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Presidential Documents

Title 3—

The President

Proclamation 8805 of April 27, 2012

Workers Memorial Day, 2012

By the President of the United States of America

A Proclamation

For centuries, American workers have called upon boundless drive and initiative to raise our cities, manufacture our goods, and build an economy that remains the engine and the envy of the world. Generations put their lives on the line to pursue prosperity, braving the hazards of the factory floor and the heat of the fields without protective equipment or the right to a safe workplace. Through the unbending conviction of workers, labor unions, and public health advocates, we secured that basic right over 40 years ago, helping protect Americans from death or injury. Yet, despite the progress we have made, it remains a deplorable fact that an average of 12 individuals die on the job every day. On Workers Memorial Day, we honor all who have perished, and we recommit to ensuring no worker ever has to choose between life and a paycheck.

Every year, more than 3 million Americans are injured on the job. Some will never fully recover; some will never come home at all. Tragically, many incidents occur due to preventable hazards that cast our Nation's most vulnerable workers into harm's way—in the mine shaft, on the construction site, or at the factory. This is unacceptable, and as we reflect on the terrible burden these workers and their families have borne, we must do more to fulfill the promise of a safe workplace for all.

My Administration remains committed to realizing that vision. The Department of Labor and agencies across the Federal Government are striving to defend workers' rights, hold employers accountable, and empower Americans across our country with the tools they need to stay safe on the job. We are pursuing enhanced whistleblower protections that will reinforce every worker's right to raise their voice without fear of retaliation. Over 2 years after the explosion at Upper Big Branch Mine in West Virginia, we continue to advance and enforce new standards and programs that will help ensure that tragedy was the last of its kind. And, through a variety of public-private partnerships, we are collaborating with businesses, employees, trade associations, and labor organizations to eliminate workplace hazards and strengthen our competitiveness in the global economy.

When the Congress passed the Federal Coal Mine Health and Safety Act of 1969 and the Occupational Safety and Health Act of 1970, our Nation took great strides toward safe and healthful working conditions for all. Yet, when millions of Americans suffer workplace-related injury or illness every year, and thousands lose their lives, we know we cannot give up the fight. Today, we reflect on their sacrifice, and we rededicate ourselves to protecting the health, safety, and dignity of every worker.

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 April 28, 2012, as Workers Memorial Day. I call upon all Americans to participate in ceremonies and activities in memory of those killed or injured due to unsafe working conditions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, 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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Presidential Documents

Executive Order 13607 of April 27, 2012

Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that Federal military and veterans educational benefits programs are providing service members, veterans, spouses, and other family members with the information, support, and protections they deserve, it is hereby ordered as follows:

Section 1. *Policy.* The original GI Bill, approved just weeks after D-Day, educated nearly 8 million Americans and helped transform this Nation. We owe the same obligations to this generation of service men and women as was afforded that previous one. This is the promise of the Post-9/11 Veterans Educational Assistance Act of 2008 (title V, Public Law 110–252) (Post-9/11 GI Bill) and the continued provision of educational benefits in the Department of Defense's Tuition Assistance Program (10 U.S.C. 2007): to provide our service members, veterans, spouses, and other family members the opportunity to pursue a high-quality education and gain the skills and training they need to fill the jobs of tomorrow.

Since the Post-9/11 GI Bill became law, there have been reports of aggressive and deceptive targeting of service members, veterans, and their families by some educational institutions. For example, some institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing academic support and counseling; encouraged service members and veterans to take out costly institutional loans rather than encouraging them to apply for Federal student loans first; engaged in misleading recruiting practices on military installations; and failed to disclose meaningful information that allows potential students to determine whether the institution has a good record of graduating service members, veterans, and their families and positioning them for success in the workforce.

To ensure our service members, veterans, spouses, and other family members have the information they need to make informed decisions concerning their well-earned Federal military and veterans educational benefits, I am directing my Administration to develop Principles of Excellence to strengthen oversight, enforcement, and accountability within these benefits programs.

