for Type A or Type B programs that demonstrate, through a letter of support, a relationship with one or more high-need LEAs; publicly funded preschool programs, including Head Start programs, located within the geographic boundaries of a high-need

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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 *(www2.ed.gov/legislation/FedRegister/other/2010-4/121510b.html).*

[4] The term ''persistently lowest-achieving schools'' means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) 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

(ii) 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

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) 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

(ii) 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.

(b) 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.

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.*

[5] The term ''priority school'' means a school that has been identified by the State as a priority school pursuant to the State's approved request for Elementary and Secondary Education Act (ESEA) flexibility.

LEA; or programs serving children eligible for services under Part C or Part B, section 619 of the IDEA located within the geographic boundaries of a high-need LEA that will provide scholars with a high-quality internship or practicum experience in a school in a high-need LEA, publicly funded preschool, or early intervention program.

The applicant must describe in the narrative the high-quality internship or practicum experiences that will be provided to scholars. The applicant must include with its application a letter of support from the partnering agency, school, or program that: (a) Indicates agreement to be a site for the proposed internship or practicum experiences; and (b) confirms a previously established partnership between the applicant and partnering agency, school, or program.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award 5 points to an application that meets this priority.

This priority is:

Applicants for Type B programs that provide a syllabus or syllabi for a new or existing course, or series of courses, that show(s) that the course or courses include or will include: (1) A discussion of applicable research and evaluation findings on the use of data on early learning outcomes, student achievement, or growth in student achievement in evaluating the effectiveness of early intervention providers, related services providers, teachers, or principals; (2) methodological and statistical considerations in conducting an evaluation of the effectiveness of these personnel using data on early learning outcomes, student achievement, or growth in student achievement; and (3) an opportunity for scholars to review, critique, and, as appropriate, participate in one or more evaluations of the effectiveness of early intervention providers, related services providers, teachers, or principals.

Note: Five is the maximum amount of competitive preference points an applicant can receive for meeting one or both of the competitive preference priorities. Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priorities they have addressed.

References

Lashley, C., & Boscardin, M.L. (2003). Special education administration at the crossroads: Availability, licensure, and preparation of special education administrators. Gainesville, FL: Center on Personnel Studies in Special Education, University of Florida. Retrieved February 24, 2010, from *www.coe.ufl.edu/copsse/docs/IB–8/1/IB–8.pdf.*

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Sindelar, P.T., & Taylor, C. (1988). Supply and demand for doctoral personnel in special education and communication disorders. *Teacher Education and Special Education, 11,* 162–167.

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Smith, D.D., Robb, S.M., West, J., & Tyler, N.C. (2010). The changing education landscape: How special education leadership preparation can make a difference for teachers and their students with disabilities. *Teacher Education and Special Education, 33*(1), 25–43.

Woods, J., & Snyder, P. (2009). Interdisciplinary doctoral leadership training in early intervention. *Infants & Young Children, 22*(1), 32–4.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,250,000. 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: $225,000–$250,000.

Estimated Average Size of Awards: $237,500.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325D.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

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 (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 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.

• 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 Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 22, 2012.

Deadline for Transmittal of Applications: May 7, 2012.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: July 5, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp*.

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel, CFDA number 84.325D, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel, CFDA number 84.325D at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.325, not 84.325D).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after

4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this 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 submit your application in paper format.

• If you submit your application electronically, you must upload 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.

• If you submit your application electronically, 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. Additional, detailed information on how to attach files is in the application instructions.

• 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 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 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 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.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.325D),
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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.325D),
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 program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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 established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities Program. These measures include: (1) The percentage of projects that incorporate evidence-based practices into the curriculum; (2) the percentage of scholars completing Personnel Development to Improve Services and Results for Children with Disabilities-funded programs who are knowledgeable and skilled in evidence-based practices for children, including infants and toddlers, with disabilities; (3) the percentage of Personnel Development to Improve Services and Results for Children with Disabilities-funded scholars who exit preparation programs prior to completion due to poor academic performance; (4) the percentage of Personnel Development to Improve Services and Results for Children with Disabilities-funded degree/certification recipients who are working in the area(s) in which they were prepared upon program completion; (5) the percentage of Personnel Development to Improve Services and Results for Children with Disabilities-funded degree/certification recipients who are working in the area(s) for which they were prepared upon program completion and are fully qualified under IDEA; (6) the percentage of Personnel Development to Improve Services and Results for Children with Disabilities degree/certification recipients who maintain employment for three or more years in the area(s) for which they were prepared and who are fully qualified under IDEA; and (7) the Federal cost per fully qualified degree/certification recipient.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

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: Celia Rosenquist, U.S. Department of Education, 400 Maryland Avenue SW.,

Room 4055, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–7373.

If you use a TDD or a TTY, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 19, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–6945 Filed 3–21–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy, DoE.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 28 and 29, 2012, at the headquarters of the IEA in Paris, France in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on March 28; and in connection with a meeting of the SEQ on March 29.

DATES: March 28–29, 2012.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 28, 2012, beginning at 9:30 a.m., and continuing on March 29 at 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) which is scheduled to be held at the headquarters of the IEA on March 28 commencing at 9:30 a.m.; and a meeting of the SEQ, which is scheduled to be held at the headquarters of the IEA on March 29 commencing at 9 a.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on March 28. The agenda for this preparatory meeting is to review the agendas for the joint SEQ/SOM meeting on March 28 and the SEQ meeting on March 29.

The agenda of the joint session of the SEQ and the SOM on March 28 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the November 2011 Joint Session
3. Reports on Recent Oil Market and Policy Developments in IEA Countries
4. The Program of Work
   —Priority Setting Exercise 2013–2014
   —Potential Project Work for Voluntary Contributions Support
5. The Current Oil Market Situation
6. Update on the Gas Market; Focus on LNG Trading
7. Reports on Recent IEA–IEF–OPEC Cooperation
   —Workship on Physical and Financial Markets (Vienna, November 2011)
   —Symposium on Energy Outlooks (Riyadh, January 2012)
   —13th IEF, Kuwait, March 2012
8. Progress on Voluntary Contributions-Funded Report: European Refinery Rationalization
   —Impact on Product Supplies
   —Impact on Stockholding
9. Other Business
   —Tentative Schedule of Upcoming Meetings:
   June 26–28, 2012
   October 17–18, 2012
   November 27–29, 2012 (ERE6)
10. Workshop: The Financialization of Oil Markets

The agenda of the SEQ meeting on March 29 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Introductory Remarks by Director of Energy Markets and Security
2. Adoption of the Agenda
3. Approval of the Summary Record of the 134th Meeting
4. Status of Compliance with IEP Stockholding Commitments
5. Emergency Response Review Program
   —Schedule of Emergency Response Reviews
   —Emergency Response Review of France
   —Emergency Response Review of Switzerland
   —Emergency Response Review of The Netherlands
   —Questionnaire Response of Finland
   —Questionnaire Response of Germany
   —Questionnaire Response of Sweden
6. Emergency Response Exercises
   —Preparations for ERE6
7. Emergency Response Measures
   —Costs and Benefits of Stockholding (Progress Report)
8. Policy and Other Developments in Member Countries
   —Mid-Term Emergency Response Review of Belgium
   —Mid-Term Emergency Response Review of Portugal
   —Oral Reports by Administrations
9. Report from the Industry Advisory Board
10. Review of Libya Collective Action
   —Report on Governing Board Discussion
   —Emergency Questionnaire QuE
11. Activities with International Organizations and Non-Member Countries
   —ASEAN (APSA)
   —Chile
   —China
   —Estonia
   —India
   —Indonesia
   —Thailand
12. Documents for Information
   —Emergency Reserve Situation of IEA Member Countries on October 1, 2011
   —Emergency Reserve Situation of IEA Member Countries on January 1, 2012
   —Base Period Final Consumption: 4Q 2010–3Q 2011
   —Base Period Final Consumption: 1Q 2011–4Q 2011
   —Updated Emergency Contacts List
13. Other Business
   —Tentative Schedule of Next Meetings:
   —June 26–28, 2012
   —October 17–18, 2012
   —November 27–29, 2012 (ERE6)

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation

Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, March 16, 2012.

Diana D. Clark

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2012–6943 Filed 3–21–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–44–000.
Applicants: Diamond State Generation Partners, LLC.
Description: Notice of Self-Certification of Diamond State Generation Partners, LLC of Exempt Wholesale Generator Status.
Filed Date: 3/15/12.
Accession Number: 20120315–5038.
Comments Due: 5 p.m. ET 4/5/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2605–004.
Applicants: Tyr Energy LLC.
Description: Tyr Energy LLC submits tariff filing per 35: Compliance Filing—Market-Based Rate Tariff Amendment to be effective 5/14/2012.
Filed Date: 3/15/12.
Accession Number: 20120315–5090.
Comments Due: 5 p.m. ET 4/5/12.

Docket Numbers: ER12–726–001.
Applicants: Spring Valley Wind LLC.
Description: Spring Valley Wind LLC submits tariff filing per 35.17(b): Amended Application for Market-Based Rate Authority to be effective 2/28/2012.
Filed Date: 3/15/12.
Accession Number: 20120315–5089.
Comments Due: 5 p.m. ET 4/5/12.

Docket Numbers: ER12–1131–000.
Applicants: Parkview AMC Energy, LLC.
Description: Parkview AMC Energy, LLC submits tariff filing per: Supplemental Information Filing to be effective N/A.
Filed Date: 3/15/12.
Accession Number: 20120315–5040.
Comments Due: 5 p.m. ET 4/5/12.

Docket Numbers: ER12–1269–000.
Applicants: BlueRock Energy, Inc.
Description: BlueRock Energy, Inc. submits tariff filing per 35.1: Market-Based Rate Tariff Baseline to be effective 3/1/2012.
Filed Date: 3/15/12.
Accession Number: 20120315–5024.
Comments Due: 5 p.m. ET 4/5/12.

Docket Numbers: ER12–1270–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 03–15–12 Schedule 20 to be effective 5/15/2012.
Filed Date: 3/15/12.
Accession Number: 20120315–5085.
Comments Due: 5 p.m. ET 4/5/12.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR12–5–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Amendments to Delegation Agreement with SERC Reliability Corporation—Amendments to SERC's Bylaws and Regional Standards Development Procedure.
Filed Date: 3/15/12.
Accession Number: 20120315–5056.
Comments Due: 5 p.m. ET 4/5/12.

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 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6882 Filed 3–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–80–000.
Applicants: Pioneer Trail Wind Farm, LLC.
Description: Application For Authorization under Section 203 Of The Federal Power Act, Requests For Waivers Of Filing Requirements, Expedited Review And Confidential Treatment of Pioneer Trail Wind Farm, LLC.
Filed Date: 3/14/12.
Accession Number: 20120314–5019.
Comments Due: 5 p.m. ET 4/4/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4100–002.
Applicants: California Independent System Operator Corporation.
Description: 2012–03–14 CAISO Order 745 Compliance Filing to be effective 12/15/2011.
Filed Date: 3/14/12.
Accession Number: 20120314–5109.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER11–4106–002.
Applicants: PJM Interconnection, LLC.
Description: Compliance Filing per Order dated 12/15/2011 in ER11–4106 (Order 745–DR Comp) to be effective 4/1/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5087.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER11–4326–001; ER11–3069–002; ER11–3545–001; ER11–3141–002; ER11–3098–002.
Applicants: Viridian Energy NY LLC, Viridian Energy, Inc., Viridian Energy MD LLC, Viridian Energy PA, LLC, Cincinnati Bell Energy LLC.
Description: Notice of non-material change in status by Viridian Energy, Inc., *et al.*
Filed Date: 3/14/12.
Accession Number: 20120314–5121.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER11–4486–002.
Applicants: ITC Midwest LLC.
Description: Compliance Filing of ITC Midwest LLC to be effective 11/9/2011.

Filed Date: 3/14/12.
Accession Number: 20120314–5076.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1261–000.
Applicants: Cleco Power LLC.
Description: Baseline of RS 11, 12, 17 and SA 93 & 110 to be effective 3/14/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5063.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1262–000.
Applicants: Cleco Power LLC.
Description: Moving RS10 to Tariff ID 61 to be effective 3/14/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5089.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1263–000.
Applicants: Cleco Power LLC.
Description: Cancellation of tariff ID—RS 10 moved to Tariff ID 61 to be effective 3/14/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5092.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1264–000.
Applicants: Pacific Gas and Electric Company.
Description: Gates Solar Station LGIA WDT SA No. 87 to be effective 3/15/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5105.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1265–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 03–14–12 Order 719 Compliance to be effective 6/12/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5106.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1266–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 03–14–12 Order 745 Compliance to be effective 6/12/2012.
Filed Date: 3/14/12.
Accession Number: 20120314–5108.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1267–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits Notice of Termination.
Filed Date: 3/14/12.
Accession Number: 20120314–5112.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: ER12–1268–000.
Applicants: Neptune Regional Transmission System, LLC.
Description: Request for Waiver of Neptune Regional Transmission System, LLC.
Filed Date: 3/14/12.
Accession Number: 20120314–5114.
Comments Due: 5 p.m. ET 4/4/12.

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 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6881 Filed 3–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN12–7–000]

Constellation Energy Commodities Group, Inc.; Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff members Sandra Waldstein and Joyce Davidson, both of the Office of External Affairs, are assigned to facilitate communication with affected states. The affected states, in New York Independent System Operator, Inc., ISO New England Inc., and PJM Interconnection, L.L.C., are eligible to make requests for the apportionment of a fund the Commission established in a March 9, 2012 order in the above-referenced docket.

As ''non-decisional'' staff, Ms. Waldstein and Ms. Davidson will not participate in an advisory capacity in the Commission's review of any future filings in the above-referenced docket, including offers of settlement or settlement agreements.

Different Commission ''advisory staff'' will be assigned to review and process subsequent filings that are made in the above-referenced docket, including any offer of settlement or settlement agreement. Non-decisional staff and advisory staff are prohibited from subsequent communications with one another concerning matters in the above-referenced docket.

Dated: March 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6883 Filed 3–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Don Pedro Hydroelectric Project Project No. 2299–075]

Turlock Irrigation District, & Modesto Irrigation District; Notice of Dispute Resolution Process Schedule, Panel, Technical Conference, and Modified Filing Times for Panel Recommendations and Dispute Determination

On January 11, 2012, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and the California Water Resources Control Board (Water Board) (collectively, the Agencies), filed a Notice of Study Dispute to initiate the Federal Energy Regulatory Commission's (Commission) formal study dispute resolution process, pursuant to 18 CFR 5.14, in the relicensing proceeding for the Don Pedro Hydroelectric Project No. 2299–075.[1] Turlock Irrigation District and the Modesto Irrigation District (collectively, the Districts), are co-licensees for the Don Pedro Hydroelectric Project.

In its Notice of Study Dispute, NMFS disputes the December 22, 2011 Study Plan Determination's treatment of eight of its June 10, 2011 study requests. NMFS identified study requests 1–4 and 7–9 as being in dispute. Specifically, the disputed study requests are: Request 1—*Effects of the Project and Related LaGrange Complex Facilities on Anadromous Fish;* Request 2—*Effects of the Project and Related Facilities Evaluated Through an Operations Model;* Request 3—*Effects of the Project*

[1] The U.S. Fish and Wildlife Service (FWS) also requested dispute resolution on two studies requested by the California Department of Fish and Game (Cal Fish and Game) and one study requested by NMFS. Additionally, NMFS requested dispute resolution on one of the Cal Fish and Game studies. In a March 9, 2012, letter the Director of the Office of Energy Projects determined that the Cal Fish and Game's studies would not be referred to dispute resolution because a disputing agency can only dispute a study request that it has made itself. The dispute regarding the study requested by NMFS and endorsed by FWS will go forward as a NMFS study dispute.

and Related Activities on Fish Passage for Anadromous Fish; Request 4—*Effects of the Project and Related Facilities Hydrology for Anadromous Fish: Magnitude, Timing, Duration, and Rate of Change;* Request 7—*Evaluation of the Upper Tuolumne Habitats for Anadromous Fish;* Request 8—*Salmon and Steelhead Full Life-Cycle Population Models;* and Request 9—*Effects of the Project and Related Facilities on Ecosystem/Marine-Derived Nutrients for Anadromous Fish.*

The Water Board's Notice of Study Dispute seeks to have the Districts' Study W&AR–2—*Project Operations/Water Balance Model* modified to address constraints in timing and magnitude of flows related to water rights.

On February 10, 2012, Commission staff designated Mr. Stephen Bowler to serve as the Commission staff Dispute Resolution Panel (Panel) chair. On March 2, 2012, NMFS designated Mr. David White as the Agency Dispute Resolution Panel member.[2] From an established list of potential third party panelists, Mr. Bowler and Mr. White selected Mr. Richard Craven and requested that he serve on the Panel. Mr. Craven agreed to serve and the Panel convened on March 10, 2012. Mr. Craven's statement certifying that he has no conflict of interest, which also summarizes his qualifications, has been filed into the record. None of the three panelists have been involved previously in the Don Pedro Hydroelectric Project relicensing proceeding.

By letter filed March 15, 2012, the Panel requested that the Director of the Office of Energy Projects (Director) modify the timeframe for submission of the Panel's recommendations from 50 to 60 days from the start of the dispute resolution process, specifically from April 24, 2012 to May 4, 2012. The Panel also recommended the modification of the deadline for the Director's determination on the study dispute from 70 to 80 days from the start of the dispute resolution process, specifically from May 14, 2012 to May 24, 2012. By this notice, the Director modifies the schedule as recommended and requested by the Panel under his authority provided in 18 CFR 5.29(f)(2) of the Commission's regulations. The resulting process plan for dispute resolution is as follows:

Responsible party	Pre-filing milestone	Date	FERC regulation
Agencies	Designation of Agency Panelist (Actual)	3/2/2012	5.14(d)(2).
Agencies	Designation of Agency Panelist (Deadline) (Start of Dispute Resolution Process).	3/5/2012	5.14(d)(2).
Dispute Panel	Third Dispute Panel Member Selected	3/5/2012	5.14(d)(3).
Dispute Panel	Dispute Resolution Panel Convened	3/12/2012	5.14(d).
FERC	Notice of Dispute Resolution Panel Technical Conference	3/16/2012	Guidance.
Districts	Applicant Comments on Study Disputes Due	3/28/2012	5.14(i).
Dispute Panel	Dispute Resolution Panel Technical Conference	4/17/2012	5.14(j).
Dispute Panel	Dispute Resolution Panel Findings Issued	5/4/2012	5.14(k).
FERC	Director's Study Dispute Determination	5/24/2012	5.14(l).

The Panel will hold an all-day technical conference on the disputed studies on April 17, 2012. The conference will be held in Sacramento, CA. Further details will be supplied in a future notice. The purpose of the technical conference is for the disputing agencies, the applicant, and the Commission to provide the Panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at its discretion, limit the speaking time for each participant.

For more information, please contact Stephen Bowler, the Dispute Resolution Panel Chair, at *stephen.bowler@ferc.gov* or 202–502–6861.

Dated: March 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6880 Filed 3–21–12; 8:45 am]

BILLING CODE 6717–01–P

[2] Mr. White's designation followed two previous designations of NMFS staff members who were determined to have prior involvement in the Don Pedro proceeding and were deemed ineligible to serve on the Panel. Mr. White's designation came one business day ahead of the deadline established by the Commission of March 5, 2012. Because of the delay in establishing an eligible agency panel member, March 5, 2012 will serve as the date of initiation of the dispute resolution process rather than the dispute notice date of January 11, 2011. Mr. White was designated to represent the Water Board as well as NMFS.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0824; FRL–9513–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pesticide Registration Application, Notification and Report for Pesticide Producing Establishments (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2011–0824 to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code: 2201T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory

Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4203; fax number: (202) 564–0085; email: *stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 29, 2011 (76 FR 73620), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in this ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2011–0824, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Application for Registration of Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–8) and Pesticide Report for Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–16). (40 CFR part 167) (Renewal).

ICR numbers: EPA ICR No. 0160.10, OMB Control No. 2070–0078.

ICR Status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(a) requires that any person who produces pesticides or pesticide devices subject to the Act must register with the Administrator of EPA the establishment in which the pesticide or the device is produced. This Section further requires that application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing and Device-Producing Establishments, is used to collect the establishment registration information required by this Section.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide/device production and sales/distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, and sold or distributed in the past year. The supporting regulations at 40 CFR part 167 provides the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, is used to collect the pesticide production information required by Section 7(c) of FIFRA.

Establishment registration information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing and device-producing establishments. Pesticide and device production information, reported on EPA Form 3540–16, is required to be submitted within 30 days after the company is notified of their pesticide-producing or device-producing establishment number, and annually thereafter on or before March 1st.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Establishments registering pesticides.

Estimated Number of Respondents: 13,830.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 19,987.

Estimated Total Annual Cost: $1,545,104. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as Part of ordinary business practices.

Changes in the Estimates: There is an increase of 829 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the estimates of the number of respondents.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6874 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0940; FRL 9512–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Federal Supplier (Small Business) Greenhouse Gas Inventory Pilot (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0940, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Sottong, Climate Protection Partnerships Division, Office of Atmospheric Programs, (6202J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9397; fax number: (202) 343–2208; email address: *sottong.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 30, 2011 (76 FR 74053), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0940, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Federal Supplier (Small Business) Greenhouse Gas Inventory Pilot (Renewal)

ICR numbers: EPA ICR No. 2100.05, OMB Control No. 2060–0532.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: On September 30, 2011, the U.S. Environmental Protection Agency (EPA) officially ended its Climate Leaders program. One element of the Climate Leaders program was the Small Business Network (SBN), which offered small businesses tools and resources to assist them with managing and reducing their Greenhouse Gas (GHG) emissions. In direct response to E.O. 13514, EPA and the U.S. General Services Administration (GSA) utilized the Climate Leaders SBN as the foundation to launch the Federal Supplier Greenhouse Gas Emissions Inventory Pilot (''the Pilot'') in August 2010 to assess the benefits and challenges experienced by small businesses in completing and reporting a GHG emissions inventory. The Pilot is a voluntary, three-year program in which small businesses are required to develop annual GHG emissions inventories through September 2013. The small businesses are also required to develop and implement GHG emissions reductions strategies and review their progress towards meeting their reduction goals and the associated benefits. Through this interagency agreement, EPA continues to support the Pilot with education and technical assistance. EPA has developed this renewal ICR to ensure that the Pilot remains credible by obtaining continued authorization to collect information from its participants to ensure that they are meeting their GHG goals. Companies that joined the Pilot voluntarily agree to the following: Setting a corporate GHG reduction goal; submitting a GHG inventory management plan; reporting to EPA, on an annual basis, the company's GHG emissions inventory, and progress toward their GHG reduction goal via the Annual GHG Inventory Summary and Goal Tracking Form. The information contained in the inventories of the companies that participate in the Pilot may be considered confidential business information and is maintained as such. EPA uses the data obtained from the companies to assess the success of the Pilot in achieving its goals and to identify the type of outreach, training, and other direct assistance and incentives that will help small business federal suppliers meet the objectives of E.O. 13514. Responses to the information collection are voluntary.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small businesses participating in the joint EPA-GSA Federal Suppliers Greenhouse Gas Emissions Inventory Pilot.

Estimated Number of Respondents: 46.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 966.

Estimated Total Annual Cost: $90,804 in labor costs and no annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 18,670 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's phase down of the Climate Leaders program on September 30, 2011. As a result, the number of respondents to this ICR decreased to include only those 46 small businesses participating in the joint EPA-GSA Federal Supplier Greenhouse Gas Emissions Inventory Pilot.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6879 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2007–0706; FRL–9513–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that and Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2007–0706, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela Suber, Office of Small Business Programs, Mail Code: 1230T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202 566–2827; fax number: 202 566–1505; email address: *suber.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 17, 2011 (76 *FR* 71339), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2007–0706 which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA received them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Renewal).

ICR numbers: EPA ICR No. 1748.09, OMB Control No. 2060–0337.

ICR status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to assist small businesses in complying with the Act. These programs are generally known as Small Business Environmental Assistance Programs (SBEAPs). EPA must provide the Congress with period reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization. This collection of information is mandatory under Section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Public Law 101–549, November 15, 1990. This Act directs EPA to monitor the SBTCPs and to provide a report to Congress. This responsibility has been delegated to the EPA SBO. Response to the collection is not required to obtain or retain a benefit. Information in the annual report to Congress is aggregated and is not of a confidential nature. None of the information collected by this

action results in/or requests sensitive information of any nature from the states.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States.

Estimated Number of Respondents: 53.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 2,120.

Estimated Total Annual Cost: $104,664, includes $0 capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6878 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0241; FRL–9513–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Hot Mix Asphalt Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0241, to (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0241, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Hot Mix Asphalt Facilities (Renewal).

ICR Numbers: EPA ICR Number 1127.10, OMB Control Number 2060–0083.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information, while submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart I.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart I, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 4 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously-applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of hot mix asphalt facilities.

Estimated Number of Respondents: 4,325.

Frequency of Response: Initially, and occasionally.

Estimated Total Annual Hour Burden: 18,284.

Estimated Total Annual Cost: $1,751,943, which includes $1,751,943 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden hours to the respondent in this ICR as compared to the most recently approved ICR. The increase is due to industry growth in the past three years, resulting in additional number of respondents that are subject to this standard. In addition, there is an increase in burden costs to both the respondent and the Agency due to an adjustment in labor rates. This ICR uses the most recent labor rates from the Bureau of Labor Statistics in calculating the labor costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6876 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL 9513–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NPDES and Sewage Sludge Monitoring Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5627; email address: *letnes.amelia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 28, 2011 (76 *FR* 81488), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0719, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: National Pollutant Discharge Elimination System (NPDES) Program (Renewal).

ICR Number: EPA ICR No. 0229.20, OMB Control No. 2040–0004.

ICR Status: This ICR is scheduled to expire on March 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters (CWA section 101). The NPDES program, established under CWA section 402, is an important tool for controlling pollutant discharges. The CWA authorizes the Agency to issue permits for the discharge of pollutants to waters of the United States. The Agency regulates point source discharges of pollutants to waters of the United States under its NPDES program. CWA section 402(b) allows states (defined to include Indian tribes and U.S. territories) to acquire authority for the NPDES program. This authority enables them to issue and administer NPDES permits. At present, 46 NPDES-authorized states and the U.S. Virgin Islands have NPDES permit program authority, but only eight states have

received authorization to manage the Biosolids (Sludge) Program. In states that do not have authority for these programs, the Agency issues and administers NPDES permits. Because some permit applications are processed by states and some by EPA, this ICR calculates government burden and costs for both states and EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 398,340 (397,703 facilities and 637 States/Tribes/Territories).

Frequency of Response: Once, every five years, annually, semi-annually, quarterly, bimonthly, monthly, biweekly, weekly, daily, ongoing, occasionally/as needed.

Estimated Total Annual Hour Burden: 21,324,741 hours.

Estimated Total Annual Cost: $1,014,324,384 includes $211,074 annualized capital costs and $18,551,848 annualized O&M costs.

Change in Burden: There is a decrease of 9,618,566 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden corresponds to 31 percent of the overall burden. The main reasons for the change in burden is that EPA generated a new estimate of construction sites based on data collected for the development of the final Construction Effluent Limitation Guidelines. The Agency revised its estimate of the number of large and small construction sites covered by this ICR downward from 243,076 to 84,472 sites annually. The impact of this change in the number of construction sites is a decrease of 8,051,315 hours.

Some other specific reasons for burdens changes are presented below:

- EPA's continuous effort to improve the quality of data in its PCS and ICIS–NPDES. This change could reflect more accurate data rather than a significant change in the number of permits actually administered. This change is particularly important for activities related to general permittees because in previous ICRs, EPA based the calculation on best professional estimates; whereas, for this ICR, the Agency has real inventory numbers from PCS and ICIS–NPDES.
- All CSO permits or enforcement orders have fulfilled the obligation of Phase I technology-based CSO control requirements (Nine Minimum Controls).
- Previously, EPA accounted for 6 hours per CAAP facilities to submit Form 2b and 0.5 hours per application per state to process and review the form. This burden from CAAP facilities and states has been transferred to the Animal Sectors ICR (OMB Control No. 2040–0250).
- In the previous ICR, EPA accounted for the state burden of 24 hours per pretreatment compliance inspection, but this burden has been transferred to the Pretreatment ICR (OMB Control No. 2040–0009).

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6875 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0240; FRL–9514–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Lime Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0240, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0240, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains

copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Lime Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1167.10, OMB Control Number 2060–0063.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Abstract: The New Source Performance Standards for Lime Manufacturing are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart HH.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart HH, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Lime production facilities.