Sec. 2. *Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members.* The Departments of Defense, Veterans Affairs, and Education shall establish Principles of Excellence (Principles) to apply to educational institutions receiving funding from Federal military and veterans educational benefits programs, including benefits programs provided by the Post-9/11 GI Bill and the Tuition Assistance Program. The Principles should ensure that these educational institutions provide meaningful information to service members, veterans, spouses, and other family members about the financial cost and quality of educational institutions to assist those prospective students in making choices about how to use their Federal educational benefits; prevent abusive and deceptive recruiting practices that target the recipients of Federal military and veterans educational benefits; and ensure that educational institutions provide high-quality academic and student support services to active-duty service members, reservists, members of the National Guard, veterans, and military families.

To the extent permitted by law, the Principles, implemented pursuant to section 3 of this order, should require educational institutions receiving funding pursuant to Federal military and veterans educational benefits to:

(a) prior to enrollment, provide prospective students who are eligible to receive Federal military and veterans educational benefits with a personalized and standardized form, as developed in a manner set forth by the Secretary of Education, working with the Secretaries of Defense and Veterans Affairs, to help those prospective students understand the total cost of the educational program, including tuition and fees; the amount of that cost that will be covered by Federal educational benefits; the type and amount of financial aid they may qualify for; their estimated student loan debt upon graduation; information about student outcomes; and other information to facilitate comparison of aid packages offered by different educational institutions;

(b) inform students who are eligible to receive Federal military and veterans educational benefits of the availability of Federal financial aid and have in place policies to alert those students of their potential eligibility for that aid before packaging or arranging private student loans or alternative financing programs;

(c) end fraudulent and unduly aggressive recruiting techniques on and off military installations, as well as misrepresentation, payment of incentive compensation, and failure to meet State authorization requirements, consistent with the regulations issued by the Department of Education (34 C.F.R. 668.71–668.75, 668.14, and 600.9);

(d) obtain the approval of the institution's accrediting agency for new course or program offerings before enrolling students in such courses or programs, provided that such approval is appropriate under the substantive change requirements of the accrediting agency;

(e) allow service members and reservists to be readmitted to a program if they are temporarily unable to attend class or have to suspend their studies due to service requirements, and take additional steps to accommodate short absences due to service obligations, provided that satisfactory academic progress is being made by the service members and reservists prior to suspending their studies;

(f) agree to an institutional refund policy that is aligned with the refund of unearned student aid rules applicable to Federal student aid provided through the Department of Education under Title IV of the Higher Education Act of 1965, as required under section 484B of that Act when students withdraw prior to course completion;

(g) provide educational plans for all individuals using Federal military and veterans educational benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion; and

(h) designate a point of contact for academic and financial advising (including access to disability counseling) to assist service member and veteran students and their families with the successful completion of their studies and with their job searches.

Sec. 3. *Implementation of the Principles of Excellence.*

(a) The Departments of Defense and Veterans Affairs shall reflect the Principles described in section 2 of this order in new agreements with educational institutions, to the extent practicable and permitted by law, concerning participation in the Yellow Ribbon Program for veterans under the Post-9/11 GI Bill or the Tuition Assistance Program for active duty service members. The Department of Veterans Affairs shall also notify all institutions participating in the Post-9/11 GI Bill program that they are strongly encouraged to comply with the Principles and shall post on the Department's website those that do.

(b) The Secretaries of Defense, Veterans Affairs, and Education, in consultation with the Director of the Bureau of Consumer Financial Protection (CFPB)

and the Attorney General, shall take immediate action to implement this order, and, within 90 days from the date of this order, report to the President their progress on implementation, including promptly revising regulations, Department of Defense Instructions, guidance documents, Memoranda of Understanding, and other policies governing programs authorized or funded by the Post-9/11 GI Bill and the Tuition Assistance Program to implement the Principles, to the extent permitted by law.

(c) The Secretaries of Defense, Veterans Affairs, and Education shall develop a comprehensive strategy for developing service member and veteran student outcome measures that are comparable, to the maximum extent practicable, across Federal military and veterans educational benefit programs, including, but not limited to, the Post-9/11 GI Bill and the Tuition Assistance Program. To the extent practicable, the student outcome measures should rely on existing administrative data to minimize the reporting burden on institutions participating in these benefit programs. The student outcome measures should permit comparisons across Federal educational programs and across institutions and types of institutions. The Secretary of Education, in consultation with the Secretaries of Defense and Veterans Affairs, shall also collect from educational institutions, as part of the Integrated Postsecondary Education Data System and other data collection systems, information on the amount of funding received pursuant to the Post-9/11 GI Bill and the Tuition Assistance Program. The Secretary of Education shall make this information publicly available on the College Navigator Website.