Estimated Number of Respondents: 41

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 3,772

Estimated Total Annual Cost: $422,931, which includes $361,431 in labor costs, no capital/startup costs, and $61,500 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in costs for both the respondents and the Agency from the most recently approved ICR. The increase in burden cost is due to adjustments in labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

There is a decrease of one hour in labor hours for the respondents related to a mathematical rounding error in the previous ICR. There is no change in the estimation methodology for labor hours to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for respondents is very low, negative, or non-existent.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–6877 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9650–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Public Service Company of New Mexico, San Juan Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit (Permit Number P062R2) issued by the New Mexico Environment Department, Air Quality Bureau (NMED). Specifically, the Administrator has granted in part and denied in part the November 19, 2010 petition, submitted by WildEarth Guardians, the San Juan Citizens Alliance, and Carson Forest Watch (Petitioners) to object to the operating permit issued on January 24, 2011 to the Public Service Company of New Mexico, for the operations of the San Juan Generating Station (SJGS) located in San Juan County, New Mexico. Pursuant to sections 307(b) and 505(b)(2) of the Clean Air Act (CAA), a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFROMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order for the Public Service Company of New Mexico San Juan Generating Station is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/san_juan_response2010.pdf.*

FOR FURTHER INFORMATION CONTACT: Brad Toups at (214) 665–7258, email address: *toups.brad@epa.gov* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these

issues during the comment period or the grounds for the issue arose after this period.

EPA received a petition from the Petitioners dated November 19, 2010, requesting that EPA object to the issuance of the Title V operating permit to Public Service Company of New Mexico, for the operation of the San Juan Generating Station in San Juan County, New Mexico for the following reasons: (1) Fails to ensure compliance with the Prevention of Significant Deterioration requirements; (2) fails to ensure compliance with source impact analysis requirements in the New Mexico State Implementation Plan; (3) fails to require prompt reporting of deviations; (4) fails to require sufficient periodic monitoring; and (5) includes a condition that is contrary to applicable requirements.

On February 15, 2012, the Administrator issued an order granting in part and denying in part the petition. The order explains the reasons behind EPA's conclusion to grant in part and deny in part the petition.

Dated: March 14, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–6936 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 21, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0725.

Title: Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies (BOCs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 12 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: Quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154, 201–205, 215, 218–220, 226 and 276.

Total Annual Burden: 600 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondent submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for an extension of this expiring information collection in order to obtain the full three year approval from them. There are no changes in the reporting requirements. There are no changes to the Commission's previous burden estimates.

This information collection contains quarterly filing of nondiscrimination reports on quality of service, installation and maintenance by Bell Operating Companies (BOCs). BOCs must submit nondiscrimination reports with regard to payphones to prevent BOCs from discriminating in favor of their own payphones. The reports allow the Commission to determine how the BOCs will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2012–6928 Filed 3–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:27 a.m. on Tuesday, March 20, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Appointive), seconded by Director John G. Walsh (Acting Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau) and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters

in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Dated: March 20, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–7035 Filed 3–20–12; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10079—Millennium State Bank of Texas, Dallas, TX

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Millennium State Bank of Texas, Dallas, Texas (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Millennium State Bank of Texas, Dallas, Texas, on July 2, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated this 16th day of March, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–6855 Filed 3–21–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–031.

Title: Australia and New Zealand-United States Discussion Agreement.

Parties: ANL Singapore Pte Ltd.; CMA CGM, S.A.; Hamburg-Süd KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1627 I Street NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes A.P. Moller-Maersk AS, trading under the name of Maersk Line, as party to the Agreement.

Agreement No.: 011463–007.

Title: East Coast of North America to West Coast of South America and Caribbean Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Hamburg-Süd; and Compania Chilena de Navagacion Interoceania, S.A.

Filing Party: Walter M. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10018.

Synopsis: The amendment would revise terms and conditions of the Agreement, reduce the number of vessels operated under the agreement, increase the vessel capacity, and revise the space allocations of the parties.

Agreement No.: 011730–004.

Title: GWF/Dole Space Charter and Sailing Agreement.

Parties: Dole Ocean Cargo Express, Inc. and Great White Fleet (US) Ltd.

Filing Party: Wade S. Hooker, Esq., 211 Central Park West, New York, NY 10024.

Synopsis: The amendment changes the name of Great White Fleet (US) Ltd. to Great White Fleet Liner Services Ltd.

Agreement No.: 011961–011.

Title: The Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia; A.P. Moller-Maersk A/S trading under the name of Maersk Line; China Shipping Container Lines Co. Ltd.; CMA CGM A.A.; Companhia Libra De Navegacao; Compania Sud American De Vapores, S.A.; COSCO Container Lines Co., Limited; Dole Ocean Cargo Express; Hamburg Sudamerikanische Dampfschifffahrts-Gesellschaft KG; Hanjin Shipping Co., Ltd; Hoegh Autoliners A/S; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Compania Libra de Navegacion; Uruguay S.A.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Safmarine Container Liners N.V.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; YangMing Marine Transport Corp. and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1627 I Street NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: Adds A.P. Moller-Maersk A/s trading under the name Maersk Line as a party to the Agreement.

Agreement No.: 012160.

Title: Grand Alliance/Hanjin Vessel Sharing Agreement.

Parties: Hapag-Lloyd AG; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Hanjin Shipping Co., Ltd.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes the parties to share vessels in the trades between Japan and the U.S. Pacific Coast, and between the U.S. Pacific Coast and the Middle East and Asia.

Agreement No.: 012161.

Title: Siem Car Carrier Pacific AS/ Hyundai Glovis Co., Ltd. Space Charter Agreement.

Parties: Siem Car Carrier Pacific AS; Hyundai Glovis Co., Ltd.

Filing Party: Ashley W. Craig; Venable LLP; 575 Seventh Street NW., Washington, DC 20004.

Synopsis: The agreement authorizes the parties to engage in a limited range of cooperative activities, including, but not limited to, vessel space chartering in the trade between The U.S. West Coast and South Korea.

Agreement No.: 012162.

Title: Hoegh Autoliners/Hyundai Glovis Space Charter Agreement.

Parties: Hoegh Autoliners AS; Hyundai Glovis Co. Ltd.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Hoegh to charter space to Hyundai Glovis in the trade from South Korea to the U.S. Atlantic Coast.

By order of the Federal Maritime Commission.

Dated: March 16, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–6826 Filed 3–21–12; 8:45 am]

BILLING CODE 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 3, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. William Bradley Giblet and Lita Giblet, both of Hydro, Oklahoma, and Gaylon Vogt, Weatherford, Oklahoma, to acquire control of Ryan Bancshares, Inc., parent of The First State Bank, both in Ryan, Oklahoma.

Board of Governors of the Federal Reserve System, March 16, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6823 Filed 3–21–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BNC Bancorp,* High Point, North Carolina; to merge with KeySource Financial, Inc., and thereby indirectly acquire KeySource Commercial Bank, both in Durham, North Carolina.

Board of Governors of the Federal Reserve System, March 19, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–6934 Filed 3–21–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIB–2012–01; Docket 2012–0002; Sequence 6]

Privacy Act of 1974; Notice of New System of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA proposes to revise a system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: Effective April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: telephone 202–208–1317; email *gsa.privacyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA proposes to revise a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system will provide for the collection of information to track and manage administrative matters, claims and litigation cases in the Office of General Counsel. The safeguards were changed to provide that access is limited to authorized individuals with passwords or keys. Electronic files are maintained behind a firewall, and paper files are stored in locked rooms or filing cabinets.

Dated: March 14, 2012.

Cheryl M. Paige,

Director, Office of Information Management.

SYSTEM NAME:

GSA/OGC–1 (Office of General Counsel Cases).

SYSTEM LOCATION:

The system is maintained electronically and in paper form in the Office of the General Counsel and the regional counsels' offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved with administrative matters, claims or litigation with GSA. Individuals referenced in potential or actual cases and matters under the jurisdiction of the Office of General Counsel; and attorneys, paralegals, and other employees of the Office of General Counsel directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed for administering and properly managing and resolving the cases in the Office of General Counsel. Records in this system pertain to a broad variety of administrative matters, claims and litigation under the jurisdiction of the Office of General Counsel including, but not limited to, torts, contract disputes, and employment matters. Records may include but are not limited to: name, social security number, home address, home phone number, email address, birth date, financial information, medical records, or employment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101; the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 501 *et seq.*); the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*); Claims (Chapter 37 of Title 31 of the U.S. Code).

PURPOSE:

Records are maintained for the purpose of litigating or resolving any case or administrative matter under consideration by the Office of General Counsel.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM.

In addition to the purpose for this system of records, information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation, or to an agency, individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

c. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Records are maintained in both paper and electronic form.

RETRIEVABILITY:

Records are retrievable based on any information captured, including but not limited to: name, case name, and social security number.

SAFEGUARDS:

Access is limited to authorized individuals with passwords or keys. Electronic files are maintained behind a firewall, and paper files are stored in locked rooms or filing cabinets.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Office of General Counsel, General Services Administration, 1275 First Street, NE., Washington, DC 20417.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

RECORD ACCESS PROCEDURES:

Individuals wishing to access their own records should contact the system manager at the address above.

CONTESTING RECORD PROCEDURE:

Individuals wishing to amend their records should contact the system manager at the address above.

RECORD SOURCE CATEGORIES:

The sources for information in the system are data from other systems, information submitted by individuals or their representatives, information gathered from public sources, and information from other entities involved in the case.

[FR Doc. 2012–6839 Filed 3–21–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships to Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA).''

Public Meeting Time and Date: 10 a.m.–3:30 p.m. EDT, June 27, 2012.

Place: Patriots Plaza, 395 E Street SW., Conference Room 9000, Washington, DC 20201.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the NORA Sector Councils on their progress, priorities, and implementation plans to date, likely including the NORA Construction, Manufacturing, Public Safety, Services, and Wholesale and Retail Trade Sector Councils. Updates will also be given on at least one NIOSH Program that is working on several NORA priorities, e.g., the NIOSH Global Collaborations Program. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the Internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an email to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation in-person or by Web meeting (requirements include: computer, Internet connection, and telephone, preferably with 'mute' capability). An email confirming registration will include the details needed to participate in the Web meeting. Non-U.S. citizens are encouraged to participate in the Web meeting. Non-U.S. citizens who do not register to attend in person on or before June 5, 2012, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html*.

Since 2006, NORA has been structured according to industrial sectors. Ten major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the Web and town hall meetings, ten NORA Sector Councils defined sector-specific strategic plans for conducting research and moving the results into widespread practice. To view the National Sector Agendas, see *http://www.cdc.gov/niosh/nora/*.

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, Ph.D., NORA Coordinator, Email *noracoordinator@cdc.gov,* telephone (202) 245–0665.

Dated: March 2, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–6771 Filed 3–21–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5052–N]

Medicare Program; Solicitation for Proposals for the Medicare Graduate Nurse Education Demonstration Program

AGENCY: Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply to participate in the Medicare Graduate Nurse Education (GNE) Demonstration. The primary goal of the GNE Demonstration is to increase the number of advanced practice registered nurses (APRNs) in order to meet the health care needs of the growing Medicare population.

DATES: Proposals will be considered timely if they are received on or before 5 p.m., Eastern Standard Time (E.S.T.) on May 21, 2012.

ADDRESSES: Proposals should be mailed to the following address: Centers for Medicare & Medicaid Services, Center for Medicare & Medicaid Innovation, Attention: Alexandre Laberge, Mail Stop: WB–06–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Alexandre Laberge (410) 786–8625 or by email at *GNE@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

General Information: Please refer to file code (CMS–5052–N) on the application. Proposals (an unbound original and 10 electronic copies on CD–ROM) must be typed for clarity and should not exceed 50 double-spaced pages, exclusive of cover letter, the executive summary, resumes, forms, and no more than 15 pages supporting documentation. Because of staffing and resource limitations, we cannot accept proposals by facsimile (Fax) transmission. Applicants may, but are not required to, submit a total of 10 copies to assure that each reviewer receive a proposal in the manner intended by the applicant (for example, collated, tabulated color copies). Hard copies and electronic copies must be identical.

Eligible Organizations: As set forth in section 5509 of the Affordable Care Act (ACA) (Pub. L. 111–148, as amended by Pub. L. 111–152), an ''eligible hospital'' may apply to perform the responsibilities specified. Section 5509(e)(5) of the ACA defines an ''eligible hospital'' to mean a hospital (as defined in section 1861(e) of the Social Security Act (the Act) (42 U.S.C. 1395x)) or a critical access hospital (as defined in section 1861(mm)(1) of the Act) that has a written agreement in place with—(A) 1 or more applicable schools of nursing; and (B) 2 or more applicable non-hospital community-based care settings. The written agreement must meet specific requirements set forth in section 5509 of the ACA including—(1) the obligations of the eligible partners with respect to the provision of qualified training; and (2) the obligation of the eligible hospital to reimburse such eligible partners applicable (in a timely manner) for the costs of such qualified training attributable to partner. The demonstration will include up to five eligible hospitals.

I. Provisions of This Notice

We are seeking eligible hospital applicants, which includes critical access hospitals, to partner with one or more applicable schools of nursing (SONs) and two or more applicable nonhospital community-based care settings (CCSs) to provide advanced practice registered nurse (APRN) students with qualified training. See section 5509(e) of the ACA for the definitions of the terms used in the preceding sentence. At least half of the clinical training must be provided in non-hospital CCSs which may include federally qualified health centers (FQHCs), rural health clinics (RHCs), and other nonhospital settings as determined appropriate by the Secretary. However, the Secretary may waive the requirement under section

5509(e)(7)(A)(ii) of the ACA with respect to eligible hospitals located in rural or medically underserved areas.

In general terms, the demonstration provides a source of Medicare funding for the reasonable costs for clinical training attributable to the incremental increase in the number of APRN students enrolled in participating SONs during the demonstration relative to an established baseline. Section 5509 of the ACA sets forth limitations on the reasonable costs reimbursable under the demonstration. We will make interim payments to selected hospitals with a cost settlement process using Medicare reasonable cost principles. Participating eligible hospitals must establish written agreements with one or more applicable SONs and two or more applicable non-hospital CCSs that define the obligations of each partner with respect to the provision of qualified training and the corresponding eligible hospital's obligation to reimburse eligible partners applicable (in a timely manner) for the costs of such qualified training attributable to the partner and the mechanism for partner reimbursement. As outlined in the GNE Solicitation, applicant hospitals may partner with other hospitals in the demonstration and we will support an expanded configuration of hospital relationships under certain circumstances.

The GNE Demonstration will run for 4 years. Applicants must identify how they propose to significantly increase the APRN student enrollment and graduation rates for clinical nurse specialist, nurse practitioner, certified registered nurse anesthetist, and certified nurse midwife specialty programs. The proposal must present evidence that the applicant hospital and partner organizations are not only capable of successfully recruiting students but also providing relevant clinical training programs responsive to our changing health care system due to the growing number of insured by 2014. Applicants will be required to provide a detailed budget and narrative describing the rationale for the proposed GNE payment rate and why this would be an efficient investment for CMS.

A competitive process will be used to select eligible organizations. We will accept proposal applications in the standard format outlined in the GNE solicitation in order to be considered for review by an internal technical panel. Applications that are not received in this format will not be considered for review.

For more specific details regarding the GNE demonstration, please refer to the informational materials on our Web site at *http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/*.

II. Information Collection Requirements

In accordance with section 5509(a)(4) of the ACA, this information collection requirement is not subject to the Paperwork Reduction Act of 1995. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Authority: Section 5509 of the ACA (Pub. L. 111–148, as amended by Pub. L. 111–152)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 19, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6940 Filed 3–21–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by May 21, 2012.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–8608.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations, or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of January 25,

2012 (77 FR 3777). This notice announces draft product-specific recommendations, either new or revised, that are being posted on FDA's Web site concurrently with publication of this notice.

II. Drug Products for Which New Draft Product-Specific

BE Recommendations Are Available

FDA is announcing new draft product-specific BE recommendations for drug products containing the following active ingredients:

A
Acyclovir (multiple reference listed drugs (RLDs),
Amiloride,
B
Butenafine HCl (multiple RLDs),Chlorpromazine HCl,
C
Clindamycin Phosphate (multiple RLDs),
D
Dalfampridine,
Dexmethylphenidate HCl,
Dextromethorphan HBr; Quinidine Sulfate,
Diclofenac Epolamine,
Drospirenone Ethinyl Estradiol; Levomefolate,
E
Ethinyl Estradiol; Norethindrone,
F
Fenofibrate,
Fludarabine,
Fulvestrant,
G
Glyburide (multiple RLDs),
Granisetron,
I
Ivermectin,
K
Ketoconazole (multiple RLDs),
M
Memantine HCl,
Metformin Hydrochloride; Saxagliptin,
N
Naftifine HCl (multiple RLDs),
Nitrofurantoin; Nitrofurantoin Macrocrystalline,
O
Ondansetron,
Oxiconazole Nitrate (multiple RLDs),
P
Pimecrolimus,
Procarbazine,
Propylthiouracil,
S
Sumatriptan,
T
Tacrolimus (multiple strengths),
Tolvaptan,
Tretinoin (multiple RLDs),
V
Vardenafil HCl,

III. Drug Products for Which Revised Draft Product-Specific BE

Recommendations Are Available

FDA is announcing revised draft product-specific BE recommendations for drug products containing the following active ingredients:

B
Benzoyl Peroxide; Clindamycin Phosphate (multiple RLDs),
Bosentan,
C
Cholestyramine,
Colesevelam,
D
Dexamethasone; Tobramycin (multiple RLDs),
H
Hydrochlorothiazide; Irbesartan,
L
Loteprednol,
Loteprednol; Tobramycin,
P
Paliperidone

For a complete history of previously published **Federal Register** notices relating to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. The guidance, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov.*

Dated: March 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6947 Filed 3–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Novel Clinical Trial Methods.

Date: April 13, 2012.

Time: 8 a.m. to 5 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: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Dissemination and Implementation.

Date: April 16, 2012.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Clinical Trials.

Date: April 16, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6962 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel; Oceans, Great Lakes, and Human Health Review Meeting.

Date: April 24–25, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Marine Toxins and Public Health Review Committee Review Meeting.

Date: April 25–27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Center, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6958 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: April 30, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan. Public meeting observers should call 1–800–791–5525 to access the teleconference and the observer passcode is 5500669#. Members of the public unable to access the meeting by phone may attend in person.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Room 10167, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Twery, Ph.D., Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6955 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Resource-related Application in Congenital Heart Diseases (R24).

Date: April 17, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Keary A Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: March 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6954 Filed 3–21–12; 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 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: Center for Scientific Review Special Emphasis Panel; Center: Mass Spectrometry Resource for Biology and Medicine.

Date: April 1–3, 2012.

Time: 8 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Copley Place Hotel, 10 Huntington Avenue Boston, MA 02116.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6953 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Registration is required since space is limited and will begin at 8 a.m. Please visit the conference Web site for information on meeting logistics and to register for the meeting *http://www.cvent.com/d/jcql88*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: April 24, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: The NCS Advisory Committee will discuss hybrid designs and analytic plans for the National Children's Study. A Director's update along with updated recruitment data will also be presented.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kate Winseck, MSW, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. For additional information about the Federal Advisory Committee meeting, please contact Circle Solutions at *ncs@circlesolutions.com*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: March 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6951 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: April 11, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: April 11, 2012.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Roberta Binder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–7966, *rbinder@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: March 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6950 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Science Advisory Board for Biosecurity Meeting; Office of Biotechnology Activities, Office of Science Policy, Office of the Director; 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 of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The NSABB is being convened on March 29–30, 2012, to review two unpublished manuscripts on the transmissibility of highly pathogenic avian influenza H5N1 virus and to provide recommendations about the responsible communication of such information. In addition, representatives from the Intelligence Community will present a classified briefing to the NSABB.

The NSABB meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. as amended, because premature disclosure of information to be discussed during the meeting would significantly frustrate the agency's ability to determine how the sensitive information in the manuscripts should be responsibly communicated, taking into consideration potential public health and national security concerns. The classified briefing of the NSABB will be closed to the public in accordance with the provisions set forth in section 552b(c)(1), Title 5 U.S.C. as amended, because classified matters sensitive to the interest of national security will be presented.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: March 29–30, 2012.

Time: 4 p.m.–8 p.m. on March 29 and 8:30 a.m.–1:30 p.m. on March 30 (times approximate).

Agenda: NSABB members will review unpublished manuscripts regarding transmissibility of avian influenza H5N1 virus. In addition, representatives from the Intelligence Community will present a classified briefing.

Place: National Institutes of Health, Building 31, Center Drive, 6th Floor, Conference Room 6, Bethesda, Maryland 20892, and a location to be determined for the classified briefing.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *hillro@od.nih.gov.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Dated: March 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6949 Filed 3–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of Publication of Privacy Impact Assessments (PIA).

SUMMARY: The Privacy Office of DHS is making available eleven PIAs on various programs and systems in DHS. These assessments were approved and published on the Privacy Office's Web site between December 1, 2011 and February 29, 2012.

DATES: The PIAs will be available on the DHS Web site until May 21, 2012, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or email: *pia@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: Between December 1, 2011 and February 29, 2012 the Chief Privacy Officer of the DHS approved and published eleven Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' These PIAs cover eleven separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the web site or by contacting the Privacy Office.

System: DHS/USSS/PIA–007 Forensic Services Division (FSD) Polygraph System.

Component: United States Secret Service (USSS).

Date of approval: December 15, 2011.

The FSD Polygraph Branch of the USSS uses the FSD Polygraph system to track all polygraph examinations that it administers. This database contains information on applicant and criminal polygraph examinations and their results. USSS is conducting this PIA because this system contains PII of individuals who undergo an exam.

System: DHS/FEMA/PIA–019 Firehouse Database (Unclassified and Classified).

Component: Federal Emergency Management Agency (FEMA).

Date of approval: December 15, 2011.

The U.S. DHS FEMA Mount Weather Emergency Operations Center (MWEOC) Emergency Services Division (ESD) owns and operates two Firehouse Databases: (1) Firehouse Database (classified); and (2) Firehouse Database (unclassified). The difference between the two databases is that the classified Firehouse Database contains classified locations on which MWEOC ESD may respond at the MWEOC facility. FEMA uses the unclassified and classified Firehouse Databases to manage the collection, documentation, and reporting of information about emergency incidents, incident investigations, site inventory and inspections, staffing, scheduling, and personnel certifications and training of FEMA paramedics, emergency management technicians, firefighters, and other first responders at MWEOC ESD. FEMA is conducting this PIA because FEMA's unclassified and classified Firehouse Databases collects, uses, maintains, retrieves, and disseminates PII of MWEOC residents, employees and contractors, visitors, as well as members of the immediate local community surrounding MWEOC. This PIA covers both the unclassified and classified Firehouse Databases.

System: DHS/ALL/PIA–028(a) Freedom of Information Act (FOIA) and Privacy Act (PA) Records Program Update.

Component: DHS.

Date of approval: December 16, 2011.

The DHS Privacy Office is publishing an update to the current PIA, DHS/ALL/PIA–028, which outlines the risks presented by the use of PII in the various FOIA and PA processes and systems employed by DHS. This update introduces the use of a FOIA software application used for tracking FOIA requests.

System: DHS/FEMA/PIA–020 Integrated Financial Management Information System (IFMIS) Merger.

Component: FEMA.

Date of approval: December 16, 2011.

The U.S. DHS FEMA's Office of the Chief Financial Officer owns and operates the IFMIS-Merger system. IFMIS-Merger is FEMA's official accounting and financial management system that pulls all financial data from other FEMA, DHS, and Government-wide systems (subsystems), and is the source of data for both internal and external financial reporting. The system records and tracks all financial transactions. FEMA is conducting this PIA because IFMIS-Merger collects uses, maintains, retrieves, and disseminates PII once pulled from the subsystems.

System: DHS/S&T/PIA–012(a) Future Attribute Screening Technology (FAST) Passive Methods for Precision Behavioral Screening.

Component: Science and Technology (S&T).

Date of approval: December 21, 2011.

The DHS Privacy Office is publishing an update to the current PIA, DHS/S&T/PIA–012 to increase the performance of FAST primary screening procedures and to increase the ability to differentiate malintent through the inclusion of passive stimuli. The FAST project, managed by the Human Factors/Behavioral Sciences Division (HFD), Homeland Security Advanced Research Projects Agency (HSARPA), S&T Directorate seeks to develop physiological and behavioral screening technologies that will enable security officials to test the effectiveness of current screening methods at evaluating suspicious behaviors and judging the implications of those behaviors. The FAST research is adding a new type of research, the Passive Methods for Precision Behavioral Screening (hereinafter FAST/Passive). The purpose of the FAST/Passive study is to build upon existing FAST research using volunteers and increase the performance of FAST primary screening procedures and to increase the ability to differentiate malintent through the inclusion of passive stimuli. The aim of the FAST/Passive study is to devise passive stimuli that will evoke malintent cues and incorporate these stimuli into the FAST screening project. The ultimate goal of the FAST screening project after the testing has been completed is to equip security officials with quantitative tools to rapidly assess potential and unknown threats.

System: DHS/USSS/PIA–008 Secret Service Use of Advanced Imaging Technology (AIT).

Component: USSS.

Date of approval: December 23, 2011.

USSS is deploying AIT, at Secret Service protective sites. This technology creates an image of the full body that highlights anomalies that are on the body. It is used as a secondary means of personnel screening at protected sites, and used after the primary screening measures indicate that an individual requires an additional level of screening.

To address privacy concerns associated with creating an image of an individual's body, the Secret Service employee who examines the image is at a remote location and cannot see the person who is being screened, only the image produced by the AIT. The Secret Service employee that is in the room with the person being imaged can communicate with the Secret Service employee who examines the image, but cannot view the image.

The image of the individual is not linked in any way to the individual nor does it they provide sufficient detail to be used for personal identification. The AIT does not have the capability to store, transmit, or print these images. In addition, an electronic privacy filter is applied to the remotely viewed image which renders the facial features unrecognizable.

System: DHS/ALL/PIA–041 One DHS Overstay Vetting Pilot.

Component: DHS.

Date of approval: December 29, 2011.

DHS is conducting the One DHS Overstay Vetting Pilot to improve DHS' ability to identify and vet foreign nationals who have remained in the United States beyond their authorized period of admission (overstays). The pilot will attempt to streamline data sharing between the National Protection and Programs Directorate's United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement (ICE). The overstay vetting process is covered by existing PIAs for the CBP Automated Targeting System (ATS), US–VISIT Technical Reconciliation Analysis Classification System, and US–VISIT Arrival Departure Information System. In addition to this existing coverage, US–VISIT has worked with the DHS Privacy Office to complete this PIA specific to the Overstay Vetting Pilot to add another layer of analysis and transparency to this specific process which can be updated as the program matures. Data sharing conducted through this program allows DHS to better identify which individuals have overstayed their authorized periods of admission, and of those overstays, which are the highest law enforcement or national security priority for enforcement action by ICE. DHS is conducting this PIA because the pilot increases the sharing within DHS of PII about travelers.

System: DHS/TSA/PIA–036 TSA Canine Web site System (CWS).

Component: TSA.

Date of approval: January 13, 2012.

Under the Aviation and Transportation Security Act, the TSA is responsible for security in all modes of transportation. TSA's National Explosives Detection Canine Team Program (NEDCTP) prepares dogs and handlers to quickly locate and identify dangerous materials that may present a threat to transportation systems. The NEDCTP operates the CWS, which is a web-based system designed to assist in coordinating operations. The CWS is the central management database for all NEDCTP records and operations. The CWS collects PII to facilitate training, foster communication, and to perform administrative functions. Because this program entails a new collection of information by TSA about members of the public in an identifiable form, the E-Government Act of 2002 and the Homeland Security Act of 2002 require that the TSA conduct a PIA.

System: DHS/TSA/PIA–012 Transportation Worker Identification Credential Program.

Component: TSA.

Date of approval: January 13, 2012.

The TSA Directorate's TWIC system has undergone a PIA 3-Year Review. The PIA requires no changes and continues to accurately relate to its stated mission.

The TSA published a joint Final Rule with the United States Coast Guard to implement a TWIC program to provide a biometric credential that can be used to confirm the identity of workers in the national transportation system, and conducted a PIA associated with that Final Rule. TSA is amended the PIA to reflect the development of TWIC contactless card capability in sections 1.4, 1.6, 9.2 and 9.3, and the approval of the records schedule by NARA in section 3.

System: DHS/ICE/PIA–032 FALCON Search & Analysis System (FALCON–SA).

Component: ICE.

Date of approval: February 1, 2012.

U.S. ICE, a component agency within the DHS, is establishing a consolidated information management system called FALCON Search & Analysis System (hereafter, FALCON–SA). This system enables ICE law enforcement and homeland security personnel to search, analyze and visualize volumes of

existing information in support of ICE's mission to enforce and investigate violations of U.S. criminal and administrative laws. ICE agents, criminal research specialists, and intelligence analysts use FALCON–SA to conduct research that support the production of law enforcement intelligence products, provide lead information for investigative inquiry and follow-up, assist in the conduct of ICE criminal and administrative investigations, assist in the disruption of terrorist or other criminal activity, and discover previously unknown connections among existing ICE investigations. ICE's use of the system is always predicated on homeland security, law enforcement, and intelligence activities. FALCON–SA is an internal system used only by ICE.