(d) The Secretary of Veterans Affairs, in consultation with the Secretaries of Defense and Education, shall provide to prospective military and veteran students, prior to using their benefits, streamlined tools to compare educational institutions using key measures of affordability and value through the Department of Veterans Affairs' eBenefits portal. The eBenefits portal shall be updated to facilitate access to school performance information, consumer protection information, and key Federal financial aid documents. The Secretaries of Defense and Veterans Affairs shall also ensure that service members and veterans have access to that information through educational counseling offered by those Departments.

Sec. 4. *Strengthening Enforcement and Compliance Mechanisms.* Service members, veterans, spouses, and other family members should have access to a strong enforcement system through which to file complaints when institutions fail to follow the Principles. Within 90 days of the date of this order, the Secretaries of Defense and Veterans Affairs, in consultation with the Secretary of Education and the Director of the CFPB, as well as with the Attorney General, as appropriate, shall submit to the President a plan to strengthen enforcement and compliance mechanisms. The plan shall include proposals to:

(a) create a centralized complaint system for students receiving Federal military and veterans educational benefits to register complaints that can be tracked and responded to by the Departments of Defense, Veterans Affairs, Justice, and Education, the CFPB, and other relevant agencies;

(b) institute uniform procedures for receiving and processing complaints across the State Approving Agencies (SAAs) that work with the Department of Veterans Affairs to review participating institutions, provide a coordinated mechanism across SAAs to alert the Department of Veterans Affairs to any complaints that have been registered at the State level, and create procedures for sharing information about complaints with the appropriate State officials, accrediting agency representatives, and the Secretary of Education;

(c) institute uniform procedures for referring potential matters for civil or criminal enforcement to the Department of Justice and other relevant agencies;

(d) establish procedures for targeted risk-based program reviews of institutions to ensure compliance with the Principles;

(e) establish new uniform rules and strengthen existing procedures for access to military installations by educational institutions. These new rules should ensure, at a minimum, that only those institutions that enter into a memorandum of agreement pursuant to section 3(a) of this order are permitted entry onto a Federal military installation for the purposes of recruitment. The Department of Defense shall include specific steps for instructing installation commanders on commercial solicitation rules and the requirement of the Principles outlined in section 2(c) of this order; and

(f) take all appropriate steps to ensure that websites and programs are not deceptively and fraudulently marketing educational services and benefits to program beneficiaries, including initiating a process to protect the term ''GI Bill'' and other military or veterans-related terms as trademarks, as appropriate.

Sec. 5. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(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,
April 27, 2012.

[FR Doc. 2012–10715
Filed 5–1–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 85
Wednesday, May 2, 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.

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

DEPARTMENT OF STATE

22 CFR Parts 123 and 126

[Public Notice 7865]

RIN 1400–AC71

Amendment to the International Traffic in Arms Regulations: Exemption for Temporary Export of Chemical Agent Protective Gear

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of chemical agent protective gear for personal use. The exemption for body armor is amended to also cover helmets when they are included with the body armor. An exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption, and by standardizing the language among the exemptions in this section of the regulations. The registration requirement as it relates to certain exemptions is clarified. And an error in the authorities for part 126 of the ITAR is corrected.

DATES: *Effective Date:* This rule is effective June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, ITAR Section 123.17.

SUPPLEMENTARY INFORMATION: In August 2009, the Department of State amended the ITAR to provide an exemption for the temporary export of body armor covered by 22 CFR 121.1, Category X(a)(1). Now, the Department is amending the ITAR to add an exemption for the temporary export of chemical agent protective gear covered by 22 CFR 121.1, Category XIV(f)(4). The exemption is available for U.S. persons for temporary exports to countries not subject to restrictions under ITAR § 126.1, and to countries subject to restrictions under ITAR § 126.1 under specified conditions. In order to use the exemption, the chemical agent protective gear must be for the U.S. person's exclusive use and must be returned to the United States. The U.S. person may not reexport the protective gear to a foreign person or otherwise transfer ownership. The protective gear may not be exported to any country where the importation would be in violation of that country's laws.

New § 123.17(j) specifies that if the chemical agent protective gear is not returned to the United States with the individual that temporarily exported the gear, a detailed report of the incident must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of ITAR § 127.12(c)(2). If the chemical agent protective gear is lost or stolen, the report should describe all attempts to locate the gear and explain the circumstances leading to its loss or theft. In the event the chemical agent protective gear is used and disposed of according to HAZMAT guidelines, the report should provide a disposal date and location details for the approved HAZMAT facility used, along with a receipt for disposal services. If a HAZMAT facility is not available, the report should describe the date, location, and method used to dispose of the protective gear. In the proposed rule, this disclosure provision was covered in paragraph (f) and applied only to the body armor and chemical agent protective gear provisions. In this final rule, we specify that, in addition to applying to the body armor and chemical agent protective gear exemptions, it also applies to the firearms exemption covered in paragraph (c).

The change removes the requirement that assistance to the government of Iraq be ''humanitarian'' to more accurately match the language of United Nations Security Council restrictions, which do not limit assistance to humanitarian assistance.

New § 123.17(k) clarifies that individuals who are U.S. persons seeking to use the exemptions of § 123.17 are not required to be registered with the Department of State (the registration requirement is described in ITAR part 122).

Section (c)(3) is revised to remove what is in practice extraneous language. Subject to the requirements of (c)(1)–(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed.

The authority citation for ITAR part 126 is corrected to include sections 7045 and 7046 of Public Law 112–74.

This rule was first published as a proposed rule on March 23, 2011, soliciting public comment. The comment period ended May 23, 2011. Seven parties filed comments recommending changes. The Department's evaluation of the written comments and recommendations follows:

Three commenting parties requested the elimination of the requirement for a U.S. Customs and Border Protection (CBP) inspection before export, citing logistical difficulties in certain instances (for example, departing on a U.S. military airplane from a U.S. military base). According to law and regulations, persons who claim this exemption must submit the articles for CBP inspection at departure, regardless of the type of aircraft used for departure from the United States. Therefore, the Department did not accept this recommendation.

Three commenting parties requested clarification of the phrase, ''affiliated with the U.S. Government,'' or recommended it be replaced with ''travelling in support of a U.S. Government contract.'' Because the first phrase includes those employed by the U.S. Government, and is meant to include those who are described by the second phrase, the Department has kept the first phrase and amended the regulation to include the second phrase.

Two commenting parties recommended the option of separate shipment or mailing of armor or gear exported using this exemption, stating that carrying the armor or gear is burdensome. We acknowledge that carrying the armor or gear may present certain logistical difficulties, but because this exemption is intentionally of limited scope, we are not prepared to authorize separate shipment or mailing

as a mean of export at this time. Therefore, the Department did not accept this recommendation.

Two commenting parties inquired into what type of documentation may be used to satisfy the exemption requirements for Iraq. As the rule is written, various forms of documentation may be presented to fulfill the exemption requirements, including the examples proffered by the commenting parties (contract with or letter from the U.S. Government).

One commenting party recommended including specific mention of the C2 canister as covered by the chemical agent protective gear exemption. Upon reflection, the Department determined that the exemption would be more useful if it provided for coverage of a spare filter canister (of which the C2 canister is one variant). Therefore, the Department in effect accepted this recommendation, although it opted for use of the more generic term of ''filter canister'' rather than ''C2 canister.''

One commenting party recommended the removal of the requirement to submit a report to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) should the person temporarily exporting under this exemption not be able to return the exported items. The commenting party said it would be ''wrong'' to treat as a violation an instance where the impediment to return was the actual intended use and destruction of the body armor or chemical agent protective gear. The Department notes when an item authorized only for temporary export is not returned to the United States, by definition it is a violation. Section 127.12(c)(2) is the means by which such a violation is reported to the Department. The Department did not accept this recommendation.

One commenting party recommended broadening this exemption for use by U.S. persons, as defined at ITAR § 120.14. The Department clarifies that the exemption is for use by U.S. persons, as defined at ITAR § 120.14.

One commenting party recommended the removal of the requirement to file the export declaration through the Automated Export System (AES), with the explanation that AES is not available for individual use. The Department verified that AES is available for individual use. Therefore, the Department did not accept this recommendation.

One commenting party recommended expanding the exemption to allow a U.S. person to export and distribute to employees the items covered by the exemption. While a company within the definition of ''U.S. person'' may claim the exemption for his employees, the individual employees must export the items and these items must be with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed).