In order to mitigate privacy and security risks associated with the deployment of FALCON–SA, ICE has built technical safeguards into the system and developed a governance process that includes the operational components of ICE Homeland Security Investigations, the oversight functions of the ICE Privacy Office, Office Principal Legal Advisor, and Office of the Chief Information Officer.

This PIA is necessary because FALCON–SA accesses and stores PII retrieved from DHS, other government agency, and commercially available databases. It is also necessary to provide public notice of the existence of FALCON–SA and to publicly document the privacy protections that are in place for the system.

System: DHS/NPPD/PIA–022 Linking Encrypted Network system (LENS).

Component: NPPD.

Date of approval: February 9, 2012.

DHS, NPPD, Critical Infrastructure Technology and Architecture (CITA) Project maintains the Linking Encrypted Network System (LENS), a data repository and application set that acts as a network of online portals or modules, allowing authorized users to obtain, post and exchange information and access common resources. NPPD conducted this PIA to examine the privacy impact associated with the collection of PII related to individuals who are LENS users or seeking access to LENS, as well as PII related to POCs that may be maintained within the LENS data repository. NPPD will conduct separate PIAs, as necessary, for those modules or applications residing on the LENS platform where the scope of the collection is beyond that of this PIA.

Dated: March 12, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–6847 Filed 3–21–12; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5499–FA–01]

Announcement of Funding Awards for the Neighborhood Stabilization Program (NSP) Technical Assistance (NSP TA) Fiscal Year (FY) 2011

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the FY2011 Neighborhood Stabilization—Technical Assistance Program. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Julie Hovden, Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–4496 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, visit HUD's NSP Resource Exchange at *www.hudnsphelp.info*, HUD's Web site at *www.hud.gov*, or call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: The FY 2011 Neighborhood Stabilization Technical Assistance Program was designed to provide assessment tools, technical and capacity building assistance to state government, local government and non-profit recipients of Neighborhood Stabilization Program (NSP) funding to achieve and measureable outcomes through the selection of technical assistance (TA) providers for this program.

The competition was announced in the NSP–TA NOFA published October 17, 2011 (FR–5499–N–01) and closed on November 21, 2011. The NOFA allowed for up to $20 million for Neighborhood Stabilization Program (NSP) Technical Assistance (NSP–TA) for technical assistance and capacity building activities for recipients, including state and local governments and non-profit organizations, receiving federal Neighborhood Stabilization Program funds. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the FY2011 competition, 12 awards totaling $20,000,000 were awarded to 12 distinct technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing in Appendix A to this document the name of the NSP–TA grantees and the amounts of the awards.

Dated: March 14, 2012.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

APPENDIX A

Recipient	State	Amount
APD Urban Planning Management, LLC	FL	$500,000
Capital Access, Inc	PA	500,000
Cloudburst Consulting Group	MD	3,000,000
Corporation for Supportive Housing	NY	500,000
Dennison Associates, Inc	DC	1,000,000
Econometrica, Inc	MD	1,000,000
Enterprise Community Partners, Inc	MD	3,000,000
ICF International	VA	3,000,000
Local Initiatives Support Corporation	NY	3,000,000
Minnesota Housing Partnership	MN	1,000,000

APPENDIX A—Continued

Recipient	State	Amount
Training & Development Associates, Inc	NC	3,000,000
W. Frank Newton, Inc	GA	500,000
Total		20,000,000

[FR Doc. 2012–6937 Filed 3–21–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5627–N–03]

Notice of Realignment/Merger of Five Regional Audit Offices: Boston, MA Will Merge With New York, NY; and the Gulf Coast Region Will Merge With Atlanta, GA and Fort Worth, TX

AGENCY: Office of Inspector General, United States Department of Housing and Urban Development (HUD/OIG).

ACTION: Notice of reorganization: realignment of Five Regional Audit Offices: Boston, Massachusetts (Region 1) will merge with New York, New York (Region 2); and The Gulf Coast Region (Region 11) will merge with Atlanta, Georgia (Region 4) and Fort Worth, Texas (Region 6).

SUMMARY: This notice advises the public that the HUD/OIG Office of Audit plans to merge/reclassify its Boston, Massachusetts (Region 1) office with its New York, New York (Region 2) office; and merge its Gulf Coast Region (Region 11) office with its Atlanta, Georgia (Region 4) office and Fort Worth, Texas (Region 6) office. The planned reorganization is intended to:

1. Improve the alignment of limited audit resources, to promote more efficient responses to HUD or Congressional requests involving critical program issues;
2. Improve management control and effectiveness while improving the overall management structure; and
3. Deploy resources to address systemic concerns within HUD.

The HUD/OIG Office of Investigations has announced its own realignment/reorganization, which impacts region 11 as well. This notice also includes a cost-benefit analysis supporting the merger of these five audit regional offices into three audit regional offices.

FOR FURTHER INFORMATION CONTACT: Randy W. McGinnis, Assistant Inspector General for Audit, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8274, Washington, DC 20410–4500, telephone (202) 402–0364 (this is not a toll free number.) A telecommunication device for hearing and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Relay Services). (This is a toll free number.)

SUPPLEMENTARY INFORMATION: Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that:

> A plan for reorganization, of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after the publication in the **Federal Register** of a cost-benefit analysis of the effect of the plan on the office involved.

The required cost-benefit analysis must include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (*See* House Conference Report No. 95–1792, October 14, 1978 at 58.) Although HUD/OIG believes that the legislative history of section 7(p) strongly suggests that the legislation is inapplicable to merger of regional offices that will in no way reduce the level of services provided to areas served by such offices, HUD/OIG nonetheless voluntarily publishes the following cost-benefit analysis of its plan.

Cost-Benefit Analysis

A. Background

Since 2002, HUD/OIG staffing has declined from an average high of 730 full time equivalents (FTEs) to a current level of 650 FTEs. HUD OIG has a target level of 620 for the beginning of FY 2013. Simultaneous with this constriction of staff resources, HUD/OIG is contending with the onslaught of mortgage fraud issues and foreclosure issues associated with the collapse of the mortgage industry and the sub-prime market, examining and evaluating the implementation, execution and oversight of HUD's HOME program, the crippled economy and the impact that the economy has had on the foreclosure of HUD FHA insured loans. To more efficiently and effectively address HUD/OIG's core mission and at the same time become better prepared to respond to inevitable but unpredictable events, HUD/OIG plans to merge five regional audit offices into three regional audit offices, 90 days following the publication of this notice.

B. Description of Proposed Changes

90 days following the publication of this notice, the HUD/OIG Office of Audit will merge its Region 1 Boston, Massachusetts office with its Region 2 New York, New York office. This one combined region can more effectively and efficiently serve the geographic area which it will cover while ultimately reducing costs. The New York office shall remain a regional office, the Boston office and its former field offices will become field offices of Region 2. HUD/OIG will also merge its Region 11 Gulf Coast office with its Region 4 Atlanta, Georgia office and its Region 6 Fort Worth, Texas office. The Gulf Coast regional staff located in Mississippi will be assigned to the Atlanta, Georgia region while its New Orleans, Louisiana based staff will be assigned to region 6 in Ft. Worth, Texas. Region 11, which was created in response to the natural disasters that struck this area, will no longer exist as a separate region, and its states of responsibility will revert back to the regions that historically oversaw them. All other existing regional and field office jurisdictional boundaries will be unchanged. HUD/OIG Office of

Investigations is undergoing a similar reorganization the details of which are being filed in the **Federal Register** at the same time as this notice. Additionally, the Office of Audit's headquarters organization will not be affected by this realignment.

Like all HUD/OIG Office of Audit regional offices, the merged regions are managed by a GS–15 Regional Inspector General for Audit (RIGA). Those RIGAs now assigned to regions that are being merged into other regions will be assigned as Deputy RIGAs (with no reduction in grade) to the appropriate regional office. Of note, there will be some attrition in this realignment and some positions will therefore be eliminated.

C. Costs Versus Benefits

1. One-Time Costs

(a) *Personnel relocation cost ($0).* It is anticipated that there may be one personnel relocation associated with this reorganization.

(b) *Severance or unemployment compensation costs ($0).* No severance costs are associated with this initiative as it does not contemplate the termination of any staff.

(c) *Purchase/movement of furniture and equipment ($0).* Each of the offices that are being evaluated for merger already exist and are fully equipped. Additionally, the proposal does not contemplate the creation of new field offices or an increase in overall FTEs. Thus, no purchase or movement of furniture or equipment is involved.

(c) *Space alteration costs (de minimus).* Some offices may require space alterations and telephone changes to accommodate any future changes of assigned staff. However, HUD/OIG estimates that any space alteration costs that result will be minimal because HUD/OIG has implemented and encourages teleworking. Further, hoteling is an option available to HUD/OIG.

No additional or supplemental funding is expected to the current appropriated budget. All costs will be maintained within the current budget.

2. Permanent Increases in Operating Costs

The realignment will not result in any increase in operating costs.

No additional or supplemental funding is expected.

3. Dollar Savings Resulting From Realignment of Offices

Personnel Cost Savings. The realignment alone will ultimately result in the elimination of 2 GS 15 positions, with an annual savings in excess of $300,000.00 per year.

D. Impact on Local Economies

The planned merger of the five regional audit offices into three regional audit offices is not expected to have any impact on the local economies of Boston, Massachusetts; New York, New York; Atlanta, Georgia; Fort Worth, Texas; or the Gulf Coast region. The merger does not involve terminating existing real estate leases prior to their expiration date, nor does it involve leasing addition real estate. Moreover, the plan does not contemplate appreciable relocation of staff to these metropolitan areas. Thus, any impact on the local economies in terms of housing, schools, public services, taxes, employment, and traffic congestion will be non-existent or insignificant at most.

E. Effect of the Reclassifications on the Availability, Accessibility, and Quality of Services Provided for Recipients of Those Services

The plan was designed to improve the quality and level of service provided to stakeholders and affected clients nationwide. The regions will receive greater management emphasis than prior to the reclassification. Management will be enabled to interact with HUD management and clients more frequently and in greater scope than is now possible. More interaction and attention translates into more availability and accessibility of higher quality services.

Dated: March 13, 2012.

David A. Montoya,

Inspector General.

[FR Doc. 2012–6939 Filed 3–21–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5627–N–02]

Notice of Reclassification of One Investigative Field Office to Regional Office: Denver, CO

AGENCY: Office of Inspector General, United States Department of Housing and Urban Development (HUD/OIG).

ACTION: Notice of reorganization: the reclassification of the Denver, Colorado field office of investigation as a regional office of investigation.

SUMMARY: This notice advises the public that the HUD/OIG Office of Investigation plans to reclassify its Denver, Colorado field office as a regional office. The planned reorganization is intended to:

1. Improve the alignment of limited investigative resources, to promote more efficient responses to HUD or Congressional requests involving critical program issues;
2. Redeploy resources to prevent and detect fraud in new program delivery of CPD, FHA and other HUD programs; and
3. Improve management control and effectiveness, and reduce travel costs of management by reducing region size.
4. Return to the traditional Regional alignment of HUD OIG Regional offices and HUD Regional offices.

The HUD/OIG Office of Audit, to the extent that it maintains a field office in this location, has determined that based upon the different nature of its responsibilities it does not need to reorganize. This notice also includes a cost-benefit analysis supporting the reclassification of the office.

FOR FURTHER INFORMATION CONTACT: John McCarty, Assistant Inspector General for Investigations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8274, Washington, DC 20410–4500, telephone 202–708–0390 (This is not a toll free number.) A telecommunication device for hearing and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Relay Services). (This is a toll free number).

SUPPLEMENTARY INFORMATION: Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that:

A plan for reorganization, of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after the publication in the **Federal Register** of a cost-benefit analysis of the effect of the plan on the office involved.

The required cost-benefit analysis must include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of

employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (*See* House Conference Report No. 95–1792, October 14, 1978 at 58.) Although HUD/OIG believes that the legislative history of section 7(p) strongly suggests that the legislation is inapplicable to a reclassification of four field offices that will in no way reduce the level of services provided to areas served by such offices, HUD/OIG nonetheless voluntarily publishes the following cost-benefit analysis of its plan.

Cost-Benefit Analysis

A. Background

HUD/OIG staffing is presently being reduced from a high average of around 730 full time equivalents (FTEs) to a target level of approximately 620 FTEs, currently now at 650. Simultaneous with this constriction of staff resources, HUD/OIG is contending with the onslaught of mortgage fraud issues and foreclosure issues associated with the collapse of the mortgage industry and the sub-prime market, the crippled economy and the impact that the economy has had on the foreclosure of HUD FHA insured loans. The ongoing staff reductions and other unforeseen additional responsibilities have conspired to cause the HUD/OIG Office of Investigation to struggle to continue to properly and timely address baseline fraud, waste and abuse in HUD programs. HUD's regional structure includes a Regional office in Denver, Colorado, and one of its four Housing Ownership Centers (HOCs) is located in Denver. HUD OIG works closely with the HOCs in indentifying trends and compiling data related to fraudulent practices against HUD programs. HUD OIG has traditionally had a Regional office in Denver, Colorado but closed it in the early 2000's due to various problems with the office. Collocating with HUD will allow HUD OIG investigations to more efficiently and effectively address HUD/OIG's core mission and at the same time become better prepared to respond to inevitable but unpredictable events. Additionally, the United States Attorney for Colorado as well as other western US Attorneys have expressed interest in expanding work relative to HUD Native American programs and having a Regional office in Denver, Colorado will facilitate that effort. Accordingly, HUD/OIG plans to reclassify its Denver, Colorado office to Regional office status, 90 days following the publication of this notice.

B. Description of Proposed Changes

90 days following the publication of this notice, the HUD/OIG Office of Investigation will reclassify its Denver, Colorado field office as a regional office, headquarters for HUD OIG Region 8. Region 8 will have geographic responsibility for the states of Colorado, Wyoming, Montana, Utah, North Dakota, South Dakota, Idaho, Oregon and Washington. As part of this reorganization Region 10, currently headquartered in Seattle, Washington, will become a field office of Region 8, and its former field offices in Washington and Oregon will become Region 8 field offices. The HUD/OIG Office of Audit will not participate in this reorganization and will remain as part of HUD OIG Region 7 with its Regional office located in Kansas City, Missouri. Additionally, the Office of Investigation's headquarters organization will not be affected by this realignment.

Like all HUD/OIG Office of Investigation regional offices, Region 8 will be managed by a GS–15 1811 Special Agent-in-Charge (SAC). The office currently has a GS–14 ASAC and 5 GS–13 agents, all of whom will remain. The current GS15 SAC position in Seattle will be eliminated and will ultimately result in a reduction of one FTE.

C. Costs Versus Benefits

1. One-Time Costs

(a) *Personnel relocation costs* It is not anticipated that there will be any personnel relocation costs associated with this reorganization. It is prudent to plan for potential relocations that may become necessary to fill vacancies and/or back filling of positions.

(b) *Severance or unemployment compensation costs ($0).* No severance costs are associated with this initiative as it does not contemplate the termination of any staff.

(c) *Purchase/movement of furniture and equipment ($0).* The only costs here will be for equipping the new SAC office. All other offices already exist and are fully equipped. Additionally, the proposal does not contemplate the creation of new field offices or an increase in overall FTEs at this time. Thus, no purchase or movement of furniture or equipment is involved.

(d) *Space alteration costs (de minimus).* Some offices may require slight space alterations and telephone changes to accommodate assigned staff and the new SAC. However, HUD/OIG estimates that any space alteration costs that result will be minimal.

No additional or supplemental funding is expected to the current appropriated budget. All costs will be maintained within the current budget.

2. Permanent Increases in Operating Costs

Cost to realign current FTEs: The reclassification of the Denver field office to a regional office will require the creation of one SAC position at the GS–15 level. However, the elimination of a SAC position in Seattle by merging Region 10 into Region 8 will ultimately offset the addition of the GS 15 position in Denver. It is likely that the position will be filled with someone from the local commuting area so any additional cost involved will be limited to the pay differential between GS–14 and GS–15 pay levels. Moreover, in light of Law Enforcement Availability Pay (LEAP) differentials payable to ASACs and SACs, combined with the curtailing effect that the overall GS15 step 10 salary cap has on LEAP differentials payable to GS–15 SACs, it is believed that costs associated with the creation of the SAC positions will be negligible, if anything. No additional or supplemental funding is expected. All additional costs will be funded within the ordinary budgets.

3. Dollar Savings Resulting From Elevation of Office

Management travel costs: A necessary incident to having remote field offices is travel costs for supervisors to travel to the office to supervise/review staff and liaise with stake-holders. HUD/OIG believes that contracting the geographic footprint of Region 7—as is contemplated by this plan—will correspondingly reduce management travel for the SAC of Region 7 located Kansas City. Travel for the eventual SAC in Region 8 will be shorter and less expensive than the corresponding travel from Kansas City. The merger of Region 10, with its regional office currently in Seattle, Washington, into Region 8, as noticed in a separate **Federal Register** notice, will further reduce travel for the Region 7 SAC. In light of the current volatile nature of energy and transportation costs, HUD/OIG is unable to accurately quantify such savings.

D. Impact on Local Economies

The planned reclassification of the Denver, Colorado office is not expected to have any impact on the local economy of Denver. The plan does not involve terminating existing real estate leases prior to their expiration date, nor does it involve leasing addition real estate. Moreover, the plan does not contemplate appreciable relocation of

staff to these large metropolitan areas. Thus, any impact on the local economies in terms of housing, schools, public services, taxes, employment, and traffic congestion will be insignificant.

E. Effect of the Reclassifications on the Availability, Accessibility, and Quality of Services Provided for Recipients of Those Services

The plan was designed to improve the quality and level of service provided to stakeholders and affected clients nationwide. The new region will receive greater management emphasis than prior to the reclassification. Management in the new region—because it will be less dispersed and remote—will be enabled to interact with HUD management and clients, the Office of the United States Attorney, and other law enforcement partners more frequently and in greater scope than is now possible. More interaction and attention translates into more availability and accessibility of higher quality services. Similarly, the footprint of HUD/OIG's Region 7 will shrink, and the incumbent SAC will be empowered to redirect attention that he currently devotes to the new Region 8 to the city within Region 7 as redefined. Again, more attention translates into more availability and accessibility of higher quality services.

Dated: March 13, 2012.

David A. Montoya,

Inspector General.

[FR Doc. 2012–6964 Filed 3–21–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5627–N–01]

Notice of Reclassification of Five Regional Offices to Investigative Field Offices: Seattle, WA; New Orleans, LA; Baltimore, MD; Tampa, FL; and Detroit, MI; Closure of Two Investigative Field Offices: Louisville, KY and Jacksonville, FL; and Closure of Two Sub-Field Offices: Long Island, NY; and Central Islip, NY

AGENCY: Office of Inspector General, United States Department of Housing and Urban Development (HUD/OIG).

ACTION: Notice of reorganization: the reclassification of the Seattle, Washington; New Orleans, Louisiana; Baltimore, Maryland; Tampa, Florida; and Detroit, Michigan regional offices as field offices of investigation and the closing of the Louisville, Kentucky and Jacksonville, Florida, offices of investigations, the Long Island, New York, sub-field office of investigations and the Central Islip, New York, sub-field office of investigations.

SUMMARY: This notice advises the public that the HUD/OIG Office of Investigation plans to reclassify its Seattle, Washington; New Orleans, Louisiana; Baltimore, Maryland; Tampa, Florida; and Detroit, Michigan regional offices as field offices of investigation. Additionally, the following field offices will be closed: Louisville, Kentucky and Jacksonville, Florida; Long Island, New York (sub-field office); and Central Islip, New York (sub-field office). The planned reorganization is intended to:

1. Improve the alignment of limited investigative resources, to promote more efficient responses to HUD or Congressional requests involving critical program issues;
2. Improve management control and effectiveness while improving the overall management structure;
3. Redeploy resources to prevent and detect fraud in new program delivery of CPD, FHA and other HUD programs;
4. Return to a more traditional regional alignment of HUD OIG regional offices and HUD regional offices.

The HUD/OIG Office of Audit, to the extent that it maintains offices in these locations, has determined that, based upon the different nature of its responsibilities, it does not need to reorganize. This notice also includes a cost-benefit analysis supporting the reclassification of the four regional offices.

FOR FURTHER INFORMATION CONTACT: John McCarty, Assistant Inspector General for Investigations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8274, Washington, DC 20410–4500, telephone 202–708–0390 (this is not a toll free number). A telecommunication device for hearing and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Relay Services). (This is a toll free number).

SUPPLEMENTARY INFORMATION: Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that:

> A plan for reorganization, of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after the publication in the **Federal Register** of a cost-benefit analysis of the effect of the plan on the office involved.

The required cost-benefit analysis must include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (*See* House Conference Report No. 95–1792, October 14, 1978 at 58.) Although HUD/OIG believes that the legislative history of section 7(p) strongly suggests that the legislation is inapplicable to a reclassification of four field offices that will in no way reduce the level of services provided to areas served by such offices, HUD/OIG nonetheless voluntarily publishes the following cost-benefit analysis of its plan.

Cost-Benefit Analysis

A. Background

Since 2002, HUD/OIG staffing has declined from an average high of 730 full time equivalents (FTEs) to a current level of 650 FTEs. HUD/OIG has a target FTE level of 620 for the beginning of FY 2013. Simultaneous with this constriction of staff resources, HUD/OIG is contending with the onslaught of mortgage fraud issues and foreclosure issues associated with the collapse of the mortgage industry and the sub-prime market, the crippled economy and the impact that the economy has had on the foreclosure of HUD FHA insured loans. The staff reductions and unforeseen additional responsibilities have conspired to cause HUD/OIG Office of Investigation to struggle to continue to address baseline fraud, waste and abuse in HUD programs. To more efficiently and effectively address HUD/OIG's core mission and at the same time become better prepared to respond to inevitable but unpredictable events, HUD/OIG plans to reclassify five regional offices to field offices and close three field offices, 90 days following the publication of this notice.

B. Description of Proposed Changes

90 days following the publication of this notice, the HUD/OIG Office of

Investigation will reclassify its Seattle, Washington; New Orleans, Louisiana; Baltimore, Maryland; Tampa, Florida; and Detroit, Michigan regional offices as field offices. The Seattle, Washington, field office will be aligned under the newly reformed Denver, Colorado, regional office (Region 8). The New Orleans, Louisiana, field office and its former field offices will be aligned under the Fort Worth, Texas, regional office (Region 6) or the Atlanta, Georgia regional office (Region 4). The Baltimore, Maryland, field office and its former field offices will be aligned under the Philadelphia, Pennsylvania regional office (Region 3). The Tampa, Florida, field office and its former field offices will be aligned under the Atlanta, Georgia, regional office (Region 4). Additionally, as part of this reorganization the New York, New York, Regional Office (Region 2) will redistribute workload and personnel to address concerns in Long Island, New York and Central Islip, New York and will close two sub-field offices in New York. Region 4 will redistribute workload to address concerns in Jacksonville, Florida and Louisville, Kentucky where the offices are being closed. All other existing regional and field office jurisdictional boundaries will be unchanged, and the HUD/OIG Office of Audit will not participate in this reorganization. Additionally, the Office of Investigation's headquarters organization will not be affected by this realignment.

Like all HUD/OIG Office of Investigation regional offices, each of the five identified regional offices is currently managed by a GS–15 1811 Special Agent-in-Charge (SAC). These SACs will be assigned as Deputy SACs (with no reduction in grade) to the appropriate regional office. Of note, there will be some attrition in this realignment and some positions will therefore be eliminated. The realignment ultimately will result in a net reduction of 6 FTEs.

C. Costs Versus Benefits

1. One-Time Costs

(a) *Personnel relocation cost ($0).* It is not anticipated that there will be any personnel relocation costs associated with this reorganization.

(b) *Severance or unemployment compensation costs ($0).* No severance costs are associated with this initiative as it does not contemplate the termination of any staff.

(c) *Purchase/movement of furniture and equipment ($0).* Each of the field offices that are being evaluated for reclassification to regional office status already exist and are fully equipped. Additionally, the proposal does not contemplate the creation of new field offices or an increase in overall FTEs. Thus, no purchase or movement of furniture or equipment is involved.

(d) *Space alteration costs (de minimus).* Some offices may require space alterations and telephone changes to accommodate any future changes of assigned staff. However, HUD/OIG estimates that any space alteration costs that result will be minimal because HUD/OIG has implemented and encourages teleworking. Further, hoteling is an option available to HUD/OIG.

No additional or supplemental funding is expected to the current appropriated budget. All costs will be maintained within the current budget.

2. Permanent Increases in Operating Costs

The realignment will not result in any increase in operating costs.

No additional or supplemental funding is expected.

3. Dollar Savings Resulting From Realignment of Offices

Personnel Cost Savings. The realignment will ultimately result in a net reduction of 6 FTEs resulting in significant savings of well over $600,000.00 for personnel costs.

Operating Costs Savings. The closure of the Louisville, Kentucky office will obviate the need to build out space for two agents. The agents are presently in loaned space from another agency. The planned lease of office space and tenant finish and equipping that space is being avoided by closing the office in Louisville. Approximate savings will be $125,000.00–150,000.00 the first year and $12,000.00 per year thereafter.

D. Impact on Local Economies

The planned reclassification of five regional offices is not expected to have any impact on the local economies of Seattle, Washington; New Orleans, Louisiana; Baltimore, Maryland; Tampa, Florida; or Detroit, Michigan, nor will there be any significant impact on Long Island, New York, Central Islip, New York or Jacksonville, Florida. For the realignment from regional to field offices, the plan does not involve terminating existing real estate leases prior to their expiration date, nor does it involve leasing addition real estate. Moreover, the plan does not contemplate appreciable relocation of staff to these large metropolitan areas. With regard to the offices that will be closed, these offices have been downsizing to allow management greater flexibility in positioning resources. The plan does involve terminating some existing real estate leases prior to their expiration date, with minimal costs associated with exercising early termination clauses which will be more than offset by future savings. Thus, any impact on the local economies in terms of housing, schools, public services, taxes, employment, and traffic congestion will be non-existent or insignificant at most.

E. Effect of the Reclassifications on the Availability, Accessibility, and Quality of Services Provided for Recipients of Those Services

The plan was designed to improve the quality and level of service provided to stakeholders and affected clients nationwide. The regions will receive greater management emphasis than prior to the reclassification. Management will be enabled to interact with HUD management and clients and law enforcement partners more frequently and in greater scope than is now possible. More interaction and attention translates into more availability and accessibility of higher quality services.

Dated: March 13, 2012.

David A. Montoya,

Inspector General.

[FR Doc. 2012–6970 Filed 3–21–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N013; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Reed Motors, Inc., Lake County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Reed Motors, Inc. (applicant), for an incidental take permit (ITP) #TE65123A–0. The applicant requests a 5-year ITP under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the

plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by April 23, 2012.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: northflorida@fws.gov. Use ''Attn: Permit number TE65123A–0'' as your message subject line.

Fax: David L. Hankla, Field Supervisor, (904) 731–3045, Attn.: Permit number TE65123A–0.

U.S. mail: David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE65123A–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, telephone: (904) 731–3121; email: *erin_gawera@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The applicant is requesting take of approximately 1.57 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a commercial development, and seeks a 5-year permit. The 7.7-ac project is located on parcel #09–22–26–110000900000 within Section 09, Township 22 South, Range 26 East, Lake County, Florida. The project includes construction of a commercial development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 3.14 mitigation credits within the Hatchineha Ranch Conservation Bank.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a ''low-effect'' project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue ITP #TE65123A–0. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: March 16, 2012.

David L. Hankla,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2012–6891 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N196; BAC–4311–K9–S3]

John Heinz National Wildlife Refuge at Tinicum, Delaware and Philadelphia Counties, PA; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (we, the Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (CCP/EA) for John Heinz National Wildlife Refuge (NWR) at Tinicum, located in Delaware and Philadelphia Counties, Pennsylvania, for public review and comment. The draft CCP/EA describes our proposal for managing the refuge for the next 15 years.

Also available for public review and comment are the draft findings of appropriateness and draft compatibility determinations for uses to be allowed upon initial completion of the plan, if alternative B is selected, and the draft habitat management plan. These are included as appendix B and appendix C, respectively, in the draft CCP/EA.

DATES: To ensure consideration, please send your comments no later than April 23, 2012. We will announce upcoming public meetings in local news media, via our project mailing list, and on our regional planning Web site: *http://www.fws.gov/northeast/planning/John%20Heinz/ccphome.html.*

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

Email: northeastplanning@fws.gov. Please include ''John Heinz NWR Draft CCP'' in the subject line of the message.

Fax: Attn: Lia McLaughlin, 413–253–8468.

U.S. Mail: Lia McLaughlin, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

In-Person Drop-off, Viewing, or Pickup: Call 215–365–3118 to make an appointment (necessary for view/pickup only) during regular business hours at 8601 Lindbergh Boulevard, Philadelphia, PA 19152. [For more information on locations for viewing or obtaining documents, see ''Public Availability of Documents'' under **SUPPLEMENTARY INFORMATION.**]

FOR FURTHER INFORMATION CONTACT: Gary Stolz, Refuge Manager, phone: 215–365–3118, or Lia McLaughlin, Planning Team Leader, phone: 413–253–8575; email: *northeastplanning@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for John Heinz NWR. We started this process through a notice in the **Federal Register** (75 FR 25285; May 7, 2010).

John Heinz NWR was established in 1972 to preserve and restore the natural area known as Tinicum Marsh, to promote environmental education, and to afford visitors an opportunity to study wildlife in its natural habitat. The total approved acquisition boundary encompasses 1,200 acres along the Delaware River in Pennsylvania. Currently, John Heinz NWR includes 993 acres of freshwater tidal marsh, open water, grassland, and forest habitats. It is an important migratory stopover for birds along the Atlantic Flyway, and provides habitat for State-listed threatened and endangered species such as the red-bellied turtle (*Pseudemys rubriventris*). The refuge offers unique opportunities for environmental education and interpretation in an urban setting. Visitors to the refuge also participate in wildlife observation, photography, and fishing.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

We started pre-planning for the John Heinz NWR CCP in January 2010. In April 2010, we distributed our first newsletter and press release announcing our intent to prepare a CCP for the refuge. In May through June 2010, we had a formal public scoping period. The purpose of the public scoping period was to solicit comments from the community and other interested parties on the issues and impacts that should be evaluated in the draft CCP/EA. To help solicit public comments, we held two public meetings at the refuge during the formal public scoping period. Throughout the rest of the planning process, we have conducted additional outreach by participating in community meetings, events, and other public forums, and by requesting public input on managing the refuge and its programs. We received comments on topics such as the potential effects of climate change, improving biological connectivity, invasive species control, environmental contaminants, environmental education programs, and other public uses of the refuge.

CCP Alternatives We Are Considering

During the public scoping process, we, the Pennsylvania Game Commission, other governmental partners, and the public, raised several issues. To address these issues, we developed and evaluated three alternatives in the draft CCP/EA. Here we present a brief summary of each of the alternatives; a full description of each alternative is in the draft CCP/EA.

Alternative A (Current Management)

Alternative A (current management) satisfies the National Environmental Policy Act (40 CFR 1506.6(b)) requirement of a ''No Action'' alternative, which we define as ''continuing current management.'' It describes our existing management priorities and activities, and serves as a baseline for comparing and contrasting alternatives B and C. It would maintain our present levels of approved refuge staffing and the biological and visitor programs now in place. We would continue to focus on providing native tidal marsh habitat for migrating and nesting wading birds; wintering marshbirds, waterfowl, and shorebirds; and other wildlife. We would also continue to actively control invasive species, manage grassland habitats, and maintain dikes and water levels in the impoundment. Our environmental education program would continue to focus on providing training for teachers so they could guide field trips on refuge property.

Alternative B (Focus on Environmental Education for Urban Youth)

This alternative is the Service-preferred alternative. It combines the actions we believe would most effectively achieve the refuge's purposes, vision, and goals, and respond to the issues raised during the scoping period. Under alternative B, we would expand our freshwater tidal marsh restoration efforts, implement additional forest habitat restoration and management efforts, and increase monitoring efforts for species and for climate change effects. Our environmental education program would focus on expanding staff-led and volunteer-led programs for urban youth. We would also develop environmental education programs that focus on this audience, and work to develop long-term relationships with schools and school districts. We would work to expand environmental interpretation opportunities and infrastructure on the refuge as well.

Alternative C

Alternative C would focus on restoring degraded forests and converting specific grassland areas to shrubland habitat. As in alternative B, we would emphasize invasive species management, freshwater tidal marsh restoration, and monitoring for climate change adaptation. However, under alternative C, we would delay much of these efforts to more fully assess the potential effects of climate change and propose restoring all of the impoundment to tidal marsh. Under alternative C, environmental educational programming would concentrate on providing high school

and college-level programs focused on encouraging and training the next generation of conservation professionals and environmentally concerned citizens. We would also focus on playing a more regional role in conservation efforts.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- *Our Web site: http://www.fws.gov/northeast/planning/John%20Heinz/ccphome.html.*
- *Public Library:* the Northeast Regional Library, located at 2228 Cottman Avenue, Philadelphia, Pennsylvania 19149, during regular library hours.

Submitting Comments/Issues for Comment

We are seeking substantive comments, particularly on the following issues:

- Issue 1—Our environmental education program;
- Issue 2—Management and restoration options for the refuge's impoundment; and,
- Issue 3—Partnership opportunities.

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the EA;
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the EA.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 25, 2012.

Wendi Weber,

Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2012–6892 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP0000 L13110000.XH0000]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Pecos District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on April 11, 2012, from 10 a.m.–4:30 p.m. and April 12, 2012, from 8 a.m.–3 p.m.

ADDRESSES: The meeting will be at the Bureau of Land Management Pecos District Office, 2909 W. 2nd Street, Roswell, NM, on April 11, with a tour for RAC members of Restore New Mexico vegetative treatment and reclamation sites on April 12, 2012. The public may send written comments to the RAC, 2909 W. 2nd Street, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Betty Hicks, Pecos District, Bureau of Land Management, 2909 W. 2nd Street, Roswell, NM 88201, 575–627–0242. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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 10-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. Planned agenda items include: Discussion on candidate species (Dunes Sagebrush Lizard and Lesser-prairie chicken) and Restore New Mexico processes.

A half-hour public comment period during which the public may address the Council is scheduled to begin at 3:30 p.m. on April 11. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Douglas J. Burger,

District Manager.

[FR Doc. 2012–6885 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000–L13100000.PP0000–L.X.SS.052L0000]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held April 18, 19 and 20, 2012. On April 18, the meeting will be at the Office of Aircraft Services, Alaska Regional Office, 4405 Lear Court, Anchorage, Alaska 99502 starting at 9 a.m. in the first floor conference room. The council will accept public comment on April 18 from 3 to 4 p.m. On April 19 and 20, the meeting location changes to the Borealis Conference Room at the Crown Plaza Hotel, 109 W. International Airport Road, Anchorage, Alaska 99518 and begins at 8:30 a.m. each day.

FOR FURTHER INFORMATION CONTACT: Thom Jennings, RAC Coordinator; BLM–Alaska State Office; 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone 907–271–3335 or email *tjenning@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, seven 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 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- National Petroleum Reserve-Alaska Draft Integrated Activity Plan and Environmental Impact Statement
- District Manager reports
- Alaska Lands Conveyance update
- Other topics of interest to the RAC

All meetings are open to the public. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so be prepared to submit written comments if necessary. 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: March 16, 2012.

Bud C. Cribley,

State Director.

[FR Doc. 2012–6887 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2410–OYC]

Notice of Continuation of Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of the listed existing concession contract, the National Park Service hereby gives notice that it has continued visitor services for a period not-to-exceed 1 year from the date of contract expiration.

DATES: *Effective Date:* January 1, 2012.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concession contract and pending the completion of the public solicitation of a prospectus for a new authorization, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new authorization.

Conc ID No.	Concessioner name	Park
INDE001–94	Concepts by Staib, Ltd	Independence National Historical Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone (202) 513–7156.

Dated: January 11, 2012.

Robert M. Gordon,

Acting Associate Director, Business Services.

[FR Doc. 2012–6963 Filed 3–21–12; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–DENA–0312–9811; 9832–0246–703]

Denali National Park and Preserve Aircraft Overflights Advisory Council; Meeting

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Aircraft Overflights Advisory Council. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Monday, April 23rd, 2012, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Residence Inn Anchorage Midtown, 1025 35th Avenue, Anchorage, AK 99508. Telephone (907) 563–9844.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. Email: *Miriam_Valentine@nps.gov*. Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine at (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meetings will include the following, subject to minor adjustments:

1. Call to Order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set Time and Place of next Advisory Council Meeting
12. Adjournment

Sue E. Masica,

Regional Director, Alaska Region.

[FR Doc. 2012–6913 Filed 3–21–12; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–0312–9771; 0004–SYP]

Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and Parts 62 and 65 of title 36 of the Code of Federal Regulations, that the National Park System Advisory Board will meet May 22–23, 2012, in Denver, Colorado. The agenda will include the review of proposed actions regarding the National Historic Landmarks Program and the National Natural Landmarks Program. The Board also may consider recommendations in the Draft Feasibility Study for the Proposed Chisholm and Great Western National Historic Trail prepared in compliance with Section 5303 of Public Law 111–11. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the board meeting and upon request may address the Board concerning an area's national significance.

DATES: (a) Written comments regarding any proposed National Historic Landmarks matter or National Natural Landmarks matter listed in this notice will be accepted by the National Park Service until May 21, 2012. (b) The Board will meet on May 22–23, 2012.

Location: The meeting will be held in the Sage Room of The Oxford Hotel, 1600—17th Street, Denver, Colorado 80202, telephone 303–628–5400.

Information: (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears Smith, Office of Policy, National Park Service, 1201 I Street, NW., 12th Floor, Washington, DC 20005, telephone 202–354–3955, email *Shirley_S_Smith@nps.gov*. (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street NW., (2280), Washington, DC 20240, email *Paul_Loether@nps.gov*. (c) To submit a written statement specific to, or request information about, any National Historic Trails Program matter listed below, or for information about the National Historic Trails Program or the National Trails System, contact Aaron Mahr Yáñez, Superintendent, National Trails – Intermountain Region, National Park Service, P.O. Box 728, Santa Fe, New Mexico 97504, telephone 505–988–6736, email *Aaron_Mahr@nps.gov*. (d) To submit a written statement specific to, or request information about, any National Natural Landmarks matter listed below, or for information about the National Natural Landmarks Program or National Natural Landmarks designation process and the effects of designation, contact Dr. Margaret Brooks, Program Manager, National Natural Landmarks Program, National Park Service, 225 N. Commerce Park Loop, Tucson, Arizona 85745, email *Margi_Brooks@nps.gov*.

SUPPLEMENTARY INFORMATION: On May 22, the Board will convene its business meeting at 8:15 a.m., and adjourn for the day at 5 p.m. The Board will reconvene at 7:50 a.m., on May 23 and adjourn at 9:45 a.m. During the course of the two days, the Board will be addressed by National Park Service Director Jonathan Jarvis; briefed by other National Park Service officials regarding education, leadership development and science; deliberate and make recommendations concerning National Historic Landmark Program, National Natural Landmarks Program, and National Historic Trail Program proposals; and receive status briefings on matters pending before committees of the Board. On the afternoon of May 23, the Board will tour Garden of the Gods National Natural Landmark in Colorado Springs.

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered at the business meeting on the morning of May 23, during which the Board may consider the following:

Nominations for New NHL Designations

Arizona

- Murray Springs Clovis Site, Cochise County, AZ.
- Poston Elementary School, Unit I, La Paz County, AZ.

California

- Knight's Ferry Bridge, Stanislaus County, CA.
- U.S. Court House and Post Office (Court House for the Southern District of California), Los Angeles, CA.
- U.S. Post Office and Court House (James R. Browning U.S. Court of Appeals), San Francisco, CA.

Colorado

- Denver Civic Center, Denver, CO.

Iowa

- Davis Oriole Earthlodge Site, Mills County, IA.

Indiana

- The Republic, Columbus, IN.

Kansas

- Black Jack Battlefield, Douglas County, KS.

Massachusetts

- Central Congregational Church, Boston, MA.

Nevada

- McKeen Motorcar #70 (Virginia & Truckee Railway Motor Car #22), Carson City, NV.

New Jersey

- Camp Evans Signal Laboratory, Wall Township, NJ.

New Mexico (also in Colorado)

- Denver & Rio Grande Railroad San Juan Extension (Cumbres & Toltec Scenic Railroad), CO and NM.

New York

- Admiral Farragut Gravesite, New York, NY.
- Hispanic Society of America Complex, New York, NY.
- Stepping Stones (Bill and Lois Wilson House), Katonah, NY.
- University Heights Campus (Bronx Community College of the City University of New York), Bronx, NY.

Ohio

- Central Branch, National Home for Disabled Volunteer Soldiers/Dayton Veterans Administration Home, Dayton, OH.
- Dr. Bob's Home (Dr. Robert and Anne Smith House), Akron, OH.

Pennsylvania

- Historic Moravian Bethlehem Historic District, Bethlehem, PA.

Puerto Rico

- Bacardi Distillery Historic District, Cataño, PR.

Rhode Island

- United Congregational Church, Newport, RI.

Virginia

- Humpback Bridge, Alleghany County, VA.

Wisconsin

• Greendale Historic District, Village of Greendale, WI.

Proposed Amendments to Existing Designations

• Hamilton Grange, New York (updated documentation and boundary revision).

• Nantucket Historic District, Nantucket County, MA (updated and additional documentation).

B. National Historic Trails Program

Proposed National Historic Trail

• Proposed Chisholm and Great Western National Historic Trail, KS, NE., OK, TX (national significance recommendation).

C. National Natural Landmarks (NNL) Program

NNL Program matters will be considered at the business meeting on the morning of May 23, during which the Board may consider the following:

Nomination for New NNL Designation

Colorado

• Big Spring Creek, Saguache County, CO.

The board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 12th floor conference room, 1201 I Street, NW., Washington, DC.

Dated: March 15, 2012.

Bernard Fagan,

Chief, Office of Policy.

[FR Doc. 2012–6931 Filed 3–21–12; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–344 (Third Review)]

Tapered Roller Bearings From China; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (76 FR 72213, November 22, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on May 31, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on June 19, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 13, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

to be held at 9:30 a.m. on June 14, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 11, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 2, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before July 2, 2012. On July 24, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 26, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 16, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6917 Filed 3–21–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–783]

Certain GPS Navigation Products, Components Thereof, and Related Software; Termination of Investigation on the Basis of Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (''ID'') (Order No. 14) granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 7, 2011, based on a complaint filed by Honeywell International Inc. of Morristown, New Jersey (''Honeywell'') that alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation, sale for importation, and sale within the United States after importation of certain GPS navigation products, components thereof, and related software, by reason of the infringement of certain claims of U.S. Patent Nos. 5,461,388, 6,088,653, 6,865,452, and 7,209,070. 76 FR 39896 (July 7, 2011). The notice of investigation named as respondents Furuno Electric Co., Ltd. of Nishinomiya, Japan, and Furuno U.S.A., Inc. of Camas, Washington (collectively, ''Furuno'').

On February 9, 2012, Honeywell and Furuno jointly moved to terminate the investigation in its entirety on the basis of a settlement agreement. On February 28, 2012, the ALJ granted the motion as an ID. Order No. 14 at 2.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

Issued: March 16, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6907 Filed 3–21–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–750]

Certain Mobile Devices, and Related Software Thereof; Notice of Commission Decision To Review in Part and on Review To Affirm a Final Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') issued on January

13, 2012, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 in the above-captioned investigation, and on review, to affirm the ID's finding of no violation. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 30, 2010, based on a complaint filed by Apple Inc., f/k/a Apple Computer, Inc., of Cupertino, California. 75 *FR* 74081–82. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices and related software by reason of infringement of certain claims of U.S. Patent Nos. 7,812,828 (''the '828 Patent''); 7,663,607 (''the '607 Patent''); and 5,379,430 (''the '430 Patent''). The Commission's notice of investigation named Motorola, Inc. n/k/a Motorola Solutions of Schaumburg, Illinois (''Motorola Solutions'') and Motorola Mobility, Inc. (''Motorola'') of Libertyville, Illinois as respondents. The Office of Unfair Import Investigation was named as a participating party. The Commission subsequently terminated Motorola Solutions as a respondent based on withdrawal of allegations pursuant to Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)). Notice (Aug. 31, 2011).

On January 13, 2012, the ALJ issued his final ID, finding no violation of Section 337. Specifically, the ALJ determined that accused products do not infringe the asserted claims of the '828 Patent either literally or under the doctrine of equivalents (''DOE''). The ALJ also found that the asserted claims of the '828 Patent are not invalid. The ALJ further found that the accused products literally infringe the asserted claims of the '430 and '607 patents, but do not infringe under DOE. The ALJ also found that the asserted claims of the '430 Patent are invalid under 35 U.S.C. § 102 for anticipation, and that the asserted claims of the '607 Patent are invalid under 35 U.S.C. § 102 for anticipation and under 35 U.S.C. § 103 for obviousness. The ALJ further found that Apple has standing to assert the '430 Patent, and that Motorola is not licensed to practice the '430 Patent. The ID also includes the ALJ's recommended determination on remedy and bonding in the event that the Commission reversed his finding of no violation of Section 337.

On January 30, 2012, Apple filed a petition for review of certain aspects of the ID's findings concerning claim construction infringement, and validity. Also on January 30, 2012, Motorola filed a contingent petition for review of certain aspects of the ID's findings concerning claim construction infringement, validity, domestic industry, standing, and licensing. On February 7, 2012, Motorola filed a response to Apple's petition for review. Also on February 7, 2012, Apple filed a response to Motorola's contingent petition for review. Further on February 7, 2012, the Commission investigative attorney filed a joint response to both Apple's and Motorola's petitions.

On February 22, 2012, non-party Google Inc. filed a public interest statement in response to the post-RD Commission Notice issued on January 25, 2012. *See* Corrected Notice of Request for Statements on the Public Interest (Jan. 25, 2012). On February 23, Apple filed a post-RD statement on the public interest pursuant to section 201.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.50(a)(4)), along with a motion for leave to file the statement out of time.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part.

Specifically, the Commission determines to review the ID for the limited purpose of clarifying that the ALJ also found claims 24–26, and 29 of the '828 Patent not infringed, and on review, to affirm this finding. We note that the ID does not explicitly address the issue of infringement of claims 24–26 and 29 of the '828 Patent, but finds no violation of Section 337 by reason of infringement of claims 1, 2, 10, 11, 24–26, and 29 of the '828 Patent. *See* ID at 205. We find, however, that the ALJ's analysis of the claim limitations ''mathematically fitting an ellipse'' and ''mathematically fit an ellipse'' with respect to claims 1 and 10, respectively, of the '828 Patent reflects the arguments and evidence adduced by Apple with respect to infringement of claims 24–26 and 29. Apple presented no argument or evidence concerning infringement of the limitation ''means for fitting an ellipse to at least one of the pixel groups'' in claim 24 and, by dependency, claims 25–26 and 29 of the '828 Patent separate from its infringement arguments concerning claims 1 and 10. Accordingly, Apple has failed to meet its burden to demonstrate infringement of claims 25–26 and 29 of the '828 Patent.

The Commission also determines to review the ID's finding that the asserted claims of the '607 Patent are obvious under 35 U.S.C. § 103 in view of the reference ''SmartSkin: An Infrastructure for Freehand Manipulation on Interactive Surfaces'' by Jun Rekimoto either alone or in combination with Japan Unexamined Patent Application Publication No. 2002–342033A to Jun Rekimoto, and on review, modify the ID but affirm the finding that Motorola has demonstrated by clear and convincing evidence that the asserted claims of the '607 Patent are invalid under 35 U.S.C. § 103. The Commission's reasoning will be set forth in an opinion to be issued shortly.

The Commission also determines to review the ID's finding that the accused products infringe claims 1, 3 and 5 of the '430 Patent, and on review, affirm the ID's finding of direct infringement, but find that the analysis of infringement is incomplete in the ID because the ID's analysis does not address the Commission's decision in *Certain Electronic Devices with Image Processing Systems, Components Thereof, And Associated Software,* 337–TA–724, Comm. Op. at 10–20 (Dec. 21, 2011).

The Commission has determined not to review the remaining issues decided in the ID. Apple's motion for leave to file its public interest comments out of time is denied as moot.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: March 16, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6914 Filed 3–21–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 23, 2012, a proposed Consent Decree in *United States of America* v. *Blacksburg Country Club, Inc.,* Case No. 7:12-cv-00087, D.J. Ref. 90–11–3–09770, was lodged with the United States District Court for the Western District of Virginia.

In this action the United States, acting at the request of the United States Department of the Interior (''DOI''), acting through the Fish and Wildlife Service (''FWS''), alleged claims against the Defendant Blacksburg Country Club, Inc. (''BCC''). These claims were for natural resource damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.,* with respect to a release of hazardous substances allegedly caused by BCC at its golf course in Blacksburg, Virginia into the North Fork of the Roanoke River. This release, which occurred on or about July 9, 2007, resulted in injury and/or damage to natural resources under the trusteeship of DOI and FWS: Namely, the death of an estimated 169 Roanoke logperch, a federally endangered species. DOI incurred expenses responding to the release and assessing the injury to natural resources that it caused.

Under the proposed consent decree, BCC has obligated itself to implement a Restoration Plan, described at Appendix A of the Consent Decree, consisting of six (6) separate projects to restore reaches of the North Fork of the Roanoke River in the vicinity of the golf course. It has also agreed to pay FWS' natural resource damage assessment costs of $18,964.34, and will pay future travel costs incurred by certain FWS personnel in monitoring implementation of the Restoration Plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Blacksburg Country Club, Inc.,* Case No. 7:12–cv–00087, D.J. Ref. 90–11–3–09770.

During the public comment period, the Consent Decree 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 Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.75 (@ 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 Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources. Division

[FR Doc. 2012–6912 Filed 3–21–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Training, Training Plans, and Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor, 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 and state agencies with an opportunity to comment on proposed or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps ensure that requested information collections are in formats appropriate to the mining community, that reporting is minimal, collection instruments are clearly understood, and that the impact of collection requirements can be properly assessed.

The Mine Safety and Health Administration is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–0131, Part 46—Training, Training Plans, and Records.

OMB last approved this information collection request (ICR) on March 10, 2009.

DATES: Submit comments on or before May 21, 2012.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–0131'' and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to MSHA may be sent by any of the methods listed below.

- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0131'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The requirements related to OMB 1219–0131 apply at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. The requirements are intended to help protect miners by ensuring that they are trained about the hazards to which they can be exposed as a result of their employment at these operations.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to training, training plans, and records at these operations. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of MSHA's functions,

including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Address 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, to minimize the burden of the collection of information on those who are to respond).

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The public comment version of the supporting statement will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with the requirements concerning the training and retraining of miners engaged in shell dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. MSHA has updated the data with respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Part 46—Training, Training Plans, and Records.

OMB Number: 1219–0131.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 46.

Total Respondents: 10,577.

Frequency: Various.

Total Responses: 1,025,161.

Estimated Total Burden Hours: 137,570 hours.

Estimated Total Burden Cost: $315,641.

Comments submitted in response to this notice will be summarized and 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.

Authority: 44 U.S.C. 3506(c)(2)(A).

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–6871 Filed 3–21–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Mine Mapping and Records of Opening, Closing, and Reopening of Mines (Formerly, Record of Mine Closures, Opening & Reopening of Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, 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. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of an existing information collection request (ICR), OMB Control Number 1219–0073 (OMB 1219–0073), which was titled ''Record of Mine Closures, Opening and Reopening of Mines'' when last approved on March 31, 2009. OMB 1219–0073 has been renamed ''Mine Mapping and Records of Opening, Closing, and Reopening of Mines'' to acknowledge the ICR's burden for mine mapping as primary; it being significantly greater than records for closure, opening, and reopening of mines. This information collection covers paperwork requirements in the following provisions: 30 CFR 75.372, 75.373, 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75.1204, 75.1204–1, and 75.1721; as well as 30 CFR 77.1200, 77.1201, and 77.1202. OMB last approved this information collection request (ICR) on March 31, 2009.

DATES: Submit comments on or before May 21, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0073'' and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to MSHA may be sent by any of the methods listed below.

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

• *Facsimile:* 202–693–9441, include ''OMB 1219–0073'' in the subject line of the message.

• *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

• *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA's information collection request, OMB 1219–0073, addresses fourteen standards as follows:

30 CFR citations	Title
Part 75	Underground Coal Mines
§ 75.372	Mine ventilation map.
§ 75.373	Reopening mines.
§ 75.1200	Mine map.
§ 75.1200–1	Additional information on mine map.
§ 75.1201	Certification.
§ 75.1202	Temporary notations, revisions, and supplements.
§ 75.1202–1	Temporary notations, revisions, and supplements.
§ 75.1203	Availability of mine map.
§ 75.1204	Mine closure; filing of map with Secretary.
§ 75.1204–1	Places to give notice and file maps.
§ 75.1721	Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements.
Part 77	Surface Coal Mines and Surface Work Areas of Underground Coal Mines
§ 77.1200	Mine map.
§ 77.1201	Certification of mine maps.
§ 77.1202	Availability of mine map.

Mine maps are schematic depictions of critical mine infrastructure, such as water, power, transportation, ventilation, and communication systems. Using accurate, up-to-date maps during a disaster, mine emergency personnel can locate where miners may have taken refuge and identify sites of explosion or inundation potential; they can know where stationary equipment was placed, where ground was secured, and where they can best begin a rescue operation. During a disaster, maps can be crucial to the safety of the emergency personnel who must enter a mine to begin a search for survivors. Coal mine operators routinely use maps to create safe and effective development plans for their mines.

Mine maps may describe the current status of a long-standing operation or provide crucial information years after a mine with extensive workings was closed, but is being reopened.

Title 30 CFR 75.1200 requires each underground coal mine operator to have an accurate and up-to-date map of such mine drawn to scale and stored in a fireproof repository in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazards. Sections 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203 specify the information which must be shown on the map. The maps must be certified by a registered engineer or surveyor; kept continuously up-to-date by temporary notations and revised and supplemented to include the temporary notations at intervals not more than 6 months; and made available for inspection by a representative of the Secretary, State coal mine inspectors, miners and their representatives, operators of adjacent coal mines, and persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. These maps are essential to the planning and safe operation of the mine. In addition, these maps provide a graphic presentation of the locations of working sections and the locations of fixed surface and underground mine facilities and equipment, escapeway routes, coal haulage and man and materials haulage entries and other information essential to mine rescue or mine fire fighting activities in the event of mine fire, explosion or inundations of gas or water. The information is essential to the safe operation of adjacent mines and mines approaching the worked out areas of active or abandoned mines. Section 75.372 requires underground mine operators to submit three copies of an up-to-date mine map to the District Manager at intervals not exceeding 12 months during the operating life of the mine.

Title 30 CFR 75.1204 and 75.1204–1 require that whenever an underground coal mine operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, the operator shall file with MSHA a copy of the mine map revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties. The maps are necessary to provide an accurate record of underground areas that have been mined to help prevent active mine operators from mining into abandoned areas that may contain water or harmful gases.

Title 30 CFR 77.1200, 77.1201 and 77.1202 require surface coal mine operators to maintain an accurate and up-to-date map of the mine and specifies the information to be shown on the map, the acceptable range of map scales, that the map be certified by a registered engineer or surveyor, that the map be available for inspection by the Secretary or his authorized representative. These maps are essential for the safe operation of the mine and provide essential information to operators of adjacent surface and underground mines. Properly prepared and effectively utilized surface mine maps can prevent outbursts of water impounded in underground mine workings and/or inundations of underground mines by surface impounded water or water and or gases impounded in surface auger mining worked out areas.

Title 30 CFR 75.373 and 75.1721 require that after a mine is abandoned or declared inactive and before it is reopened, mine operations shall not begin until MSHA has been notified and has completed an inspection. Section 75.1721 specifies that once the mine operator notifies the MSHA District Manager on the intent to reopen a mine all preliminary plans must be submitted in writing prior to development of the coalbed unless or until all preliminary plans are approved.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information

public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available at MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The public comment version of the supporting statement will be available on MSHA's Web site for 60 days after the publication date of this notice. The document will be available on MSHA's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety standards concerning mine maps. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Mapping and Records of Opening, Closing, and Reopening of Mines.

OMB Number: 1219–0073.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 75 and Part 77.

Total Respondents: 1,876.

Frequency: Annual, at least every six months, and as mines are developed.

Total Number of Responses: 804.

Estimated Total Burden Hours: 16,476.

Estimated Total Burden Cost: $21,474,889.

Comments submitted in response to this notice will be summarized and 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.

Authority: 44 U.S.C. 3506(c)(2)(A).

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–6870 Filed 3–21–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, 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. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–0120, Occupational Noise Exposure. OMB last approved this information collection request (ICR) on March 10, 2009.

DATES: All comments must be postmarked or received by midnight Eastern Daylight Time on May 21, 2012.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–0120'' and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0120'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. If hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

This information collection was originally titled ''Noise exposure assessment; audiometric testing, evaluation, and records and training in all mines.'' OMB 1219–0120 has been renamed ''Occupational Noise Exposure'' to more clearly focus the title and purpose of the information collection on its central concern for the prevention of hearing loss resulting from occupational noise exposure.

Noise is a harmful physical agent and one of the most pervasive health hazards in mining. Repeated exposure to high levels of sound over time causes occupational noise-induced hearing loss (NIHL), a serious, often profound physical impairment in mining, with far-reaching psychological and social effects. NIHL can be distinguished from aging and other factors that can contribute to hearing loss and it can be prevented. According to the National Institute for Occupational Safety and Health (NIOSH), NIHL is among the ''top ten'' leading occupational illnesses and injuries.