One commenting party recommended allowing the use of this exemption for temporary export to proscribed destinations listed in ITAR § 126.1, when the person using the exemption is travelling on official business in support of a U.S. government contract. The Department agreed with the rationale that this modification to the proposed rule would ''allow for the timely support of U.S. Government contracts in hazardous areas of foreign countries where such protective gear is required for personal safety.'' Therefore, the Department accepted this recommendation.

One commenting party recommended eliminating the requirement in paragraph (f)(3) for the individual to declare to CBP his intention of returning the articles upon each return to the United States, stating that it is common practice for persons to safely store their gear overseas when returning home for short visits. The Department accepted this recommendation, and has revised paragraph (f)(3) to require the person to declare that it is his intention to return the articles ''at the end of tour, contract, or assignment for which the articles were temporarily exported.''

One commenting party recommended providing the option of depositing the body armor or chemical agent protective gear with a U.S. Government depot and receiving a receipt in lieu of physical return of the articles to the United States, and another commenting party inquired whether this was permissible under the exemption. In order to avoid the requirement of obtaining a license from the Department for the export, the articles temporarily exported under this exemption must be physically returned to the United States. Therefore, the Department did not accept this recommendation.

One commenting party recommended including helmets in the body armor exemption, noting that helmets are frequently added to a suit of armor, and that it ''makes good sense'' to include in the same exemption that covers items that protect a person's body an item that protects a person's head. The Department agreed with this recommendation, and has added helmets covered by 22 CFR 121.1, Category X(a)(6) to the exemption for the temporary export of body armor, when the helmet is included with the body armor. The exemption is not available for the helmet alone.

Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will, and hereby does, adopt the proposed rule, with changes noted and other edits, and promulgates it as a final rule.

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. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 60-day provision for public comment and without prejudice to its determination that restricting defense article exports is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform 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.

Executive Order 13175

The Department has determined that this rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to his rule.

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 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 12988

The Department of State has reviewed this 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.

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 Parts 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 123 and 126 are amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

■ 2. Section 123.17 is amended by revising the section heading, and paragraphs (c), (f), and (g), and adding paragraphs (h) through (k), to read as follows:

§ 123.17 Exports of firearms, ammunition, and personal protective gear.

* * * * *

(c) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System per § 123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

(2) The firearms and accompanying ammunition to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) The firearms and accompanying ammunition must be for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare that it is his intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in § 123.18 of this subchapter.

* * * * *

(f) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by U.S. Munitions List Category X(a)(1), which may include one helmet covered by U.S. Munitions List Category X(a)(6), or one set of chemical agent protective gear covered by U.S. Munitions List Category XIV(f)(4), which may include one additional filter canister, provided:

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System (AES) per § 123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

(2) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare it is his intention to return the article(s) to the United States at the end of tour, contract, or assignment for which the articles were temporarily exported.

(g) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor or chemical agent protective gear for personal use to countries listed in § 126.1 of this subchapter provided:

(1) The conditions in paragraph (f) of this section are met; and

(2) The person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer.

(h) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Iraq, provided the conditions in paragraph

(f) are met, and the person is either affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract, or is traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(i) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Afghanistan, provided the conditions in paragraph (f) are met.

(j) If the articles temporarily exported pursuant to paragraphs (c) and (f)

through (i) of this section are not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) of this subchapter.

(k) To use the exemptions in this section, individuals are not required to be registered with the Department of State (the registration requirement is described in part 122 of this subchapter). All other entities must be registered and eligible, as provided in §§ 120.1(c) and (d) and part 122 of this subchapter.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 3. 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; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74.

Dated: April 25, 2012.

Rose E. Gottemoeller,

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

[FR Doc. 2012–10599 Filed 5–1–12; 8:45 am]

BILLING CODE 4710–25–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 104

RIN 3142–AA07

Notification of Employee Rights Under the National Labor Relations Act

AGENCY: National Labor Relations Board.

ACTION: Final rule; Court-ordered delay of effective date.