For many years, NIHL was regarded as an inevitable consequence of working in a mine. Mining, an intensely mechanized industry, relies on drills, crushers, compressors, conveyors, trucks, loaders, and other heavy-duty equipment for the excavation, haulage, and processing of material. This equipment creates high sound levels, exposing machine operators as well as employees working nearby. The Mine Safety and Health Administration (MSHA), the Occupational Safety and Health Administration, the military, and other organizations around the world have established and enforced standards to reduce the loss of hearing. Quieter equipment, isolation of workers from noise sources, and limiting the time workers are exposed to noise are among the many well-accepted methods that will prevent the costly incidence of NIHL.

MSHA's information collection request, OMB 1219–0120, addresses eight standards as follows:

30 CFR Citation	Title
Part 62	Occupational Noise Exposure
§ 62.110	Noise exposure assessment.
§ 62.130	Permissible exposure level.
§ 62.171	Audiometric test procedures.
§ 62.172	Evaluation of audiograms.
§ 62.174	Follow-up corrective measures when a standard threshold shift is detected.
§ 62.175	Notification of results; reporting requirements.
§ 62.180	Training.
§ 62.190	Records.

Records of miner exposures to noise are necessary so that mine operators and MSHA can evaluate the need for and effectiveness of engineering controls, administrative controls, and personal protective equipment to protect miners from harmful levels of noise that can result in hearing loss. However, the Agency believes that extensive records for this purpose are not needed. These requirements are a performance-oriented approach to monitoring. Records of miner hearing examinations enable mine operators and MSHA to ensure that the controls are effective in preventing NIHL for individual miners. Records of training are needed to confirm that miners receive the information they need to become active participants in hearing conservation efforts.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed extension of the information collection related to the occupational noise standard. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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, to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The public comment version of the supporting statement will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with this standard in order to reduce occupation-related hearing loss in miners. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Occupational Noise Exposure.

OMB Number: 1219–0120.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 62.

Total Number of Respondents: 13,245.

Frequency: Various.

Total Number of Responses: 177,992.

Estimated Total Burden Hours: 12,455.

Estimated Total Burden Cost: $33,880.

Comments submitted in response to this notice will be summarized and 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.

Authority: 44 U.S.C. 3506(c)(2)(A).

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–6872 Filed 3–21–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 3 p.m., Wednesday, March 21, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activity. Closed pursuant to some or all of the following: exemptions (8), (9)(i)(B) and 9(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304

Mary Rupp,

Board Secretary.

[FR Doc. 2012–7090 Filed 3–20–12; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Request of Recommendations for Membership for Directorate and Office Advisory Committees

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) requests

recommendations for membership for its scientific and technical Federal advisory committees. Recommendations should consist of the submitting person or organization's name and affiliation, the name of the recommended individual, the recommended individual's curriculum vita (2–5 pages), an expression of the individual's interest in serving, and the following recommended individual's contact information: employment address, telephone number, Fax number, and email address. Self recommendations are accepted. If you would like to make a recommendation for membership on any of our committees, please send your recommendation to the committee contact person listed below.

ADDRESSES: The mailing address for the National Science Foundation is 4201 Wilson Boulevard, Arlington, VA 22230.

Web links to individual committee information may be found on NSF Web site: NSF Advisory Committees.

SUPPLEMENTARY INFORMATION: Each Directorate and Office has an external advisory committee that typically meets twice a year to review and provide advice on program management, discuss current issues and review and provide advice on the impact of policies, programs, and activities in the disciplines and fields encompassed by the Directorate or Office. In addition to Directorate and Office advisory committees, NSF has several committees that provide advice and recommendation on specific topics: astronomy and astrophysics; environmental research and education; equal opportunities in science and engineering; performance assessment; and business and operations.

A primary consideration when formulating committee membership is recognized knowledge, expertise, or demonstrated ability [1]. Other factors that may be considered are balance among diverse institutions, regions, and groups underrepresented in science, technology, engineering, and mathematics. Committee members serve for varying term lengths, depending on the nature of the individual committee. Although we welcome the recommendations we receive, we regret that NSF will not be able to acknowledge or respond positively to each person who contacts NSF or has been recommended. NSF intends to publish a similar notice to this on an annual basis. NSF will keep recommendations active for 12 months from the date of receipt.

The chart below is a listing of the committees seeking recommendations for membership. Recommendations should be sent to the contact person identified below. The chart contains web addresses where additional information about individual committees is available.

Advisory committee	Contact person
Advisory Committee for Biological Sciences *http://www.nsf.gov/bio/advisory.jsp*.	Charles Liarakos, Directorate for Biological Sciences; phone: (703)292–8400; e-mail: *cliarako@nsf.gov;* fax: (703)292–9154.
Advisory Committee for Computer and Information Science and Engineering *http://www.nsf.gov/cise/advisory.jsp*.	Carmen Whitson, Directorate for Computer and Information Science and Engineering; phone: (703)292–8900; e-mail: *cwhitson@nsf.gov;* fax: (703) 292–9074.
Advisory Committee for Cyberinfrastructure *http://www.nsf.gov/od/oci/advisory.jsp*.	Marc Rigas, Office of Cyberinfrastructure; phone: (703) 292–8970; *mrigas@nsf.gov;* fax: (703) 292–9060.
Advisory Committee for Education and Human Resources *http://www.nsf.gov/ehr/advisory.jsp*.	James Colby, Directorate for Education and Human Resources; phone: (703) 292–8600; e-mail: *jcolby@nsf.gov;* fax: (703) 292–9179.
Advisory Committee for Engineering *http://www.nsf.gov/eng/advisory.jsp*.	Shirah Pope, Directorate for Engineering; phone: (703) 292–8300; e-mail: *spope@nsf.gov;* fax: (703) 292–9013.
Advisory Committee for Geosciences *http://www.nsf.gov/geo/advisory.jsp*.	Melissa Lane, Directorate for Geosciences: phone: (703) 292–8500; e-mail: *mlane@nsf.gov;* fax: (703) 292–9042.
Advisory Committee for International Science and Engineering *http://www.nsf.gov/od/oise/advisory.jsp*.	Robert Webber, Office of International Science and Engineering; phone: (703) 292–7569; e-mail: *rwebber@nsf.gov;* fax: (703) 292–9067.
Advisory Committee for Mathematical and Physical Sciences ..... http://www.nsf.gov/mps/advisory.jsp	Morris Aizenman, Directorate for Mathematical and Physical Sciences; phone: (703) 292–8807; e-mail: *maizenm@nsf.gov;* fax: (703) 292–9151.
Advisory Committee for Social, Behavioral & Economic Sciences *http://www.nsf.gov/sbe/advisory.jsp*.	Lisa Jones, Social, Behavioral & Economic Sciences; phone: (703) 292–8700; E–Mail: *lmjones@nsf.gov;* fax: (703) 292–9083.
Advisory Committee for Polar Programs *http://www.nsf.gov/od/opp/advisory.jsp*.	Kelly Falkner, Office of Polar Programs; phone: (703) 292–8030; e-mail: *kfalkner@nsf.gov;* Fax: (703) 292–9081.
Committee on Equal Opportunities in Science and Engineering *http://www.nsf.gov/od/ceose/index.jsphttp://www.nsf.gov/od/oia/activities/ceose/index.jsp*.	Kelly Mack, Division of Human Resource Development; phone: 703/292–8640; e-mail: *kmack@nsf.gov;* fax: (703) 292–9018.
Advisory Committee for Environmental Research and Education *http://www.nsf.gov/geo/ere/ereweb/advisory.cfm*.	Elizabeth Zelenski, Directorate for Geosciences; phone: (703) 292–8500; e-mail: *ezlensk@nsf.gov;* fax: (703) 292–9042.
Advisory Committee for Business and Operations *http://www.nsf.gov/oirm/bocomm/*.	Jeffrey Rich, Office of Information and Resource Management; phone: (703)292–8100; e-mail: *jrich@nsf.gov;* (703) 292–9084.
Astronomy and Astrophysics Advisory Committee *http://www.nsf.gov/mps/ast/aaac.jsp*.	Elizabeth Pentecost, Division of Astronomical Sciences; phone: (703) 292–4907; e-mail: *epenteco@nsf.gov;* fax: (703) 292–9034.

[1] Federally registered lobbyists are not eligible for appointment to these Federal advisory committees.

Dated: March 16, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–6859 Filed 3–21–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0072]

Quality Verification for Plate-Type Uranium-Aluminum Fuel Elements for Use in Research and Test 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–2005, ''Quality Verification for Plate-Type Uranium-Aluminum Fuel Elements for Use in Research and Test Reactors.'' This guide describes a method that the staff of the NRC considers acceptable for complying with the Commission's regulations concerning establishing and executing a quality assurance program for verifying the quality of plate-type uranium-aluminum fuel elements used in research and test reactors (RTRs).

DATES: Submit comments by May 21, 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–2012–0072. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0072. 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: Mekonen Bayssie, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7489; or email at: *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0072 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–2012–0072.
- *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 ML11206A205. The regulatory analysis may be found in ADAMS under Accession Number ML11206A211.

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–2012–0072 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, ''Quality Verification for Plate-Type Uranium-Aluminum Fuel Elements for Use in Research and Test Reactors,'' is temporarily identified by its task number, DG–2005. The DG–2005 is proposed revision 2 of Regulatory Guide 2.3, dated July 1976.

This guide describes a method that the staff of the NRC considers acceptable for complying with the Commission's regulations concerning establishing and executing a quality assurance program for verifying the quality of plate-type uranium-aluminum fuel elements used in research and test reactors (RTRs).

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

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–6896 Filed 3–21–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753; NRC–2012–0071]

Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements To Operate for 10 Hours per Month''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.''

DATES: Comment period expires on April 23, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0071. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0071. 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: Ms. Michelle C. Honcharik, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1774 or email at *michelle.honcharik@nrc.gov*. For technical questions please contact Mr. Matthew Hamm, Reactor Systems Engineer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1472 or email at *matthew.hamm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0071 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–2012–0071.
- *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*. TSTF–522, Revision 0, includes a model application and is available in ADAMS under Accession Number ML100890316. The proposed model SE for plant-specific adoption of TSTF–522, Revision 0, is also available under ADAMS Accession Number ML113540250.
- *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–2012–0071 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.

Background

The proposed change revises the Improved Standard Technical Specification (ISTS), NUREG–1430, ''Standard Technical Specifications Babcock and Wilcox Plants,'' NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants,'' NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR [Boiling Water Reactor]/4,'' and NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6.'' Specifically, the proposed change revises Surveillance Requirements (SRs) for the following systems: The iodine cleanup system/shield building air cleanup system, the control room emergency filtration system, the emergency core cooling system (ECCS) pump room exhaust air cleanup system, and the fuel building air cleanup system. This TS improvement is part of the consolidated line item improvement process (CLIIP).

Additional Technical Details

TSTF–522, Revision 0, is applicable to all nuclear power plants. The proposed change revises SRs for the following systems: The iodine cleanup system/shield building air cleanup system, the control room emergency filtration system, the ECCS pump room exhaust air cleanup system, and the fuel building air cleanup system. In particular SRs 3.6.11.1/3.6.13.1, 3.7.10.1, 3.7.12.1, 3.7.13.1, and 3.7.14.1, which currently require operating the heaters in the respective systems for at least 10 continuous hours every 31 days, would be changed to require at least 15 continuous minutes of heater operation every 31 days.

This notice provides an opportunity for the public to comment on proposed changes to the ISTS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the ISTS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed changes and reconsider the

changes or announce the availability of the changes for adoption by licensees as part of the CLIIP. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE, and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–522, Revision 0. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–522, Revision 0.

Dated at Rockville, Maryland, this 14th day of March 2012.

For the Nuclear Regulatory Commission.

John R. Jolicoeur,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–6894 Filed 3–21–12; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the RRB determines the amount of an employer's contribution, primarily on the basis of the RUIA benefits paid, both unemployment and sickness, to the employees of the railroad employer. These experienced-based contributions take into account the frequency, volume, and duration of the employees' unemployment and sickness benefits. Each employer's contribution rate includes a component for administrative expenses as well as a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR part 345. RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is used by Railroad employers to report and remit their quarterly contributions to the RRB. Employers can use either the manual version of the form or its Internet equivalent. One response is requested quarterly of each respondent and completion is mandatory. The RRB proposes no changes to Form DC–1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–1 (Manual)	1,235	25	515
DC–1 (Internet)	1,365	25	569
Total	2,600		1,084

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–6831 Filed 3–21–12; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or

other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board (RRB) is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes the following forms to obtain the necessary information from claimants and railroad employers: Forms SI–1c, Supplemental Information on Accident and Insurance; SI–5, Report of Payments to Employee Claiming Sickness Benefits Under the RUIA; ID–3s, Request for Lien Information; Report of Settlement; ID–3s-1, Lien Information Under Section 12(o) of the RUIA; ID–3u, Request for Section 2(f) Information; ID–30k, Notice to Request Supplemental Information on Injury or Illness; and ID–30k–1, Notice to Request Supplemental Information on Injury or Illness. Completion is required to obtain benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 80988 on December 27, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Supplemental Information on Accident and Insurance.

OMB Control Number: 3220–0036.

Form(s) submitted: SI–1c, SI–5, ID–3s, ID–3s.1, ID3u, ID–30k, and ID–30k.1.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information that is needed to determine the amount of the RRB's reimbursement from the person or company responsible for such payments.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
SI–1c	500	5	42
SI–5	7	5	1
ID–3s (Paper & Telephone)	7,000	3	350
ID–3s (Email)	7,000	3	350
ID–3s.1 (Paper & Telephone)	500	3	25
ID–3u (Paper & Telephone)	1,100	3	55
ID–3u (Email)	1,100	3	55
ID–30k	100	5	8
ID–30k.1	75	5	6
Total	17,382		892

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–6834 Filed 3–21–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29982; File No. 812–13996]

Forward Funds, et al.; Notice of Application

March 15, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Forward Funds (the ''Trust''), Forward Management, LLC (the ''Adviser''), and Forward Securities, LLC (''Forward Securities'').

DATES: *Filing Dates:* The application was filed on January 4, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090;

Applicants, 101 California Street, Suite 1600, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end series management investment company. The Adviser, a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and serves as investment adviser to the current series of the Trust. Forward Securities, a Delaware limited liability company, is a registered broker-dealer under the Securities Exchange Act of 1934, as amended (''1934 Act'') and is expected to become the Funds' distributor before the issuance of the requested order.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trust and any other existing or future registered open-end investment company or series thereof that (i) is advised by the Adviser or any entity controlling, controlled by or under common control the Adviser and is in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trust; (ii) invests in other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of directors will review the advisory fees charged by the Fund of Funds' investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that they may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6864 Filed 3–21–12; 8:45 am]

BILLING CODE 8011–01–P

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the requested order will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29983; File No. 812–13795]

First Trust Exchange-Traded Fund, et al.; Notice of Application

March 15, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

APPLICANTS: First Trust Exchange-Traded Fund (the ''Initial Trust''), First Trust Exchange-Traded Fund II (''Trust II''), First Trust Exchange-Traded Fund III (''Trust III''), First Trust Exchange-Traded Fund IV (''Trust IV''), First Trust Exchange-Traded AlphaDEX® Fund (''AlphaDEX Trust''), First Trust Exchange-Traded AlphaDEX® Fund II (''AlphaDEX Trust II'' and, together with the Initial Trust, Trust II, Trust III, Trust IV and the AlphaDEX Trust, ''Existing Trusts''), First Trust Advisors L.P. (the ''Advisor''), and First Trust Portfolios L.P. (the ''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

DATES: *Filing Dates:* The application was filed on July 15, 2010, and amended on January 7, 2011, September 9, 2011, and March 12, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 120 East Liberty Drive, Suite 400, Wheaton, IL 60187, Attn: W. Scott Jardine.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Existing Trusts are each open-end management investment companies registered under the Act and organized as Massachusetts business trusts. Trust IV will offer one series which will be a Fixed Income Fund as defined below (the ''Initial Fund''). Applicants intend to name the Initial Fund the First Trust Senior Loan Fund. The Initial Fund's investment objective will be to provide high current income. The Initial Fund is expected to invest at least 80% of its net assets (including investment borrowings) in senior loans, which may include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies and other loans with characteristics that the Advisor believes qualify as senior loans.

2. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and it or an entity controlling, controlled by or under common control with the Advisor will serve as the investment adviser to the Funds (as defined below). The Advisor may in the future retain one or more subadvisers (''Fund Subadvisors'') to manage the Funds' portfolios. Any Fund Subadvisor will be registered under the Advisers Act. The Distributor is, or another entity (a ''Future Distributor''), will be a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), and will serve as the principal underwriter and distributor for the Funds.[1]

3. Applicants request that the order apply to the Existing Trusts, the Initial Fund, and to any other open-end management investment company existing or created in the future (together with the Existing Trusts, the ''Trusts'' and each a ''Trust'') and any existing or future series of the Trusts that may utilize active management investment strategies and invest (i) in fixed income securities (including without limitation exchange-traded notes and senior loans) (such securities, ''Fixed Income Securities'' and each such series, a ''Fixed Income Fund'') or (ii) in a combination of equity securities (which may include shares of other exchange-traded funds, money market mutual funds or other investment companies) and Fixed Income Securities (each such series, a ''Balanced Fund'') (collectively, ''Future Funds'', together with the Initial Fund, the ''Funds'').[2] Any Future Fund will be (a) advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor, and (b) comply with the terms and conditions of the application. Fixed Income Funds that invest all or a portion of their assets in securities not traded in the U.S. markets are each an ''International Fixed Income Fund.'' International Fixed Income Funds and Balanced Funds that invest all or a portion of their assets in securities not traded in U.S. markets are referred to as ''International Funds.'' Applicants anticipate that certain International Funds may invest a portion of their assets in depositary receipts representing foreign securities in which they seek to invest

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Pursuant to a prior order, Applicants may operate actively managed exchange-traded funds that invest primarily in equity securities. *First Trust Advisors L.P., et al.,* Investment Co. Act Release Nos. 28421 (Sep. 29, 2008) (notice) and 28468 (Oct. 27, 2008) (order). In addition, applicants have prior orders to operate index based exchange-traded funds that invest primarily in equity securities. *First Trust Exchange-Traded Fund et al.,* Investment Co. Act Release Nos. 27051 (Aug. 26, 2005) (notice) and 27068 (Sep. 20, 2005) (order) as amended by Investment Co. Act Release Nos. 27772 (Mar. 30, 2007) (notice) and 27784 (Apr. 25, 2007) (order).

(''Depositary Receipts'').[3] The Funds will not invest in options contracts, futures contracts or swap agreements. Each Fund will operate as an actively-managed exchange-traded fund (''ETF'').

4. Shares of the Initial Fund will be sold at a price of between $20 and $200 per Share in Creation Units of at least 25,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either: (a) a broker-dealer or other participant in the National Securities Clearing Corporation (''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant, ''DTC Participant'', and facilities of the DTC (the ''DTC Process'')), which in either case has executed an agreement with the Distributor and the Transfer Agent, with respect to purchases and redemptions of Creation Units.

5. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[4] On any given Business Day [5] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in the Fund's portfolio (including cash positions) as of the end of the prior Business Day, except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [6] or (c) TBA Transactions,[7] short positions and other positions that cannot be transferred in kind [8] will be excluded from the Creation Basket.[9] If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of International Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of an International Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[10]

7. Each Business Day, before the open of trading on the national securities exchange as defined in section 2(a)(26) of the Act (''Stock Exchange'') upon which its Shares are listed and traded, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange or a major market data vendor will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

8. An investor purchasing a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.[11] Orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the Funds. The Distributor also will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on a Stock Exchange. One or more Stock Exchange specialists or market makers (together, ''Market Makers'') will be assigned to the Shares. If Shares are

[3] A Fund will not invest in any Depositary Receipts that the Advisor or any Fund Subadvisor(s) deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[5] A Trust will issue, sell and redeem Creation Units of the applicable Fund on any day that the Trust is open for business, including as required by section 22(e) of the Act (each, a ''Business Day'').

[6] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[7] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[8] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[9] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[10] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[11] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing a portion of the Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing those securities.

listed on the NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca, Inc.), one or more member firms of that Stock Exchange will act as a Market Maker and maintain a market for Shares trading on that Stock Exchange.[12] Prices of Shares trading on a Stock Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[13] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.[14]

12. Neither a Trust nor any individual Fund will be marketed or otherwise held out as an ''open-end investment company'' or a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the method of obtaining, buying or selling Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from a Fund in Creation Units only.

13. The Distributor's Web site, which will be publicly available prior to the public offering of Shares, will include the current Prospectus and Summary Prospectus (if any) for each Fund. The Web site for the Funds which is and will be publicly accessible will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before the commencement of trading in Shares on the Stock Exchange, each Fund will disclose on the Web site the identities and quantities of the securities (''Portfolio Securities'') and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[15]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units always redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not

[12] If Shares are listed on Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares.

[13] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[14] All Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[15] Under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T + 1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for the International Funds is contingent not only on the settlement cycle of the United States markets, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Funds. Applicants state that local market delivery cycles for transferring Redemption Instruments to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the International Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow International Funds that deliver Redemption Instruments in-kind to pay redemption proceeds up to a maximum of 15 calendar days after the tender of a Creation Unit for redemption.[16] At all other times and except as disclosed in the relevant Statement of Additional Information (''SAI''), applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.[17]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each International Fund will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to a maximum of 15 calendar days, needed to deliver the proceeds for the relevant International Fund. Applicants are seeking relief from section 22(e) only for those International Funds that create and redeem in-kind.

Sections 17(a)(1) and (2) of the Act

9. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an ''Affiliated Fund'').

10. Applicants request an exemption from section 17(a), under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the outstanding Shares of the respective Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants contend that no useful purpose would be served by prohibiting these affiliated persons or second tier affiliates of a Fund from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. The composition of a Creation Basket will be the same and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Fund.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

2. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may

[16] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

[17] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or Fund Subadvisor (if any), directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6865 Filed 3–21–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66615; File No. SR–BX–2012–019]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Fee Schedule

March 16, 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 March 12, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule 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 Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing for March 2012; Participants will only be assessed any applicable routing fee for orders on the effective date and thereafter. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement a change to the BOX routing fees. BOX believes the proposed structure will provide an incentive to BOX Options Participants (''Participants'') to submit their customer orders for execution on BOX and will discourage potentially abusive and predatory order routing practices to evade fees on other exchanges.[5] BOX proposes to continue to provide routing to away exchanges at no charge to Participants that execute more than 40% of their non-Professional, Public Customer transactions[6] on BOX, rather than those orders being executed at other exchanges after BOX routes them to an away exchange.

If BOX does not have sufficient liquidity at the NBBO to execute Public Customer Orders on BOX, such orders are routed to an away exchange for execution. Currently, BOX does not assess any fee to Participants for doing so. BOX, however, believes that exempting all outbound Public Customer Orders from routing fees is resulting in some Participants sending an increasing amount of orders to BOX when BOX is not at the NBBO, so that the orders will be routed to an away exchange; and BOX believes this activity pattern is designed to evade transaction fees on other exchanges. In order to curtail this activity that BOX believes is designed to take advantage of BOX routing Public Customer order at no charge, BOX proposes a routing fee structure that provides an incentive to Participants whom execute their Public Customer transactions on BOX. The proposed change will have no effect on the billing of orders of non-Participants, including any orders routed to BOX from away exchanges.

The Exchange proposes that BOX will continue to route Public Customer Orders to an away exchange without imposing any fee, to the extent that more than 40% of the Participants' Public Customer Orders sent to BOX each month execute on BOX. Executions on BOX would include orders executing on the BOX Book, or through any other BOX mechanism that may be available to execute Public Customer Orders (e.g., Price Improvement Period, Solicitation or Facilitation Auction Mechanisms). If 60% or more of a Participants' Public Customer Orders executed through BOX each month are routed to and executed at an away exchange, BOX will assess a $0.50 per contract routing fee to all of a Participants' Public Customer orders routed to an away exchange for execution for the month. BOX will calculate the percentage of contracts executed on BOX compared to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Note that BOX does not route broker-dealer proprietary orders and thus does not assess them any routing fees. Based on BOX market data, BOX believes certain Participants are intentionally submitting orders to BOX when limited liquidity is on BOX at the national best bid or offer (''NBBO''). This limited liquidity is not enough to fill the orders submitted, and thus, BOX is required, in accordance with its obligations to customer orders under the national market system plan for Options Order Protection, to route such orders to a market that is displaying liquidity at the NBBO.

[6] For the purposes of the discussion in this proposed rule change, these non-Professional, Public Customer Orders will be referred to as Public Customer Orders.

percentage routed and executed away at the end of each month.

Instructing BOX to route orders away if they are not able to be executed on BOX is voluntary for BOX Participants. Participants may choose not to route their Public Customer Orders to another exchange. Participants may also avoid paying the proposed routing fee by choosing to designate their orders as Fill and Kill (''FAK''). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled. Imposing a routing fee structure that provides a benefit to Participants for trading on BOX will allow BOX to recoup a portion of the costs incurred for providing routing services, while also providing an incentive to Participants to trade on BOX and benefit from BOX routing services for Public Customer Orders at no charge.

While the changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, for March 2012, Participants will only be assessed any applicable routing fee for orders on the effective date and thereafter. In determining a Participant's percentage of Public Customer Orders executed on BOX for March 2012, BOX will only consider orders submitted to BOX on the effective date and thereafter, and will not consider orders submitted prior to the filing date of this proposed fee change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the changes proposed are an equitable allocation of reasonable fees and charges among BOX Options Participants.

BOX believes that the proposed routing fee structure for routing non-Professional, Public Customer Orders to other market venues is reasonable because the fee will allow BOX to recoup its transaction costs attendant with offering routing services. BOX uses third-party broker-dealers to route orders to other exchanges and incurs charges for each order routed to and executed at an away market, in addition to the transaction fees charged by other exchanges. BOX has been providing its routing services to Participants for Public Customer Orders at no cost and has been able to cover such costs with revenue generated from transactions on BOX. In order to better recover costs for routing such orders, the Exchange is proposing a routing fee structure to continue to provide these routing services to Participants at no charge if the Participants trade on BOX a certain percentage of their Public Customer volume traded through BOX each month, as opposed to BOX routing those orders away for execution.

BOX also believes that assessing its routing fees to Participants based on the percentage of Public Customer Orders traded on BOX is an equitable allocation of a reasonable fee. Based on BOX market data, BOX believes certain Participants are intentionally submitting orders to BOX when limited liquidity is on BOX at the NBBO. This limited liquidity is not enough to fill the orders submitted, and thus, BOX is required, in accordance with its obligations to customer orders under the national market system plan for Options Order Protection, route such orders to a market that is displaying liquidity at the NBBO. BOX data indicates that BOX generally routes significantly less than 60% of a Participant's Public Customer Orders to BOX to an away exchange for execution. Additionally, BOX believes that permitting a Participant to have up to 60% of such orders routed to an away exchange for execution without being assessed any routing fee is reasonable and appropriate.

The Exchange believes the proposed routing fee structure is equitable and not unfairly discriminatory because the incentive to trade on BOX it is available to all Participants on an equal basis. The Exchange believes it is reasonable and equitable to provide Participants (A) an incentive to trade on BOX, and (B) the ability to route customer orders at no cost, because transactions executed on BOX increase BOX market activity and market quality. Greater liquidity and additional volume executed on BOX aids the price and volume discovery process. Participant trading on BOX also results in revenue that BOX is able to use to provide routing services at no cost to Participants. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it promotes enhancing BOX market quality. The changes proposed by this filing are intended to provide an incentive to BOX Participants to submit orders for execution on BOX and not engage in abusive and predatory practices to evade fees on other exchanges.

Further, BOX operates within a highly competitive market. BOX, however, does not assess ongoing fees for access to BOX market data, or fees related to order cancellation. As stated, BOX incurs costs, including transaction fees at other exchanges, every time it routes a customer order to an away exchange for execution. Providing routing services draws on BOX system resources and routing more and more orders results in greater ongoing operational costs to BOX. As such, BOX aims to recover its costs by assessing Participants fees for routing Public Customer Orders to away exchanges, if those Participants are submitting such orders to BOX so as to evade other exchanges' fees and take advantage of BOX routing services. BOX therefore believes that assessing the fee only to those Participants that have 60% or more of their Public Customer Orders routed to an away exchange for execution is reasonable, and an equitable allocation of its fees for providing routing services.

Finally, the Exchange notes that although routing is available to BOX Participants for customer orders, Participants are not required to use the routing services, but instead, BOX routing services are entirely voluntary. As discussed above, BOX Participants can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on 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 Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–019 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–BX–2012–019. 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–BX–2012–019 and should be submitted on or before April 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6866 Filed 3–21–12; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66616; File No. SR–Phlx–2012–11]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding the Listing and Trading of PHLX FOREX Options™

March 16, 2012.

I. Introduction

On January 23, 2012, NASDAQ OMX PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade U.S. dollar-settled foreign currency options known as PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro (''PHLX FOREX Options''). The proposed rule change was published for comment in the **Federal Register** on February 1, 2012.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade foreign currency options known as PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro. The proposal establishes new Rules 1000C through 1009C that would, in conjunction with current Exchange trading rules, allow listing and trading of PHLX FOREX Options. The Exchange also is amending Phlx Option Floor Procedure Advices F–6[4] and F–15[5] (''OFPAs or Advices'') to harmonize the Exchange Advices and the proposed PHLX FOREX Options rules.

The proposal allows the listing and trading of PHLX FOREX Options on six of the same foreign currencies that underlie another type of foreign currency option that is currently listed and traded on the Exchange (referred to as either ''FCOs'' or World Currency Options, ''WCOs''), including the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro.[6] The proposal does not affect the continued listing and trading of FCOs on the Exchange, as PHLX FOREX Options will be eligible to list and trade in parallel to current FCOs.[7]

PHLX FOREX Options will be similar, and in many respects identical, to FCOs. As such, the proposed rules provide that the Exchange's existing rules and procedures will be applicable to PHLX FOREX Options, and the proposed PHLX FOREX Options rules will supplement existing rules. For example, PHLX FOREX Options will follow the rules that are currently applicable to FCOs that pertain to areas such as hours of trading, quoting and market making requirements, margin requirements, reporting options positions, filing trade information, and FLEX trading.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66257 (January 26, 2012), 77 FR 5073 (''Notice'').

[4] Specifically, the Exchange proposes to amend Advice F–6 to reflect ''expressed as'' pricing for maximum quotes spread parameters in light of bid and ask differentials. The Exchange notes that this change will harmonize Advice F–6 with its corresponding proposed rule 1003C, so that the same pricing is reflected in the rule and the Advice.

[5] The Exchange also proposes to amend Advice F–15, which discusses minor infractions of position/exercise limits and hedge exemptions, to reflect the addition of proposed Rules 1008C and 1009C. The Exchange notes that this will harmonize Advice F–15 with its corresponding proposed Rules 1008C and 1009C, and thereby include minor violations of the proposed rules in the Exchange's Minor Rule Plan as reflected in the Advices.

[6] The product specifications for the current FCOs can be found at *http://www.nasdaqomxtrader.com/wco.* The Exchange currently lists eleven FCOs that trade in the manual auction market as well as electronically. The currencies underlying these FCOs include: the Australian dollar, the British pound, the Canadian dollar, the Euro, the Japanese yen, the Mexican peso, the New Zealand dollar, the Norwegian krone, the South African rand, the Swedish krona, and the Swiss franc.

[7] However, Phlx proposes to amend the FCO rules in one respect to provide that, for purposes of determining position and exercise limits, FCO options will be aggregated with PHLX FOREX Options that are listed on the same underlying currency. *See infra* note 30.

[8] *See* Exchange Rules 101, 1014, 721, 1003, 1053, and 1079, respectively. In its filing, the Exchange notes that other Exchange rules that are applicable to the trading of foreign currency options products include Rules 1006 (Other Restrictions on Exchange Options Transactions and Exercises); 1014 (Obligations and Restrictions Applicable to

Continued

New Rule 1000C states that unless otherwise specified, the proposed rules in the Rule 1000C series of rules (''Rule 1000C Series'') are applicable only to PHLX FOREX Options. Further, Rule 1000C provides that except to the extent that specific rules in the Rule 1000C Series govern, or unless the context otherwise requires, the provisions of the Option Rules applicable to FCOs [9] and of the By-Laws and all other Rules and Policies of the Board of Directors are applicable to the trading on the Exchange of PHLX FOREX Options.

To minimize investor confusion, the Exchange has represented that it intends to engage in an educational effort to inform potential traders about the differences in the PHLX FOREX Options as compared to FCO products.[10]

Pricing Convention

In its filing, the Exchange noted that the primary difference between current FCOs and proposed PHLX FOREX Options will be the pricing convention of PHLX FOREX Options, which resembles the ''spot market pricing'' on the underlying currencies.[11] This is the same convention that is used for currency futures and options on currency futures contracts on the same underlying currencies.[12] Currently, the Exchange receives spot market prices for currencies underlying the FCOs from a data vendor, which at this time is SIX Telekurs,[13] and converts such spot market prices to ''Exchange Spot Prices'' by applying an appropriate multiplier (*e.g.,* 100 or 1000).[14] The closing settlement value for FCO settlement purposes is the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration.[15] The Exchange currently generates a settlement value report for each underlying currency and publicly disseminates unique FCO symbols and settlement values in order to differentiate between live underlying markets and 12:00:00 noon FCO settlement prices.

Unlike FCOs, the proposed PHLX FOREX Options will not use the modified ''Exchange Spot Prices'' for settlement purposes. Instead, the Exchange will use the spot market prices that it receives from its data vender (*i.e.,* SIX Telekurs) at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration to calculate settlement values. In other words, the Exchange will not apply a multiplier to the spot price for FOREX Options as it does for FCOs.[16] PHLX FOREX Option settlement values will be, similarly to FCOs, publicly disseminated with unique symbols to differentiate between live underlying markets and 12:00:00 Eastern Time (noon) PHLX FOREX Option settlement prices. Except for applying multipliers for FCO settlement values, the settlement value methodologies will largely be similar for PHLX FOREX Options and FCOs.

Similar to FCOs, PHLX FOREX Options listed by the Exchange will be European-style exercise.[17] Upon exercise, holders of options contracts would receive U.S. dollars representing the difference between the exchange rate and the exercise price of the option, which would be multiplied by the units of currency in each PHLX FOREX Option contract.[18] Additionally, PHLX FOREX Options that are in-the-money by any amount on the expiration date would be exercised automatically by OCC, while PHLX FOREX Options that are out-of-the-money on the expiration date would expire worthless. The Exchange anticipates that PHLX FOREX Options will be cleared by The Options Clearing Corporation (''OCC'').[19]

Opening and Adding New PHLX FOREX Options

The Exchange proposes Rule 1002C regarding the series of underlying PHLX FOREX Options that may be opened for trading after a particular class of PHLX FOREX Option has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes that, at the commencement of trading on the Exchange of a particular class of PHLX FOREX Options, the Exchange will open a minimum of one expiration month and series for each class of options open for trading on the Exchange.[20] The exercise price of each series of PHLX FOREX Options opened for trading on the Exchange will be fixed in terms of U.S. dollars per unit of the underlying currency at a price per

Specialists and Registered Options Traders); 1022 (Securities Accounts and Orders of Specialists and Registered Options Traders); 1024 (Conduct of Accounts for Options Trading); 1025 (Supervision of Accounts); 1027 (Discretionary Accounts); 1028 (Confirmations); 1039 (Resolution Of Uncompared Trade); 1043 (Allocation of Exercise Notices); 1044 (Delivery and Payment); 1045 (Officers And Employees Restricted); 1047 (Trading Rotations, Halts and Suspensions); 1049 (Communications to Customers); 1063 (Responsibilities of Floor Brokers); 1064 (Crossing, Facilitation and Solicited Orders); 1066 (Certain Types of Orders Defined); 1068 (Execution of Multi-Part Orders); 1080 (Phlx XL and Phlx XL II); 1083 (Order Protection; Locked and Crossed Markets); 1089 (Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options); and 1092 (Obvious Errors and Catastrophic Errors). *See* Notice, *supra* note 3, 77 FR at 5078.

[9] Exchange Option Rules 1000 *et seq.* and 1000A *et seq.*

[10] *See* Notice, *supra* note 3, 77 FR at 5075. For example, as discussed in the Exchange's filing, the pricing of PHLX FOREX Options and FCOs will be different in that the pricing of a Euro PHLX FOREX Option will resemble spot market pricing (*e.g.,* 1.0031) while the pricing of a Euro FCO will resemble index option pricing (*e.g.,* 100.31). *See* Notice, *supra* note 3, 77 FR at 5076. Further, the pricing symbology will be different in that PHLX FOREX Option prices would be stated out to four decimal places while FCOs are priced out to two places.

[11] *See* Notice, *supra* note 3, 77 FR at 5074. *See also* proposed Exchange Rule 1001C.

[12] A currency futures contract is a transferable futures contract that specifies the price at which a currency can be bought or sold at a future expiration date. CME Group Inc. lists and trades futures and options on futures contracts on many of the same currencies that the Exchange is proposing for PHLX FOREX Options, including the Australian dollar, the British pound, the Canadian dollar, and the Euro. Examples of settlement (closing) spot prices of futures contracts on these currencies can be found at *ftp://ftp.cmegroup.com/pub/settle/stlcur.*

[13] According to the Exchange, SIX Telekurs specializes in the procurement, processing and distribution of international financial information for investment advisory services, fund administration, portfolio management, financial analysis and securities administration. SIX Telekurs collects data directly from hundreds of contributors and exchanges as well as more than thirty (30) worldwide contributing banks. *See* Notice, *supra* note 3, 77 FR at 5075. This data serves as the basis for the foreign currency spot market prices that SIX Telekurs provides to the Exchange.

The Exchange notes that spot market prices for currencies underlying PHLX FOREX Options are also calculated by other entities and available to investors from other sources such as market data vendors Bloomberg, Reuters, and Thomson. Investors can also get spot market prices for free from sources such as *http://finance.yahoo.com/;* as well as from brokers with whom investors have a trading account. *See* Notice, *supra* note 3, 77 FR at 5075.

[14] For a definition of Exchange Spot Price, *see* Rule 1000(b)16.

The International Securities Exchange, LLC (''ISE'') similarly applies multipliers to its cash-settled rate-modified currency options (which are not fungible with Phlx's FCOs) so that they tend to look like the prices of index and other options. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[15] *See* Exchange Rule 1057.

[16] *See* Proposed Exchange Rule 1006C. For example, the July 2012 settlement value of a PHLX FOREX Option on the Euro may be $1.4338 based on the spot market price of the underlying currency; whereas the July 2012 settlement value price of a FCO on the Euro may be $143.38 based on the application of a 100 multiplier to the similar spot market price.

[17] Unlike American style options, European style options may be exercised only on the day that they expire.

[18] *See* Proposed Exchange Rule 1006C. Each PHLX FOREX Option contract for the six currencies discussed in this filing would, like each FCO contract, have 10,000 units of currency. The product specifications for the new PHLX FOREX Options may be found at *http://www.nasdaqomxtrader.com/wco.*

[19] The Exchange's FCOs are cleared by OCC. *See* Securities Exchange Act Release No. 54935 (December 13, 2006), 71 FR 76417 (December 20, 2006) (SR–OCC–2006–10) (order approving amendments to OCC's by-laws and rules to accommodate the clearance and settlement of the Exchange's FCOs).

[20] The Exchange notes that it currently intends to open two quarterly and two additional near-term months. *See* Notice, *supra* note 3, 77 FR at 5076.

unit which is reasonably close to the current spot market price of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange. The Exchange notes that this is the same as the procedure for opening initial months and series and fixing expiration terms of equity options and index options on the Exchange.[21]

Regarding additional series of options, proposed Rule 1002C states that additional series of PHLX FOREX Options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[22] Regarding long-term options, the proposed rule provides that with respect to any class of PHLX FOREX Options series the Exchange may list options having up to thirty-nine months from the time they are listed until expiration (with up to six additional expiration months).[23] Strike price interval, bid/ask differential and continuity rules will not apply to such options series until the time to expiration is less than nine months.[24] In addition, the Exchange is proposing to allow PHLX FOREX Options to be eligible for FLEX trading.[25]

Strike Prices

Pursuant to proposed Rule 1002C, the Exchange could initially list exercise strike prices for a PHLX FOREX Option within a 40% band around the current spot market price for the underlying currency, with such options listed at $.0050 intervals. As the spot market moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the spot market by more than 20 percent and are not less than the spot market by more than 20 percent (*i.e.,* within the 40% band).[26]

Bids and Offers and Minimum Trading Increments

The quote spread parameters (or bid/ask differentials) with respect to PHLX FOREX Options are found in subsection (a) of Rule 1003C, which is applicable to PHLX FOREX Options specialists and Registered Options Traders (''ROTs''). In subsection (a), the Exchange proposes to use the spot market price convention but move the decimal point two places to the right so that a bid and/or offer differential of $.0025 would be ''expressed as'' $.25 for trading purposes.[27] Regarding electronic quotations, the Exchange proposes to state in subsection (b) to Rule 1003C that PHLX FOREX Options may be quoted electronically with a difference not to exceed $.0500 (expressed as $5.00) between the bid and offer regardless of the price of the bid.[28] The Exchange believes that because such proposed ''expressed as'' price demarcations are similar to how prices are now expressed for equity options, it would be easier for PHLX FOREX Options participants to use the expressed as pricing for trading purposes.[29]

Proposed Rule 1004C regarding bids and offers of PHLX FOREX Options states that except as provided in paragraph (b) and (c) of that Rule (contract adjustments and spread type priority), all bids or offers made on the Exchange floor for PHLX FOREX Option contracts shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. The example given in the rule is that a bid of ''.0325'' (which would be expressed as ''$3.25'') for a premium on a $1.70 strike price option on the British pound would represent a bid to pay $325 per option contract.

The minimum trading increment for PHLX FOREX Options is set forth in proposed Rule 1005C. For the six currencies that the Exchange proposes to list, the minimum increment would be $.0001, expressed as $.01. Subsection (b) adds that different, higher, minimum increments may be fixed by the Exchange for option contracts of a particular series of PHLX FOREX Options, which information would be posted on the Exchange's Web site.

Position and Exercise Limits

Proposed Rule 1008C establishes that the new PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro, will each have a position limit of 1,200,000 contracts. The proposed rule also establishes that if a PHLX FOREX Option and an FCO are listed on the same underlying currency (*e.g.,* a Euro PHLX FOREX Option and a Euro FCO), then the positions in each option on the same underlying currency will be aggregated for purposes of determining compliance with the applicable position limit.[30] Proposed Rule 1009C establishes that the exercise limits for options on PHLX FOREX Options will be equivalent to the position limits prescribed in Rule 1008C.

Closing Settlement Value

PHLX FOREX Options will use a closing settlement value methodology that is identical to what is currently being used for FCOs with one distinction—calculating settlement value for PHLX FOREX Options will use

[21] *See id.*

[22] Proposed subsection (a)(ii) to Exchange Rule 1002C states further: The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of PHLX FOREX Options until five (5) business days prior to expiration.

[23] *See* Proposed Exchange Rule 1002C(a)(iii).

[24] *See id.*

[25] Specifically, proposed Exchange Rule 1007C provides that the FLEX procedures set forth in Rule 1079 in respect of FCOs will also be applicable to PHLX FOREX Options. Rule 1079 deals with the process of listing and trading FLEX equity, index, and FCOs on the Exchange. The rule states that FLEX options are available for FCOs and discusses, among other things: opening FLEX options trading through the Request-for-Quote (''RFQ'') process; quotes responsive to RFQs; trading parameters and procedures; and position and exercise limits for FLEX options.

[26] For example, if at the time of initial listing, the spot market of the Euro is at $1.000 the strike prices the Exchange would list for the PHLX FOREX Option will be $.800 to $1.20 in $.0050 intervals. If the spot market then moves to $1.3050, the Exchange may list additional strikes at the following prices in $.0050 intervals: $1.045 to $1.565.

[27] Proposed subsection (a) to Exchange Rule 1003C states in full: with respect to all PHLX FOREX Options, bidding and/or offering so as to create differences of no more than $.0025 (expressed as $.25) between the bid and the offer for each option contract for which the prevailing bid is less than $.0200 (expressed as $2.00); no more than $.0040 (expressed as $.40) where the prevailing bid is $.0200 (expressed as $2.00) or more but less than $.0500 (expressed as $5.00); no more than $.0050 (expressed as $.50) where the prevailing bid is $.0500 (expressed as $5.00) or more but less than $.1000 (expressed as $10.00); no more than $.0080 (expressed as $.80) where the prevailing bid is $.1000 (expressed as $10.00) or more but less than $.2000 (expressed as $20.00); and no more than $.0100 (expressed as $1.00) where the prevailing bid is $.2000 (expressed as $20.00).

[28] Proposed subsection (b) to Exchange Rule 1003C states further: the bid/ask differentials set forth in this subparagraph (b) only applies to electronic quotations and only following the opening rotation in each security (i.e., the bid/ask differentials specified in sub-paragraph (a) above shall apply during opening rotation). Quotations provided in open outcry may not be made with bid/ask differentials set forth in this subparagraph (b) and instead must comply with the legal bid/ask differential requirements described in sub-paragraph (a) above and not in this sub-paragraph (b).

[29] *See* Notice, *supra* note 3, at 5076. As an example, the Exchange states that it would be unwieldy for a trader in a crowd to have to announce that he is improving a price by .0010 (one tenth of a penny). The ''expressed as'' price would allow the trader to announce that he is improving the price by ten cents or a dime. *See id.* at n.32.

[30] *See also* proposed change to Exchange Rule 1001 Commentary .05 (c)(iv) (describing the aggregation provision for purposes of determining compliance with position limits for FCO options).

the spot market price, whereas FCOs currently use the modified Exchange Spot Price. Accordingly, proposed Rule 1006C provides that the closing settlement value for PHLX FOREX Options and for FLEX PHLX FOREX Options shall be the spot market price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.[31] The rule states that, like with FCOs, PHLX FOREX Options will be settled in U.S. dollars per unit of underlying currency, and the Exchange will disseminate the closing settlement value through one or more major market data vendors. The rule also indicates that the disclaimer of liability that is applicable to FCOs is likewise applicable to PHLX FOREX Options. In addition, the Exchange states that it will disseminate PHLX FOREX Option closing settlement values on its Web site.[32]

Systems Capacity and Surveillance

The Exchange represents in its filing that it has the necessary systems capacity to support new options series that will result from the introduction of PHLX FOREX Options on the Exchange.[33] The Exchange also represents that it has an adequate surveillance program in place for trading PHLX FOREX Options, and noted that it will apply the same surveillance program to PHLX FOREX Options that it uses for FCOs.[34]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [35] and the rules and regulations thereunder applicable to a national securities exchange.[36] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[37] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, the proposed PHLX FOREX Options are similar to Phlx's existing FCO options, which the Commission approved in 2007.[38] In the areas where the two products and the corresponding rules are identical, the Commission continues to believe that such provisions are consistent with the Act. The contract specifications that are unique to the proposed PHLX FOREX Options are discussed below.

The Commission believes that any potential concerns regarding investor confusion between the two products should be mitigated by the Exchange's undertaking to engage in an educational outreach effort to inform potential traders about the differences between the new PHLX FOREX Options and the existing FCO products.[39] Further, PHLX FOREX Options will have their own ticker symbols and the applicable settlement values will be disseminated with unique symbols to differentiate these products from FCO options based on the same underlying currency.

A. Settlement Value and Dissemination of Information

The Commission notes that the primary difference between current FCOs and proposed PHLX FOREX Options is that the pricing convention of PHLX FOREX Options will be based on the spot market prices for the underlying currencies. As noted above, to calculate settlement values, the Exchange will use the spot market prices that it receives from SIX Telekurs or another data vendor at 12 Eastern Time on the last trading day prior to expiration, but will not apply any multiplier as it does for FCOs. The Commission believes that the proposed closing settlement value methodology for PHLX FOREX Options is substantially similar to the methodology used for FCOs, despite the absence of a modifier for the former, and therefore it does not raise any new regulatory issues.

Further, the Commission believes that sufficient venues exist for obtaining reliable information on the underlying currencies so that investors in PHLX FOREX Options can monitor the underlying spot market in the underlying currencies.[40] The Commission also believes that the Phlx's procedures and the competitive nature of the spot market for the currencies should help to ensure that the settlement values for PHLX FOREX Options will accurately reflect the spot price for foreign currencies. Finally, the closing settlement value will be publicly disseminated by Phlx. Accordingly, the proposed rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Surveillance

The Commission notes that the Phlx will integrate PHLX FOREX Options into existing Phlx market surveillance market programs for FCOs. Phlx has represented that it has an adequate surveillance program in place for the trading of FCOs and believes that such program will be adequate for the surveillance of PHLX FOREX Options.[41] In addition, Phlx will have the ability to obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[42] Accordingly, the Commission believes that Phlx has access to the tools necessary to adequately surveil trading in these options.

C. Position and Exercise Limits

Phlx proposes a position limit of 1,200,000 contracts for PHLX FOREX Options in the underlying currencies proposed in this filing, namely the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro. The Commission notes that this position limit is consistent with the current position limit for FCOs on Euros.[43] The Commission further notes that the Exchange has provided data evidencing

[31] Similar to FCOs, the expiration date for PHLX FOREX Options would be the Saturday following the third Friday of the expiration month, and the last trading day would be the third Friday of the expiration month.

[32] *See* Notice, *supra* note 3, 77 FR at 5078.

[33] *See id.*

[34] *See id.*

[35] 15 U.S.C. 78f.

[36] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78f(b)(5).

[38] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34) (FCO Approval Order).

[39] *See* Notice, *supra* note 3, 77 FR at 5075.

[40] The Commission notes that the Exchange stated in the Notice that, in addition to spot market prices provided by SIX Telekurs, spot market prices are available from other sources such as Bloomberg, Reuters, and Thompson and available from free sources such as *http://finance.yahoo.com/*. *See* Notice, *supra* note 3, 77 FR at 5075.

[41] *See* Notice, *supra* note 3, 77 FR at 5078.

[42] The Exchange is a member of the ISG under the Intermarket Surveillance Group Agreement, which was modernized in 2008, and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. The members of the ISG include all of the U.S. registered stock and options markets. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. *See id.*

[43] *See* Exchange Rules 1001 and 1002.

the liquidity of the markets for these six currencies. Specifically, the Exchange has represented that the six major foreign currencies that underlie PHLX FOREX Options are all within the top ten most traded foreign currencies in the world, and represent a 72.9% share of the daily market turnover (excluding U.S. dollars).[44] Accordingly, the Commission believes that the proposed position limits are consistent with the Act.

Further, PHLX FOREX Options contracts will be aggregated with FCO contracts for position and exercise limit purposes. The Commission believes that aggregation of PHLX FOREX Options contracts with FCOs on the same underlying currency for purposes of position and exercise limits is appropriate and designed to address concerns with the potential for manipulation or disruptions of the markets for PHLX FOREX Options contracts and FCOs.

D. Other Rules

The Commission believes that the other rule changes proposed by the Phlx to accommodate the trading of PHLX FOREX Options are consistent with the Act. First, the Commission believes that the procedure for opening initial months and series and setting expiration terms is appropriate and consistent with the Exchange's rules for equity and index options on the Exchange.[45] Specifically, the Exchange will open a minimum of one expiration month and series for each class of options open for trading on the Exchange, and the exercise price will be fixed at a price that is reasonably close to the current spot market price of the underlying foreign currency at or before the time such series of options is first opened for trading.

Further, the Commission believes it is reasonable for the Phlx to initially list exercise strike prices within a 40 percent band around the current spot market price for an underlying currency for a PHLX FOREX Option. The Commission also believes that it is consistent with the Act for the Exchange to establish the proposed minimum trading increments for PHLX FOREX Options. The Commission notes that the Phlx has represented that it has the systems capacity to support the additional quotations and messages that will result from listing options on PHLX FOREX Options.

[44] *See* Notice, *supra* note 3, 77 FR at 5077.

[45] *See* Exchange Rules 1012 and 1101A.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–Phlx–2012–11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6867 Filed 3–21–12; 8:45 am]

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[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66614; File No. SR–ISE–2012–22]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Add an Index Option Product for Trading on the Exchange

March 16, 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 9, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The 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 is proposing to amend its rules to trade options on the ISE Max SPY™ Index (''ISE Max SPY''), a newly-developed, ISE proprietary index (patent pending). The ISE Max SPY is designed to represent 10 times the value of the published prices in the SPDR® S&P 500® ETF Trust. The Exchange also proposes to list and trade long-term options on the ISE Max SPY. Options on the Max SPY will be p.m. cash-settled and will have European-style exercise provisions.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules 2001, 2004 and 2009 to provide for the listing and trading of options on the ISE Max SPY™ index, a newly-developed, ISE proprietary index (patent pending). The ISE Max SPY is designed to represent 10 times the value of the published share prices in the SPDR® S&P 500® ETF Trust. In addition to options on the ISE Max SPY, the Exchange may list long-term options on ISE Max SPY.[3] Options on the ISE Max SPY will be P.M. cash-settled and will have European-style exercise provisions.

The ISE Max SPY Index is constructed using the share prices of the SPDR® S&P 500® ETF Trust (the ''Trust'', which is commonly known by its exchange symbol ''SPY''). According to the Trust's prospectus, SPY is based on the S&P 500®, which is a capitalization-weighted index of 500 stocks from a broad range of industries. The component stocks are weighted according to the total market value of their outstanding shares. The impact of a component's price change is proportional to the issue's total market share value, which is the share price times the number of shares outstanding. These are all summed for all 500 stocks and divided by a predetermined base value. The base value for the S&P 500® is adjusted to reflect changes in capitalization resulting from, among other things, mergers, acquisitions, stock rights and substitutions. The ISE Max SPY is calculated by multiplying the share prices of SPY by a factor of 10 and rounding to the tenths place. For example, if the share price for SPY is

[3] Under ISE Rule 2009(b), ''Long-Term Index Options Series,'' the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

112.35 then the ISE Max SPY value would yield a value of 1123.50 for the ISE Max SPY.

The Exchange believes that the proposed product would benefit investors in several ways. First, the European exercise style will allow investors to engage in certain trading strategies involving in-the-money options without the risk of being assigned prior to expiration. The Exchange also notes that options with a European exercise style may exhibit lower premiums than those with an American exercise style, all other terms being equal, because the risks of early assignment may contribute to higher prices for options with an American style exercise. Further, the cash-settlement feature would allow investors to retain their existing underlying equity or exchange-traded fund (''ETF'') positions if they engage in short options strategies, as opposed to physically-settled options that also have American style exercise where an assignment could require an investor to adjust its portfolio in the underlying shares.

The Exchange also believes that a large underlying index would appeal to market participants that have different investment goals. For example, a smaller index size would appeal to investors seeking lower-priced options, while a larger index size would appeal to investors seeking to reduce their transaction costs by having to purchase fewer contracts.

As proposed, the proposal would become effective on a pilot program basis for a period of fourteen months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a p.m.-settled series that expires beyond the conclusion of the pilot period could be established during the 14-month pilot. If the pilot program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the pilot program, the Exchange would also submit a pilot program report to the Commission at least two months prior to the expiration date of the program (the ''annual report''). As described below, the annual report would contain an analysis of volume, open interest and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the S&P 500® index. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. The annual report would be provided to the Commission on a confidential basis.

The annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration data [sic]; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis. Additionally, the annual report would contain the following analysis of trading patterns in Expiration Friday, p.m.-settled ISE Max SPY options series in the pilot:

(1) A time series analysis of open interest; and

(2) An analysis of the distribution of trade sizes.

Also, for series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), would be provided; and

(2) A calculation of share volume of a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

Index Design and Composition

The ISE Max SPY Index is designed to provide larger scale exposure to, and is calculated using, the share prices of SPY. Each Trust unit, (*i.e.,* each share of SPY) represents an undivided ownership interest in the Trust. Shares of SPY trade like any other equity security, and are listed and traded on NYSE Arca.

As discussed above, the ISE Max SPY is calculated by multiplying the share prices of SPY by a factor of 10 and rounding to the tenths place. For example, if the share price for SPY is 112.35 then the ISE Max SPY value would yield a value of 1123.50 for the ISE Max SPY.

Index Calculation and Index Maintenance

Real-time index levels for the ISE Max SPY shall be calculated by ISE or its agent, and shall be disseminated by ISE every 15 seconds during the Exchange's regular trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').[4] The settlement value for the ISE Max SPY Index is calculated using the Net Asset Value (''NAV'') of the fund, as calculated by the Exchange, on a per share basis, times ten.[5] The NAV of an ETF is the per-share dollar amount of the fund which is calculated by dividing the total value of all the securities in its portfolio, less any liabilities, by the number of fund shares outstanding. In general, equity ETFs use the closing

[4] The Exchange will also disseminate these values to its members.

[5] The settlement value that the Exchange calculates may be different from the NAV published by the trustee of the Trust. According to the prospectus of the Trust, the trustee may deem prices of the Trust's portfolio securities to be inappropriate, and may use the prices of another market other than the NYSE, or may appraise the value of the securities itself. Additionally, the Trust uses the NYSE's closing prices of all the portfolio securities even though several of those securities are not listed on the NYSE (as of the close on February 24, 2012, one hundred components of the SPY portfolio, which represented 20% of the total portfolio count and 21.74% of the weighting, were listed on Nasdaq). In calculating ISE Max SPY, the Exchange uses the published closing prices from the primary market of those securities.

prices of each of the fund's holdings to determine the total value of all the securities in its portfolio. In the case of SPY, the closing prices of the portfolio securities are determined by the closing auction processes of the NYSE for each of those securities.

The Exchange will also notify the staff of the Division of Trading and Markets of the Commission immediately in the event values of the ISE Max SPY Index are not disseminated every 15 seconds by a widely available source. In the event the ISE Max SPY Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Exercise and Settlement Value

Options on the ISE Max SPY will expire on the Saturday following the third Friday of the expiration month. Trading in options on the ISE Max SPY will normally cease at 4:15 p.m. (EST), except for expiring contracts, which will cease trading at 4 p.m. (EST) on the Friday preceding an expiration Saturday. Non-expiring contracts will continue to trade until 4:15 p.m. (EST). The index value for exercise of the ISE Max SPY options will be calculated by ISE based on the NAV of the fund, on a per share basis, times ten.

The Commission recently determined that it was appropriate to reintroduce p.m.-settlement to cash-settled index options when it approved C2 Options Exchange, Incorporated's (''C2'') SPXPM.[6] As discussed above, settlement value of the ISE Max SPY utilizes the prices of the stocks held in the SPDR® S&P 500® ETF Trust. These stocks are also used in the calculation of the S&P 500® index underlying C2's SPXPM. Therefore, all the arguments supporting p.m.-settlement in the order approving SPXPM apply here.

Reintroduction of P.M. Settlement

When cash-settled[7] index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.,* p.m.-settlement).[8] The Commission became concerned about the impact of p.m.-settlement on cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays.[9] These concerns were heightened during the quarterly expirations of the third Friday of March, June, September and December when options, index futures, and options on index futures all expire simultaneously. P.m.-settlement was believed to have contributed to above average volume and added market volatility on those days, which sometimes led to sharp price movements during the last hour of trading.[10] As a consequence, the close of trading on the quarterly expiration Friday became known as the ''triple witching hour.'' Besides contributing to investor anxiety, heightened volatility during the expiration periods created the opportunity for manipulation and other abusive trading practices in anticipation of the liquidity constraints.[11]

In light of the concerns with p.m.-settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission (''CFTC'') approved a rule change by the Chicago Mercantile Exchange to provide for a.m.-settlement for index futures, including futures on the S&P 500® index.[12] The Commission subsequently approved a rule change by the Chicago Board Options Exchange (''CBOE'') to list and trade a.m.-settled S&P 500® index options.[13] In 1992, the

[6] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008) (''SPXPM Filing'').

[7] The seller of a ''cash settled'' index option pays out the cash value of the applicable index on expiration or exercise. A ''physically settled'' option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. *See* Characteristics and Risks of Standardized Options, available at: *http://www.theocc.com/components/docs/riskstoc.pdf,* for a discussion of settlement.

[8] The exercise settlement value for a p.m.-settled index option is generally determined by reference to the reported level of the index as derived from the closing prices of the component securities (generally based on the closing prices as reported by the primary exchange on which the stock is listed) on the last business day before expiration (*e.g.,* the Friday before Saturday expiration). *See* Characteristics and Risks of Standardized Options, available at: *http://www.theocc.com/components/docs/riskstoc.pdf,* for a discussion of settlement value.

[9] *See, e.g.,* Securities Exchange Act Release Nos. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) (''Regulators and self-regulators were concerned that the liquidity constraints faced by the securities markets to accommodate expiration related buy or sell programs at the market close on expiration Fridays could exacerbate ongoing market swings during an expiration and could provide opportunities for entities to anticipate these pressures and enter orders as part of manipulative or abusive trading practices designed to artificially drive up or down share prices.''); 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (order approving a proposal for S&P 500 index options with an exercise settlement value based on an index value derived from opening, rather than closing, prices); and 32868 (September 10, 1993), 58 FR 48687 (September 10, 1993) (notice of filing and order granting accelerated approval of proposed rule change by the New York Stock Exchange, Inc. (''NYSE'') relating to changes in auxiliary closing procedures for expiration days) (stating, ''[a]s long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potential large imbalances that can be engendered by firms unwinding index derivative related positions''). The cash settlement provisions of stock index futures and options contracts facilitated the growth of sizeable index arbitrage activities by firms and professional traders and made it relatively easy for arbitrageurs to buy or sell the underlying stocks at or near the market close on expiration Fridays (*i.e.,* the third Friday of the expiration month) in order to ''unwind'' arbitrage-related positions. These types of unwinding programs at the close on expiration Fridays often severely strained the liquidity of the securities markets as the markets, and in particular the specialists on the NYSE, faced pressure to attract contra-side interest in the limited time that was permitted to establish closing prices. *See* Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 (August 30, 2001) (File No. S7–15–01) (proposing release concerning cash settlement and regulatory halt requirements for security futures products).

[10] *See, e.g.,* Securities Exchange Act Release Nos. 24276 (March 27, 1987); 52 FR 10836 (April 3, 1987) (notice of filing and order granting accelerated approval to a proposed rule change by the NYSE relating to opening price settlement of expiring NYSE Composite and Beta Index options); 37894 (October 30, 1996), 61 FR 6987 [sic] (November 5, 1996) (notice of filing and order granting accelerated approval of proposed rule change by the NYSE permanently approving the expiration day auxiliary closing procedures pilot program); and 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) (reaffirming the Commission's view of the advantages of a.m. settlement). *See also* Hans Stoll and Robert Whaley, Expiration Day Effects of Index Options & Futures (March 15, 1986) (noting that share volume on the NYSE was much higher in the last hour of a quarterly expiration Friday when both options and futures expire than on non-expiration Fridays).

[11] *See, e.g.,* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) (explaining that entities could take advantage of illiquidity resulting from the unwinding of arbitrage-related positions on expiration Fridays to manipulate share prices).

[12] *See* Proposed Amendments Relating to the Standard and Poor's 500, the Standard and Poor's 100 and the Standard Poor's OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the Chicago Mercantile Exchange). *See also* Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (noting that the Chicago Mercantile Exchange moved the S&P 500® futures contract's settlement value to opening prices on the delivery date). The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

[13] *See* Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (order approving a proposal for S&P 500 index options with an exercise settlement value based on an index value derived from opening, rather than closing, prices). At the time it approved

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Commission approved CBOE's proposal to transition all of its European-style cash-settled options on the S&P 500® index to a.m.-settlement.[14] Thereafter, the Commission approved proposals by the options markets to transfer most of their cash-settled index products to a.m.-settlement.[15]

The Commission and the CFTC noted the benefits of a.m.-settlement in a 2001 joint release concerning securities futures, where they observed that ''the widespread adoption of opening-price settlement procedures in index futures and options has served to mitigate the liquidity strains that had previously been experienced in the securities markets on expirations.'' [16]

Since 1992, the Commission has approved proposals that provide for cash-settled index options with p.m.-settlement on a limited basis for options products that generally are characterized by lower relative volume and that generally do not involve settlement on the third Friday of a month.[17] At the time of each approval, the Commission stated that limited approvals on a pilot basis would allow the exchange and the Commission to monitor the potential for adverse market effects and modify or terminate the pilots, if necessary. Notably, with the exception of FLEX Index options, these recently-approved p.m.-settled contracts do not involve expiration on the third Friday of the month. These new contracts, including FLEX, have also been characterized by limited volume, and would not be expected to have a pronounced effect on volatility in the underlying securities at the close as a result.

The concerns from 18 years ago that led to the transition to a.m.-settlement for index derivatives have been largely mitigated. Expiration pressure in the underlying cash markets at the close has been greatly reduced with the advent of multiple primary listing and unlisted trading privilege markets and trading is now widely dispersed among many market centers. Further, opening procedures in the 1990s were deemed acceptable to mitigate one-sided order flow driven by index option expiration and that [sic] today's more sophisticated automated closing procedures should afford a similar, if not greater, level of comfort. Specifically, many markets, notably The NASDAQ Stock Market LLC (''Nasdaq'') and the NYSE, now utilize automated closing cross procedures and have closing order types that facilitate orderly closings, and that [sic] these closing procedures are well equipped to mitigate imbalance pressure at the close. In addition, ISE believes that after-hours trading now provides market participants with an alternative to help offset market-on-close imbalances.

Also, as noted in the SPXPM Filing, for roughly five years (1987–1992) CBOE listed both a.m.- and p.m.-settled SPX and did not observe any related market disruptions during that period in connection with the dual a.m./p.m.-settlement.[18] Finally, ISE believes that p.m.-settled options predominate in the over-the-counter (''OTC'') market, and ISE is not aware of any adverse effects in the underlying cash markets attributable to the considerable volume of OTC trading. ISE is merely trying to offer a p.m.-settled product in an exchange environment which offers the benefit of added transparency, price discovery and stability. The ISE asserts that given the changes since the 1980s, concerns with p.m.-settlement are not applicable in today's market because closing procedures on the cash equities markets have become more automated with real time data feeds that are distributed to a wider array of market participants.

Finally, in the SPXPM Filing, C2 estimates that 95% of OTC options based on the S&P 500® index are p.m.-settled,[19] therefore ISE Max SPY will attract some of that trading interest. ISE notes that doing so would be consistent with the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act and could help mitigate

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CBOE's introduction of a.m.-settlement for cash settled index options, the Commission identified two benefits to a.m.-settlement for cash-settled index options. *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09). First, it provides additional time to test price discovery, as market participants have the remainder of the regular trading day to adjust to opening session price movements and determine whether those movements reflect changes in fundamental values or short-term supply and demand conditions. Second, it provides more opportunity to trade out of positions acquired during the opening auction. In this respect, attracting contra-side interest to a single-priced auction to offset an order imbalance (such as those attributable to index arbitrage) may more readily be achieved in an opening auction on Friday morning than a closing auction on Friday afternoon because the morning session allows market participants that have provided that liquidity to have the remainder of the regular trading day to liquidate their positions. In contrast, positions acquired in a Friday afternoon closing auction generally cannot be liquidated as readily and efficiently until the following Monday. Holding positions overnight, or over a weekend, may entail greater risk than holding intraday positions. To accept such risk (real or perceived), market participants generally will require a greater premium, which may translate into greater price concessions, and thus lead to greater volatility in the closing auction. In other words, a consequence of p.m.-settlement may be enhanced volatility at the close. *See, e.g.,* Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 at 45908 (August 30, 2001) (''Steep discounts (premiums) were necessary in part because traders who bought (sold) stocks to offset unwinding programs had to maintain their newly acquired long (short) positions over the weekend—during which time they were subject to considerable market risk.'').

[14] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09) (order approving CBOE's proposal relating to position limits for SPX index options based on the opening price of component securities).

[15] CBOE's index options on the S&P 100® (OEX), however, kept their p.m.-settlement. *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09). No futures or options on futures trade on the S&P 100 index. Other types of options utilize p.m.-settlement, including physically-settled single-stock options and options on ETFs.

[16] *See* Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 at 45908 (August 30, 2001) (proposing release for a joint rule between the Commission and the CFTC generally stipulating, among other provisions, that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities). *See also* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 at 36741–42 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products in which the Commission reaffirmed the advantages of a.m.-settlement) (''[O]pening price settlement procedures offered several features that enabled the securities markets to better handle expiration-related unwinding programs.'').

[17] In particular, in 1993, the Commission approved CBOE's proposal to list and trade p.m.-settled, cash-settled options on certain broad-based indexes expiring on the first business day of the month following the end of each calendar quarter (''Quarterly Index Expirations''). *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13). In 2006, the Commission approved, on a pilot basis, CBOE's listing of p.m.-settled index options expiring on the last business day of a calendar quarter (''Quarterly Options Series''). *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65). In January 2010, the Commission approved CBOE's listing of p.m.-settled FLEX options on a pilot basis. *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (order approving rule change to establish a pilot program to modify FLEX option exercise settlement values and minimum value sizes). FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Prior to 2010, only a.m.-settlement based on opening prices of the underlying components of an index could be used to settle a FLEX index option if it expired on, or within two business days of, a third-Friday-of-the month expiration (''Blackout Period''). Last year, the Commission approved a pilot program to permit FLEX index options with p.m.-settlement that expire within the Blackout Period. *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087). In September 2010, the Commission approved CBOE's listing of p.m.-settled End of Week expirations (expiring on each Friday, other than the third Friday) and End of Month expirations (expiring on the last trading day of the month) for options on broad-based indexes, also on a pilot basis. *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075).

[18] *See* SPXPM Filing, *supra* note 6, at 55974.

[19] *Id.* At 55975.

counterparty risks faced by OTC market participants.

Contract Specifications

The contract specifications for options on the ISE Max SPY are set forth in Exhibit 3–2. Options on the ISE Max SPY are European-style and p.m.-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in Rule 2008(a), will apply to the trading of options on the ISE Max SPY. Exchange rules that are applicable to the trading of options on broad-based indexes will also apply to the trading of ISE Max SPY options.[20] Specifically, the trading of ISE Max SPY options will be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options. Further, ISE Max SPY options shall be quoted and traded in U.S. dollars.

For options on the ISE Max SPY, the Exchange proposes that there would be no position limits since the index is based on the published prices of the stocks held in the SPDR® S&P 500® ETF Trust.[21] As discussed above, C2 received approval to list and trade cash-settled S&P 500® index options with no position limits.[22] The Exchange believes that ISE Max SPY should have no position limits for the same reasons suggested by C2 for SPXPM.[23] The settlement value calculated by ISE would use the portfolio components of the SPY Trust, which are the same as the components of the S&P 500® index. C2 has stated that the settlement value it is using for SPXPM is based on the closing value of the S&P 500® which is calculated using the closing prices of the index components. Similarly, ISE would be calculating the settlement value using the published closing prices of the portfolio securities of the SPDR® S&P 500® ETF Trust, thereby benefitting from the same considerable aggregate capitalization.

To determine appropriate position limits for this product, the Commission requested that the Exchange apply a model, such as the Dutt-Harris model,[24] whereby the authors developed a model to determine appropriate position limits for cash settled index derivatives. The authors concluded that position limits are not as important for broad-based index derivative contracts that are cash settled because they are composed of highly liquid and well-followed securities. As such, the authors note that it would require very high trading volumes to manipulate the underlying securities and, consequently, any attempted manipulation would be more easily detectable and prosecutable. The position limits suggested by the Dutt-Harris model for an S&P 500®-based index option would be so large as to be irrelevant and position limits of such magnitude would attract scrutiny from surveillance systems that would, as a consequence, serve as an effective substitute for position limits. The premise of this conclusion is based upon the broad range and deep liquidity of securities that comprise the S&P 500®, which are the same portfolio securities whose published prices are used to calculate the settlement value of the ISE Max SPY.

The Exchange believes that the existing surveillance procedures and reporting requirements at ISE, other options exchanges, and at the clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[25] Accordingly, ISE's market surveillance has been and will continue to be rigorous and more than adequate to address any manipulation concerns.

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the ISE Max SPY. Accordingly, purchases of put or call options with 9 months or less until expiration must be paid for in full. Writers of uncovered put or call options must deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set minimum strike price intervals for ISE Max SPY options at 1 point intervals. The minimum tick size for series trading below $3 shall be $0.05, and for series trading at or above $3 shall be $0.10.

The Exchange proposes to list options on the ISE Max SPY in the twelve consecutive near-term expiration months.[26] In addition, long-term option series having up to sixty months to expiration may be traded.[27] The trading of long-term ISE Max SPY options shall also be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Chapter 6 of the Exchange's rules is designed to protect public customer trading and shall apply to the trading of options on the ISE Max SPY. Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option unless such customer's account has been approved in writing by a designated Options Principal of the Member. Additionally, ISE's Rule 610 regarding suitability is designed to ensure that options are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order on the day the discretionary order is entered. Finally, ISE Rule 609, Supervision of Accounts, Rule 612, Confirmation to Customers, and Rule 616, Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in of [sic] options on the ISE Max SPY.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the ISE Max SPY. The ISE Market Surveillance Department conducts routine surveillance in approximately 30 discrete areas. Index products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes.

[20] *See* ISE Rules 2000 through 2013.

[21] There would be reporting requirements pursuant to Rule 415, *Reports Related to Position Limits.*

[22] *See* note 6.

[23] *Id.*

[24] *See* The Journal of Futures Markets, Vol. 25, no. 10, 945–965 (2005) (Position Limits for Cash-Settled Derivative Contracts by Hans R. Dutt and Lawrence E. Harris) (''Dutt-Harris Paper'').

[25] These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

[26] *See* Rule 2009(a)(3).

[27] *See* Rule 2009(b)(1).

This is true for both surveillance system processing and manual processes that support the ISE's surveillance program.

Finally, the Exchange has the necessary systems capacity to support new options series that will result from the introduction of options on the ISE Max SPY, including Leaps.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and the rules and regulations thereunder, and, in particular, the requirements of Section 6(b) of the Act.[28] In particular, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) [29] requirements that the rules of an exchange [sic] designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes that p.m.-settlement for the subject index option in the manner proposed does not raise any meaningful regulatory concerns. Further, the Exchange believes that the proposal will not adversely impact fair and orderly markets on expiration Fridays for the underlying stocks comprising SPY. As discussed in Section (a) of Item 3 of this filing (the purpose section), the handling of orders at the close on the stock markets has matured considerably since concerns were initially raised in the late 1980s. Additionally, the proposed rule change would provide Members and investors with additional opportunities to trade S&P 500® options with a p.m.-settlement feature in an exchange environment and subject to transparent exchange-based rules, and that [sic] investors would also benefit from the opportunity to trade in association with this product on Expiration Fridays thereby removing impediments to a free and open market consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–ISE–2012–22 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–ISE–2012–22. 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–ISE–2012–22 and should be submitted on or before April 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6863 Filed 3–21–12; 8:45 am]

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[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66610; File No. SR–Phlx–2012–29]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Certain Select Symbols From the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

March 15, 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 March 2, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Select Symbols,'' specifically to remove various Select Symbols.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange's Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' in order to remove certain delisted symbols from the list of Select Symbols.

The Select Symbols in Section I are subject to the rebates and fees in that section. The Exchange is proposing to delete the following symbols from the list of Select Symbols in Section I of the Fee Schedule: American Airlines (''AMR'') and Eastman Kodak (''EK'') (collectively ''Proposed Deleted Symbols''). AMR was delisted on November 30, 2011 and EK was delisted on January 19, 2012 and therefore these symbols are not subject to the rebates and fees in Section I of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from the list of Select Symbols because these symbols have been delisted and no longer trade on the Exchange. The Exchange believes that it is equitable and not unfairly discriminatory to remove the Proposed Deleted Symbols from the list of Select Symbols because all members, uniformly, would not be assessed either the rebates or the fees pursuant to either Section I or II[6] of the Fee Schedule with respect to the Proposed Deleted Symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] 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 No. SR–Phlx–2012–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–29 and should be submitted on or before April 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6862 Filed 3–21–12; 8:45 am]

BILLING CODE 8011–01–P

[3] The term ''Select Symbols'' refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange's Fee Schedule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] Section II, entitled ''Equity Options Fees.'' includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of ProElite, Inc. and Universal Guardian Holdings, Inc.: Order of Suspension of Trading

March 20, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ProElite, Inc. because it has not filed any periodic reports since the period ended December 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Universal Guardian Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 20, 2012, through 11:59 p.m. EDT on April 2, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–7010 Filed 3–20–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighteenth Meeting: RTCA Special Committee 213, Enhanced Flight Visions Systems/Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting RTCA Special Committee 213, Enhanced Flight Visions Systems/Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of the eighteenth meeting of RTCA Special Committee 213, Enhanced Flight Visions Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held April 17–19, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

April 17, 2012

- Introductions and administrative items
- Review and approve minutes from last full plenary meeting
- Review and approve updated terms of reference for submittal to PMC
- Review SVS/CVS (WG1) and Vision Systems (WG2) objectives
- Work Group 2 (VS) Discussion

April 18, 2012

- Work Group 2 (VS) Discussion
- Work Group 1 (SVS/CVS) break discussion out if needed

April 19, 2012

- Work Group 1 and 2 Update
- Administrative items (action item review and meeting schedule—July 17–19 DC, September/October Europe)
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 15, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–6829 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: RTCA Special Committee 226, Audio Systems and Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting RTCA Special Committee 226, Audio Systems and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the second meeting of RTCA Special Committee 226, Audio Systems and Equipment.

DATES: The meeting will be held April 17–19, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

April 17–19, 2012

- Welcome and Administrative Remarks
- Introductions
- Agenda Overview
- Review previous action items
- Finalize and approve changes to TOR
- Solicit proposals for further changes to DO–214
- Continue discussion on the following:
  - Risks of usage of adaptive technology during test
  - Proposed committee letter to invite additional headsets, MIC's and CVR manufacturers
  - Addition of noise test requirement to the vibration test variable nature of Oxygen Mask Microphone and Hand Microphone performance in the marketplace
  - Proposal to remove CVR Area Microphone requirements from standard in lieu of ED–112
  - FAA info letter addressing use of Active Noise Reduction (ANR) and Powered ANR headsets to discuss concern of EMI, EMC effects on power leads affecting communications
  - Support from NTSB with regards to ANR
  - Sensitivity versus output power as they correlate with its specified ratings
- Continue review of DO–214 and draft updates/changes
- Draft language for noise test requirement to combine with the vibration test
- Other Business
- Establish Agenda for Next Meeting

• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 15, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–6838 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, May 10, 2012, from 8 a.m. to 5 p.m., and Friday, May 11, 2012, from 8 a.m. to 4:30 p.m., at the National Housing Center, 1201 15th Street NW., Washington, DC 20005. This will be the 55th meeting of the COMSTAC.

The proposed agenda for May 10 features a meeting of the full COMSTAC in the morning, followed by meetings of the working groups as follows:

—Business/Legal 10 a.m.–12 noon)
—Operations (1 p.m.–3 p.m.)
—Export Controls (3 p.m.–5 p.m.)

The proposed agenda for the morning of May 11 features the Systems working group (8:30 a.m.–10:30). The working groups will then present their reports and recommendations, followed by the opportunity for public comment.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or email) by May 3, 2012, so that the information can be made available to COMSTAC members for their review and consideration before the May 10 and 11, 2012 meetings. Written statements should be supplied in the following formats: one hard copy with original signature and/or one electronic copy via email.

Subject to approval, a portion of the May 11, 2012, meeting will be closed to the public (starting at approximately 3:45 p.m.).

An agenda will be posted on the FAA Web site at *www.faa.gov/go/ast*. For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; Email *susan.lender@faa.gov*. Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

Issued in Washington, DC, March 14, 2012.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2012–6832 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Tulsa International Airport under the provision of Section 817 of the FAA Modernization and Reform Act of 2012.

DATES: Comments must be received on or before April 30, 2012.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, AR/OK Airports District Office, 2601 Meacham Boulevard, Fort Worth, Texas, 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Hough, Deputy Airports Director, Tulsa International Airport, P.O. Box 581838, Tulsa, Oklahoma, 74158.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Piñon, Project Manager, Federal Aviation Administration, Southwest Region, Airports Division, AR/OK Airports District Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

The request to release property may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Tulsa International Airport under the provision of the FAA Modernization and Reform Act of 2012.

On June 18, 2010, the FAA determined that the request to release property at Tulsa International Airport submitted by the Tulsa Airport Authority, Tulsa, Oklahoma, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than April 30, 2012.

The following is a brief overview of the request:

The Tulsa International Airport requests the release of 68,167 square feet of non-aeronautical property to the Tulsa Airport Authority. The current property is currently vacant and has no ability to have any aviation use associated with the land. The parcel does not have access to the airfield and is in no conflict with the Master Plan in this area. The purpose of this release is to allow the Tulsa Airport Authority to sell the subject land that no longer serves any aeronautical purpose to the airport to Danny's Auto Salvage for use as an automobile salvage yard.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER IMFORMATION CONTACT**.

In addition, any person may, inspect the application, notice and other documents germane to the application in person at the Tulsa International Airport, 8602 South Elwood, Tulsa, Oklahoma, 74132.

Issued in Fort Worth, Texas, on March 9, 2012.

Joseph G. Washington,

Acting Manager, Airports Division Office.

[FR Doc. 2012–6833 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0180; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of Petition Grant.

SUMMARY: BMW of North America, LLC (BMW) [1] a subsidiary of BMW AG, Munich, Germany, has determined that certain BMW vehicles equipped with ''run-flat'' tires do not fully comply with paragraphs S4.3(c) and S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* BMW filed an appropriate report, dated November 2, 2010, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, BMW has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of BMW's petition was published with a 30-day public comment period, on March 7, 2011, in the *Federal Register* (76 FR 12410). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0180.''

FOR FURTHER INFORMATION CONTACT: For further information on this decision contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0645, facsimile (202) 366–5930.

Summary of BMW's Petition: BMW estimates that approximately 54,200 vehicles equipped with ''run flat'' tires are affected. The affected vehicle models are certain: Model Year 2008–2011 BMW X5 SAV multipurpose passenger vehicles, manufactured from February 2, 2008 through October 26, 2010; Model Year 2008–2011 BMW X6 SAC multipurpose passenger vehicles, manufactured from September 19, 2008 through October 26, 2010; and 2011 BMW 5–Series, BMW 5–Series Gran Turismo, and BMW 7–Series passenger cars, manufactured from September 1, 2010 through October 26, 2010.

BMW explains that the noncompliance is that the tire and loading information placards on the affected vehicles incorrectly include a recommended cold tire inflation pressure and size designation for a spare tire. Because the vehicles are equipped with ''run-flat'' tires and have no spare tire, the word ''none,'' as required by paragraphs S4.3(c) and S4.3(d) is required in place of the spare tire size and the associated recommended cold tire inflation pressure.

BMW argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Vehicle owner's are informed via the vehicle Owner's Manual that if ''RSC'' is stamped on the sidewall of the tire, then the tire is a ''run-flat'' tire.

2. BMW vehicle owners can contact BMW Roadside Assistance™ representatives by telephone 24 hours/day. These representatives can provide vehicle owners, on a vehicle model and model year basis, with all available tire sizes and specifications for the tires originally mounted on their vehicle, including the installation of ''run-flat'' tires.

3. For vehicles equipped with BMW Assist™, passengers can contact BMW Roadside Assistance™ representatives directly from within the vehicle.[2]

BMW reported that the noncompliance was brought to their attention during inspections of vehicles equipped with ''run-flat'' tires. On October 26, 2010, BMW realized that the affected vehicles do not conform to FMVSS No. 110.

BMW has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will have compliant labels.

In summation, BMW believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 110 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

NHTSA Decision: The agency agrees with BMW that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of the subject vehicles in which the vehicle tire and loading information placards erroneously indicated that a spare tire was available when, in fact, ''run flat'' tires were installed in lieu of the spare tire.

In the agency's judgment, this noncompliance to FMVSS No. 110 will have an inconsequential effect on motor vehicle safety because:

In the event of a flat with a ''run flat'' tire, the vehicle operator can continue to operate the vehicle. Instructions concerning the safe operation of a vehicle with a flat ''run flat'' tire are available from the vehicle owner's manual as well as BMW Roadside ™.

Additionally, all information required for maintaining and/or replacing the front and rear tires (i.e., tire size designations and their respective cold tire inflation pressures), as well as the seating capacity and vehicle capacity weight are correct on the tire and loading information placard on the subject vehicles.

In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion that the subject FMVSS No. 110 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 54,200 [3] vehicles that have already

[1] BMW of North America, LLC (BMW) is a vehicle manufacturer incorporated under the laws of the state of New Jersey.

[2] Refer to the BMW petition for specific details on the availability of BMW Assist™.

[3] BMW's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt BMW as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 54,200

passed from the manufacturer to an owner, purchaser, or dealer.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: March 16, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–6850 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0024; Notice 1]

Supreme Indiana Operations, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Startrans, a division of Supreme Indiana Operations, Inc., (Startrans) [1] has determined that certain Startrans trucks, buses, and multifunction school activity buses (MFSAB) manufactured from 2006 through 2011, do not fully comply with paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Startrans has filed an appropriate report dated November 16, 2011, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Startrans submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Startrans' petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles involved: Affected are approximately: 97,271 Startrans 2006 through 2011 model year trucks, 9,543 Startrans 2007 through 2011 model year buses, and 436 model year 2007 through 2011 MFSAB.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject vehicles that Startrans no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: Startrans explains that the noncompliance is that the height of the lettering on the combined certification and tire information labels attached to the subject vehicles is less than that required by paragraph S5.3 of FMVSS No. 120. The lettering on the noncompliant labels is only 2.12 millimeters (mm) in height. The height required by paragraph S5.3 is 2.4 mm.

Rule text: Paragraph S5.3 of FMVSS No. 120 requires in pertinent part:

> S5.3 Each vehicle shall show the information specified in S5.3.1 and S5.3.2 and, in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this paragraph. This information shall appear either—
>
> (a) After each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter; or at the option of the manufacturer,
>
> (b) On the tire information label affixed to the vehicle in the manner, location, and form described in § 567.4(b) through (f) of this chapter as appropriate of each GVWR–GAWR combination listed on the certification label.

Summary of Startrans' Analysis and Arguments

Startrans determined that the subject noncompliance existed after being notified by the NHTSA's Office of Vehicle Safety Compliance (OVSC) that an apparent noncompliance was identified during an OVSC FMVSS No. 120 compliance test of a model year 2010 Startrans MFSAB.

Startrans makes the argument that the subject noncompliance is not performance related and is inconsequential to vehicle safety. The font height of the text on the certification label is just 0.28 mm less than the requirement, but the label text is clear, legible and meets all the other labeling requirements.

Startrans also states that the number of vehicles that potentially require remedy is 107,250 and represents several concerns. These vehicles are already registered and currently represent no concern with licensing. To perform a remedy on this many vehicles invites the possibility of certification decals being reinstalled on the wrong vehicles.

Startrans has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 120.

In summation, Startrans believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may

of the affected vehicles. However, granting this petition does relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after BMW notified them that the subject noncompliance existed.

[1] Supreme Indiana Operations, Inc., is manufacturer of motor vehicles and is registered under the laws of the state of Delaware.

also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

DATES: *Comment Closing Date:* April 23, 2012.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: March 16, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–6852 Filed 3–21–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Research Advisory Committee

AGENCY: Office of Financial Research, Treasury.

ACTION: Notice of establishment of the Financial Research Advisory Committee and solicitation of applications for Committee membership.

SUMMARY: The Treasury Department has determined that it is in the public interest to establish the Financial Research Advisory Committee. A Charter for the Committee has been prepared and will be filed no earlier than 15 days following the date of publication of this notice. This notice establishes criteria and procedures for the selection of members.

FOR FURTHER INFORMATION CONTACT: Andrea Ianniello, Office of Financial Research, Department of Treasury, (202) 622–3002.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 2 § 1–16, as amended), the Treasury Department intends to establish the following advisory committee, pursuant to its Charter:

Title: Financial Research Advisory Committee.

Purpose: The purpose of the Committee is to provide advice and recommendations to the Office of Financial Research (OFR) and to assist the OFR in carrying out its duties and authorities. The OFR will benefit from the knowledge, experience, and perspective of academics, researchers, industry leaders, government officials, and others.

Statement of Public Interest: It is in the public interest to establish, under the provisions of the Federal Advisory Committee Act, the Financial Research Advisory Committee (''Committee''). The Committee shall be a continuing advisory committee with an initial two-year term, subject to two-year re-authorizations. The Committee provides an opportunity for academics, researchers, industry leaders, and other qualified individuals to offer their expert advice and recommendations to the OFR, which among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of federal financial regulators and researchers. These views will be offered to the Director of the OFR on a regular basis. There exists no other source within the Federal government that could serve this function.

Background

The OFR was established under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, July 21, 2010). The purpose of the OFR is to support the Financial Stability Oversight Council (Council) in fulfilling the purposes and duties of the Council and to support the Council's member agencies by:

—Collecting data on behalf of the Council, and providing such data to the Council and member agencies;
—Standardizing the types and formats of data reported and collected;
—Performing applied research and essential long-term research;
—Developing tools for risk measurement and monitoring;
—Performing other related services;
—Making the results of the activities of the OFR available to financial regulatory agencies; and
—Assisting such member agencies in determining the types and formats of data authorized by the Dodd-Frank Act to be collected by such member agencies.

Objective, Scope, and Description of the Committee

The Committee will advise the OFR on issues related to the responsibilities of the office.

The Committee shall provide its advice, recommendations, analysis, and information directly to the OFR. The OFR may share the Committee's advice and recommendations with the Secretary of the Treasury or other Treasury officials. The OFR will share information with the Committee as the Director determines will be helpful in allowing the Committee to carry out its role.

Members will be selected by the Department from persons that are recognized experts in the fields of economics, financial institutions and markets, statistical analysis, financial markets analysis, econometrics, applied sciences, risk management, data, information standards, technology, or other areas related to OFR's duties and authorities, or may be representatives of sectors related to OFR's duties and authorities. Members should also have experience as a widely-recognized academic or research expert in a field related to OFR's duties and authorities, as a senior leader or respected professional within an industry sector related to OFR's duties and authorities, or as a financial regulator or official in an area related to OFR's duties and authorities.

Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds, and viewpoints represented. The Committee shall consist of not more than 30 members.

The Committee will be chaired by a member selected by OFR.

The Committee will function for a two-year period before renewal or termination. It will meet at such intervals as are necessary to carry out its duties. Each year, the Committee intends to conduct one orientation session, as needed, approximately two public meetings, and several work sessions.

The meetings are open to public observers, including the press, unless prior notice has been provided for a closed meeting.

No person who is a Federally-registered lobbyist may serve on the Committee. Membership on the Committee is limited to the individuals appointed and is non-transferrable. Regular attendance is essential to the effective operation of the Committee.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a cover letter describing their interest, reasons for application, and qualifications, and should enclose a complete professional biography or resume.

Some members of the Committee may be required to adhere to the conflict of interest rules applicable to Special Government Employees, as such employees are defined in 18 U.S.C. 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

In accordance with Department of Treasury Directive 21–03, a clearance process includes fingerprints, tax checks, and a Federal Bureau of Investigation criminal check. Applications must state in their application that they agree to submit to these pre-appointment checks.

The application period for interested candidates will extend to April 16, 2012. Applications should be submitted in sufficient time to be received by the close of business on the closing date and should be sent to *Andrea.Ianniello@treasury.gov* or by mail to: Office of Financial Research, Department of the Treasury, Attention: Andrea Ianniello, 1500 Pennsylvania Avenue NW., MT–1330, Washington, DC 20220.

Cyrus Amir-Mokri,

Assistant Secretary for Financial Institutions.

[FR Doc. 2012–6941 Filed 3–21–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Taxpayer Advocacy Panel Meeting Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given of the cancellation of the open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee scheduled for Wednesday, March 21, 2012 at 2:30 p.m. Eastern Time via teleconference, which was originally published in the **Federal Register** on February 14, 2012, (Volume 77, Number 30, Page 8329).

The meeting is cancelled pending renewal of the Taxpayer Advocacy Panel Charter.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or (718) 488–2085.

Dated: March 14, 2012.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–6750 Filed 3–21–12; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Taxpayer Advocacy Panel Meeting Cancellation

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting cancellation

SUMMARY: Notice is hereby given of the cancellation of the open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee scheduled for Tuesday, March 20, 2012 at 10 a.m. Eastern Time via teleconference, which was originally published in the **Federal Register** on February 14, 2012, (Volume 77, Number 30, Page 8329).

The meeting is cancelled pending renewal of the Taxpayer Advocacy Panel Charter.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or (414) 231–2360.

Dated: March 14, 2012.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–6857 Filed 3–21–12; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Announcement of Competition Under the America COMPETES Reauthorization Act of 2011: Project REACH Homelessness Mobile App Contest

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: To provide software which can operate on smart phones and tablet devices that can simplify access to resources available to the homeless and the caregivers and caseworkers who serve them, the Secretary of Veterans Affairs (VA) announces a prize competition under Section 105 of the America COMPETES Reauthorization Act of 2011, Public Law 111–358 (2011) (the ''Act'').

DATES: Competition begins 12 p.m. March 22, 2012. Entries will be accepted until 11 p.m., Eastern Standard Time, July 27, 2012. The Grand Prize Winner will be announced on or before November 9, 2012, at 11 p.m.

FOR FURTHER INFORMATION CONTACT: Matthew Webb at the Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632–9550. (**Note:** This is not a toll-free number.) *See also,* Section 11, below.

SUPPLEMENTARY INFORMATION:

Background

As a member of the White House Council for Community Solutions and founder of the non-profit Jon Bon Jovi (JBJ) Soul Foundation, Jon Bon Jovi approached the former White House Chief Technology Officer to ask about ways that volunteers could find shelters in the neighborhood of the JBJ Soul Kitchen, a community restaurant in Monmouth County, New Jersey that is sponsored by his foundation. He was subsequently referred to the VA Chief Technology Officer and the Director of the VA Innovation Initiative (VAi2), who began to explore solutions. They recognized that this was not just a local problem and that finding a solution that would allow service providers to refer their clients to other resources (including food, shelter, and clinical services) could substantially advance Secretary Eric K. Shinseki's goal of ending Veteran homelessness by 2015. Because JBJ Soul Kitchen has been intimately involved in the development to the project, because they do not have any pecuniary interest whatsoever in the outcome, nor will they gain from this voluntary affiliation, and because they serve Veterans as part of their ''neighbor in need'' population, we decided that it was an ideal venue for contestants to demonstrate their entries as a defined beta test site. VAi2 recognized that working closely with this private organization, rather than solely focusing on VA facilities, would benefit Veterans because homeless Veterans do not and should not exclusively use VA facilities; encouraging JBJ Soul Kitchen's close participation helps to emphasize the need to include private providers and would encourage software developers to include these organizations within their developed entries.

The Project Real-time Electronic Access for Caregivers and the Homeless (REACH) contest is being sponsored by the Department of Veterans Affairs through the VA Innovation Initiative, in support of the Administration's goal to end Veteran homelessness by 2015. This is an apps-development challenge to help the people who help the homeless more easily find essential services. It is

designed to tap the enormous talent and deep compassion of the nation's developer community. Winners of this contest will deliver a free, easy-to-use, and broadly accessible web and smartphone application that provides locality-based information about shelters, clinics, and food banks. This contest has the potential to advance the mission of the Department of Veterans Affairs by providing technological support to those who help homeless Veterans. While emphasizing Veterans, however, VA believes all persons experiencing homelessness or providing care to the homeless would benefit from an application that provides better access and information to healthcare, employment, and counseling services.

Finalists will develop applications which provide users with easy access to resources near JBJ Soul Kitchen (Red Bank, NJ). This contest is designed to expand the help that this provider of services to the homeless—and other similar organizations across the country—can offer by providing easy access to up-to-date information about local resources. Finalists in this competition must at a minimum provide real- or near real-time information about bed availability among area homeless shelters near JBJ Soul Kitchen.

The ultimate goal of this contest is to create a national platform that can be adapted to any location in America to support those who help the homeless rapidly identify points of service, including food, shelter and medical clinics.

Contest Requirements and Rules

1. *Subject of the contest.* The goal of the contest is to create a free, easy-to-use, and broadly accessible web- and smartphone app to provide locality-based services available to the homeless, including shelters, health clinics, and food banks.

2. *Amount of the prize.* VA will award up to $10,000 to as many as five finalists. VA will award an additional Grand Prize of up to $25,000 to one of those finalists. The $10,000 prizes will be awarded in one lump sum. The $25,000 prize will also be awarded in one lump sum.

3. *Basis on which finalists will be selected.* Finalists will be the first five (5) entrants who:

a. Create a functional mobile application to offer to homeless advocates and shelter coordinators that meets the following requirements:

- Runs on at least one of the following browsers: Explorer, Chrome, Safari, or Firefox.
- Runs on at least one of the following smartphone platforms: iPhone or Android. (**Note**, however, that the Grand Prize winner must support both the iPhone and Android platforms.).
- Demonstrates at least 99% uptime.
- Creates a mechanism that allows for simple aggregation of near or real time bed availability at shelters local to JBJ Soul Kitchen, which is located at: 207 Monmouth St., Red Bank, New Jersey 07701.
- Provides information about local VA health services.
- Provides information about local employment services and job opportunities.
- Provides information about crisis hotline services.
- Provides local legal assistance resources.
- ''Local'' is defined as geographically within Monmouth County, New Jersey.

b. Submit a complete entry within the submission period beginning 12 p.m. Thursday, March 22, 2012, and ending 11 p.m. July 27, 2012, unless extended by formal announcement.

- To be complete, an entry must be submitted to: *www.reachthehomeless.challenge.gov* and include a working link to a Web site from which judges can download the application that meets the criteria in 3.a. or includes a mobile device with the app pre-loaded. If the entry includes a pre-loaded mobile device, instead of a link to a site at which the app can be downloaded, a submission must be made to *www.reachthehomeless.challenge.gov* on the day that device is transmitted to the VAi2 team.
- The entry date is the date the VA receives a complete application. If the contestant chooses to supply a mobile device with their app pre-loaded, the *www.reachthehomeless.challenge.gov* submission is tentative until receipt of the device with the pre-loaded application. If the transmission date and online submission dates differ, the transmission date will be used as the entry date for the purposes of this contest.
- See the submission rules (Section 9) for more information about submission requirements.

4. *Beta test phase.* To compete for the Grand Prize, finalists will participate in a beta test phase.

a. The beta test phase will consist of live trials with the staff of the JBJ Soul Kitchen shelter located at 207 Monmouth St., Red Bank, New Jersey 07701.

b. The beta test phase will include two rounds, beginning on August 30, 2012, and concluding November 3, 2012.

- Within each round, finalists will be assigned at random a three-day period (e.g., Thursday, Friday, Saturday) to have users at the shelter pilot the application and provide feedback.

c. Finalists will be expected to deliver at least one (1) working device with the application pre-loaded and any instructions for use to the pilot site prior to their beta test periods.

d. Finalists are encouraged but not required to travel to Soul Kitchen during their beta test periods.

e. Finalists are encouraged but not required to perform usability testing at other locations, in addition to their assigned beta test periods at Soul Kitchen.

f. Changes to the beta test schedule or pilot site will be communicated via formal announcement.

5. *Basis on which the Grand Prize will be awarded.* The Grand Prize winner will be selected from among the five finalists following a beta test phase. The Grand Prize will be awarded to the entrant that receives the highest score from the Competition panel of judges during the final presentation following the beta test phase. The successful finalist will:

a. Provide an application that supports both iPhone and Android platforms.

b. Provide a web link from which judges can download this application to a mobile device. Documentation provided as part of the entry must include any important additional information, such as system requirements.

- Unlike the previous round of competition, delivering a mobile device or devices with the application preloaded will not satisfy this requirement.

c. Provide users with real- or near real-time information about the services listed above in 3.a.

d. Demonstrate to the satisfaction of the judges that the application excels in areas of performance speed, ease of use, comprehensive service delivery to support those who help the homeless, and feature extensions not explicitly contemplated on the contest Web site. Selection of the winner is in the sole discretion of the judges.

6. *Alternate basis for selecting five finalists.* If the competition judges decide that fewer than five entrants have met the submission criteria by July 27, 2012, VA may select fewer than five finalists.

a. In the event of a tie for the fifth position based on submission time, the competition judges will review the tying applications to determine if they meet the requirements listed in 3a. If both

applications are found to meet the eligibility criteria, the contest will expand to accommodate a sixth finalist. The fifth and sixth finalist will each receive a $10,000 prize. They will each, however, only get one round of beta testing days, instead of two, to be decided at random.

• In the unlikely event that more than two competitors tie and all entrants meet the selection criteria, the judges will select two finalists at random. The selected finalists will each receive a $10,000 prize and one round of beta testing, to be decided at random.

7. *Decisions to not award.* If the competition judges find that no entrants have met the selection criteria for the five finalists, then no finalists will be selected and no award will be granted. If the competition judges find that none of the finalists have met the criteria for the Grand Prize Winner, then no Grand Prize award will be awarded.

8. *Contest period.* The contest period will proceed according to the following schedule, unless modified or extended by a formal announcement.

a. The contest will begin accepting submissions at 12 p.m., March 22, 2012.

b. Judges will begin reviewing submissions on or about April 30, 2012.

c. The deadline for submissions is 11 p.m., July 27, 2012.

d. Finalists will be announced on or about August 24, 2012.

e. The beta test phase will begin on or about August 30, 2012.

f. The beta test phase will conclude on or about November 3, 2012.

g. Judges will begin reviewing the final applications on or about November 5, 2012.

h. The Grand Prize winner will be announced on or about November 9, 2012.

9. *Submissions.* To participate in this competition, contestants must submit an entry to www.reachthehomeless.challenge.gov, which includes:

a. A narrative describing the participant's homelessness application. The narrative will be in a format compatible with Microsoft Word 2007, not exceeding five 8 ½ x 11'' pages in length using Arial or Calibri 11 point font and one-inch margins.

b. Information necessary to contact the participant in the event the participant is an apparent winner or there are questions about the information submitted, including name, street address, email address and telephone number.

c. An explanation of how judges can test the application. Submissions may take one of two forms:

• A link in the submission email to the appropriate site from which the judges could download the application. The narrative should list any additional requirements for downloading, such as a password, device type, or operating system version; or

• A mobile device with the app pre-loaded. The narrative must include any additional requirements for using the device, such as a passcode. The device must be transmitted by overnight delivery via United Parcel Service, United States Postal Service, FedEx, or similar service to the following address: Department of Veterans Affairs, Attn: Jonah Czerwinski, 810 Vermont Ave NW., Mail Code 00 Suite 1015C, Washington DC 20420.

The device will be returned to the contestant after final judging and no later than December 31, 2012.

10. *Eligibility to participate in the competition.* To be eligible to win a prize in this competition, an individual or entity:

a. Must create an account on the www.challenge.gov web site by supplying name and email address. Creating an account will constitute ''registration to participate in the competition'' as provided in the Act.

b. In the case of an individual, must be a citizen or permanent resident of the United States; and if an entity, must be incorporated in and maintain a primary place of business in the United States.

c. Must have complied with all requirements of this Notice and all requirements established by Section 105 of the America COMPETES Act of 2011, Public Law 111–358.

d. May not be a Federal entity or Federal employee acting within the scope of his or her employment.

e. Must agree to assume any and all risks and waive any claims against the Federal government and its related entities, except in case of willful misconduct, for any injury, death, damage, or loss of property revenue or profits, whether direct, indirect, or consequential, arising from their participation in this competition, whether the injury, death, damage or loss arises through negligence or otherwise. Provided, however, that participants will not be required to waive claims against VA arising out of the unauthorized use of or disclosure by the agency of the intellectual property, trade secrets or confidential information of the participant.

• Participants shall be responsible for obtaining their own insurance to cover claims by any third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with or participation in the competition.

f. VA will use the information submitted in the entry to contact the finalists and apparent Grand Prize winner. If VA is unsuccessful in contacting the apparent winner after a minimum of 10 attempts over the course of a 10-day period, it may disqualify the participant and either (1) award the prize to another participant or (2) terminate this competition without awarding any prize.

g. Prior to final designation as a finalist in this competition, finalists will be required to submit the below documentation:

• If an individual, that the person is a citizen or permanent resident of the United States; and if an entity, that is it incorporated in and maintains a place of business in the United States;

• Financial account information sufficient to support electronic transfer of the prize amount consistent with VA fiscal policy and the issuance of an IRS Form 1099. The information submitted will be used for these purposes only.

11. *Procedures for obtaining additional information:*

a. During the period of this competition, VA will operate and maintain a moderated blog at www.reachthehomeless.challenge.gov to which participants may submit questions and receive official guidance from VA.

b. VA may choose not to respond to any question or comment or to delete questions or comments which it determines are not relevant to the competition.

c. All participants are bound by official guidance on the blog if posted prior to submission of a participant's entry.

12. *Judges and judging procedures:*

a. Subject to the requirements of Public Law 111–358, Sec 24(k), the Director, VA Innovations Initiative, acting on behalf and with the authority of the Secretary of VA, will appoint one or more qualified individuals to act as judges of the Homelessness Mobile App contest and may appoint himself as a judge. Judges may include individuals from outside VA, including from the private sector and individuals nominated by the Competition.

b. A judge may not have a personal or financial interest in, or be an employee, officer, director, or agent of any entity that is a registered entrant in the Contest, and may not have a familial or financial relationship with an individual who is a registered entrant.

c. Specific tasks related to the judging process may be delegated to VA employees or employees of a collaborating Federal agency.

d. Judges shall have the authority to disregard any minor error in any entry that does not create any substantial benefit or detriment to any entrant.

e. If a judge is disqualified or unable to fulfill his or her duties, VAi2 reserves the right to substitute another official as judge.

• VA may select different judges for the finalist selection panel and the Grand Prize award panel.

f. The competition judges may use any technical means they determine suitable to test the functionality and usability of the entrant's homelessness application.

g. Decisions of the judges are final.

13. *Intellectual Property:* Participants in the competition will retain ownership of their applications, and any intellectual property developed under this competition. The Federal Government may negotiate a license for the use of intellectual property developed by a participant.

a. The winner of the competition will make its application available and free to download from appropriate application marketplace(s) by a date to be decided by the VAi2 team on or about the time the Grand Prize winner is announced.

b. VA may, in its sole and exclusive discretion, choose to negotiate with any non-winning entrant for a license to use any intellectual property developed by a participant for this competition.

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 16, 2012, for publication.

Dated: March 16, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–6830 Filed 3–21–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on April 17, 2012, at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, Virginia, from 9 a.m. to 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans, and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates, and will continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on policies, regulations, and implications for the incorporation of genomic data, particularly whole genome data, into health care and clinical decision-making. The meeting will also receive an update on the status of the ongoing Million Veteran Program.

The Committee will receive public comments at 3 p.m. Comments are limited to 5 minutes each. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Sumitra Muralidhar, Designed Federal Officer, Office of Research and Development (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Sumitra.muralidhar@va.gov.* Any member of the public wishing to attend or seeking additional information should contact Dr. Muralidhar at (202) 443–5679.

By direction of the Secretary.

Dated: March 16, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–6845 Filed 3–21–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Federal Communications Commission

47 CFR Part 36

Jurisdictional Separations and Referral to the Federal-State Joint Board; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 12–27]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission seeks comment on extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations. Extending the freeze would allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Comments are due on or before April 5, 2012. Reply comments are due on or before April 12, 2012.

ADDRESSES: You may submit comments, identified by WC Docket No. 80–286, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

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: Daniel Ball, Attorney Advisor, at 202–418–1577, Pricing Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 80–286, FCC 12–27, released on March 15, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554.

Background

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The FNPRM proposes extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2012, until June 30, 2014. Extending the freeze will allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive separations reform.

2. The 2001 Separations Freeze Order, 66 FR 33202, June 21, 2001, froze all part 36 category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers. Rate-of-return carriers had the option to freeze their category relationships at the outset of the freeze. The freeze was originally established July 1, 2001 for a period of five years, or until the Commission completed separations reform, whichever occurred first. The 2006 Separations Freeze Extension Order, 71 FR 29843, May 24, 2006, extended the freeze for three years or until the Commission completed separations reform, whichever occurred first. The 2009 Separations Freeze Extension Order, 74 FR 23955, May 22, 2009, extended the freeze until June 30, 2010. The 2010 Separations Freeze Extension Order, 75 FR 30301, June 1, 2010, extended the freeze until June 30, 2011. The 2011 Separations Freeze Extension Order, 76 FR 30840, May 27, 2011, extended the freeze until June 30, 2012.

3. In this FNPRM the Commission seeks comment on extending the freeze for two years, until June 30, 2014. The proposed extension would allow the Commission to continue to work with the Federal-State Joint Board on Separations to achieve comprehensive separations reform. Pending comprehensive reform, the Commission tentatively concludes that the existing freeze should be extended on an interim basis to avoid the imposition of undue administrative burdens on incumbent LECs. The Commission asks commenters to consider how costly and burdensome an extension of the freeze, or a reversion to the pre-freeze part 36 rules, would be for small incumbent LECs, and whether an extension would disproportionately affect specific types of carriers or ratepayers. Incumbent LECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze almost eleven years ago. If the Commission does not extend the separations freeze, and instead allows the earlier separations rules to return to force, incumbent LECs would be required to reinstitute their separations processes. Given the imminent expiration of the current separations freeze, it is unlikely that incumbent LECs would have sufficient time to reinstitute the separations processes necessary to comply with the earlier separations rules.

4. The extended freeze would be implemented as described in the 2001 Separations Freeze Order. Specifically, price-cap carriers would use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers would use the same frozen jurisdictional allocation factors, and would use the same frozen category relationships if they had opted previously to freeze those as well.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*ecfs Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the

caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

• Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving 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 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.

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Ex Parte Requirements

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. See 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

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 this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

In the *1997 Separations NPRM,* the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's part 36 jurisdictional separations rules, and that the separations process codified in part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly. Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's part 36 procedures to ensure that they meet the objectives of the 1996 Act. The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process. Because of the significant lapse of time since the imposition of the freeze, and because the industry has experienced myriad changes during that time, including reform of universal service and intercarrier compensation, we ask that commenters, in their comments on the present FNPRM, comment on the impact of a further extension of the freeze.

The purpose of proposed extension of the freeze is to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, regulation, technology, and market structure of the telecommunications industry.

Legal Basis

The legal basis for the FNPRM is contained in sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410, and §§ 1.1200 through 1.1216 of the Commission's rules, 47 CFR 1.1, 1.411 through 1.429, and 1.1200 through 1.1216.

Description and Estimate of the Number of Small Entities to Which Rules May Apply

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 section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

We have included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard established by the SBA, and is not dominant in its field of operation. Section 121.201 of the SBA regulations defines a small wireline telecommunications business as one with 1,500 or fewer employees. In addition, the SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Because our proposals concerning the part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1500 or fewer employees may be affected by the proposals made in this FNPRM. We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and

determinations in other, non-RFA contexts.

Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant 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 and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or 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 part thereof, for small entities.

As described above, many years have elapsed since the imposition of the freeze, thus, we ask commenters, in their comments on the present FNPRM, address the impact of a further extension of the freeze. We seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

Implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If an extension of the freeze can be said to have any affect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

The FNPRM does not propose any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, and Uniform System of Accounts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 254, 403, and 410.

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.156, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, 36.382 [Amended]

2. In 47 CFR part 36 remove the words ''June 30, 2012'' and add, in their place, the words ''June 30, 2014'' wherever they appear in the following places:

a. Section 36.3(a), (b), (c), (d) introductory text, and (e);

b. Section 36.123(a)(5) and (6);

c. Section 36.124(c) and (d);

d. Section 36.125(h) and (i);

e. Section 36.126(b)(5), (c)(4), (e)(4), and (f)(2);

f. Section 36.141(c);

g. Section 36.142(c);

h. Section 36.152(d);

i. Section 36.154(g);

j. Section 36.155(b);

k. Section 36.156(c);

l. Section 36.157(b);

m. Section 36.191(d);

n. Section 36.212(c);

o. Section 36.214(a);

p. Section 36.372;

q. Section 36.374(b) and (d);

r. Section 36.375(b)(4) and (5);

s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);

t. Section 36.378(b)(1);

u. Section 36.379(b)(1) and (2);

v. Section 36.380(d) and (e);

w. Section 36.381(c) and (d); and

x. Section 36.382(a).

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Part III

The President

Proclamation 8785—National Day of Honor

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Presidential Documents

Title 3—

The President

Proclamation 8785 of March 19, 2012

National Day of Honor

By the President of the United States of America

A Proclamation

Nine years ago, members of the United States Armed Forces crossed the sands of the Iraq-Kuwait border and began one of the most challenging missions our military has ever known. They left the comforts of home and family, volunteering in service to a cause greater than themselves. They braved insurgency and sectarian strife, knowing too well the danger of combat and the cost of conflict. Yet, through the dust and din and the fog of war, they never lost their resolve. Demonstrating unshakable fortitude and unwavering commitment to duty, our men and women in uniform served tour after tour, fighting block by block to help the Iraqi people seize the chance for a better future. And on December 18, 2011, their mission came to an end.

Today, we honor their success, their service, and their sacrifice. In one of our Nation's longest wars, veterans of Operation Iraqi Freedom and Operation New Dawn wrote one of the most extraordinary chapters in American military history. When highways became mine fields and uncertainty waited behind every corner, service members rose to meet the task at hand with unmatched courage and determination. They learned languages and cultures, taking on new roles as diplomats and development experts to improve the communities where they served. Their strength toppled a tyrant, and their valor helped build opportunity in oppression's place. Across nearly 9 years of conflict, the glory of their service—as well as the contributions of other members of the U.S. Government and our coalition partners—always shone through.

The war left wounds not always seen, but forever felt. The burden of distance and the pain of loss weighed heavily on the hearts of millions at home and overseas. Behind every member of our military stood a parent, a spouse, or a son or daughter who proudly served their community and prayed for their loved one's safe return. For wounded warriors, coming home marked the end of one battle and the beginning of another—to stand, to walk, to recover, and to serve again. And, in war's most profound cost, there were those who never came home. Separated by time and space but united by their love of country, nearly 4,500 men and women are eternally bound; though we have laid them to rest, they will live on in the soul of our Nation now and forever. To them, to their families, and to all who served, we owe a debt that can never be fully repaid.

When we returned the colors of United States Forces-Iraq and the last of our troops set foot on American soil, we reflected on the extraordinary service and sacrifice of those who answered our country's call. Their example embodied that fundamental American faith that tells us no mission is too hard, no challenge is too great, and that through tests and through trials, we will always emerge stronger than before. Now, our Nation reaffirms our commitment to serve veterans of Iraq as well as they served us—to uphold the sacred trust we share with all who have worn the uniform. Our future is brighter for their service, and today, we express our gratitude by saying once more: Welcome home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 19, 2012, as a National Day of Honor. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities that commemorate the return of the United States Armed Forces from Iraq.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of March, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

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S. 1134/P.L. 112–100
St. Croix River Crossing Project Authorization Act (Mar. 14, 2012; 126 Stat. 268)

S. 1710/P.L. 112–101
To designate the United States courthouse located at 222 West 7th Avenue, Anchorage, Alaska, as the James M. Fitzgerald United States Courthouse. (Mar. 14, 2012; 126 Stat. 270)

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