SUMMARY: On August 30, 2011, the National Labor Relations Board (Board) published a final rule requiring employers subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. (76 FR 54006, August 30, 2011.) On October 12, 2011, the Board amended that rule to delay the effective date from November 14, 2011, to January 31, 2012. (76 FR 63188, October 12, 2011.) The Board later further amended the rule to delay the effective date from January 31, 2012, to April 30, 2012. (76 FR 82133 December 30, 2011.) On April 17, 2012, in light of conflicting decisions at the district court level, the D.C. Circuit entered an injunction pending appeal further delaying the effective date of the rule. *National Association of Manufacturers* v. *NLRB* (12–5068 D.C. Cir. April 17, 2012) citing *Chamber of Commerce* v. *NLRB* (11–02516 D.S.C. April 13, 2012) (finding Board lacked authority to issue rule). The purpose of this notice is to announce that delay in the effective date of the rule.

DATES: The effective date of the final rule published at 76 FR 54006, August 30, 2011, and amended at 76 FR 63188, October 12, 2011, and at 76 FR 82133, December 30, 2011, is by judicial action delayed indefinitely from April 30, 2012, pending resolution of the legal issues raised by the conflicting court decisions.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Washington, DC 20570, (202) 273–1067 (this is not a toll-free number), 1–(866) 315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On August 30, 2011, the National Labor Relations Board published a final rule requiring employers subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. The Board later changed the effective date of the rule from November 14, 2011, to January 31, 2012, and then to April 30, 2012. On April 13, 2012, the District Court for South Carolina held, contrary to the District Court for the District of Columbia, that the Board lacked authority to issue the rule. On April 17, 2012, the D.C. Circuit temporarily enjoined the rule in light of conflicting decisions at the district court level. Accordingly, the effective date of the rule is delayed until further notice.

Signed in Washington, DC, on April 26, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–10520 Filed 4–27–12; 4:15 pm]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA–016–FOR; Docket ID OSM–2011–0014]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing our approval of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 2002, version to the July 1, 2010, version. Additionally, Iowa proposed to revise its Program related to ownership and control by updating its dates and adding new citations. Iowa intends to revise its program to be no less effective than the corresponding Federal regulations.

DATES: *Effective Date:* May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Amendment

By letter dated August 25, 2011 (Administrative Record No. IA–451), Iowa sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in

response to a September 30, 2009, letter we sent to Iowa in accordance with 30 CFR 732.17(c), concerning multiple changes to ownership and control requirements (Administrative Record No. IA–450.1). Iowa proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR 700 to End from the July 1, 2002, version to the July 1, 2010, version.

We announced receipt of the proposed amendment in the October 17, 2011, **Federal Register** (76 FR 64043). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 16, 2011. We did not receive any public comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

Adoptions by Reference of 30 CFR Part 700 to End Revised as of July 1, 2010

Iowa updated its adoption by reference of applicable sections of 30 CFR 700 to End from those in effect as of July 1, 2002, to those in effect as of July 1, 2010. Iowa also revised dates and added citations in its ownership and control requirement sections listed in the table below.

27 Iowa administrative code chapter 40, coal mining rules (IAC 27–40)	Topic	Federal regulations adopted by reference (30 CFR)
27–40.1 (17A, 207)(1)	Authority and scope	Part 700.
27–40.3 (207)	General	Part 700.
27–40.4 (207)	Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals.	Parts 701 and 702.
27–40.5 (207)	Restrictions on financial interests of State employees.	Part 705.
27–40.6 (207)	Exemptions for coal extraction incident to government—financed highway or other constructions.	Part 707.
27–40.7 (207)	Protection of employees	Part 865.
27–40.11 (207)	Initial regulatory program	Part 710.
27–40.12 (207)	General performance standards—initial program	Part 715.
27–40.13 (207)	Special performance standards—initial program	Part 716.
27–40.21 (207)(3) and (7)	Areas designated by an Act of Congress	Part 761.
27–40.22 (207)(1)	Criteria for designating areas as unsuitable for surface coal mining operations.	Part 762.
27–40.23 (207)	State procedures for designating areas unsuitable for surface coal mining operations.	Part 764.
27–40.30 (207)	Requirements for coal exploration	Part 772.
27–40.31 (207)(9), (10), and (11)	Requirements for permits and permit processing	Part 773.
27–40.32 (207)(7)	Revision or amendment; renewal; and transfer, assignment, or sale of permit rights.	Part 774.
27–40.33 (207)	General content requirements for permit applications.	Part 777.
27–40.34 (207)	Permit application—minimum requirements for legal, financial, compliance, and related information.	Part 778.
27–40.35 (207)	Surface mining permit applications—minimum requirements for information on environmental resources.	Part 779.
27–40.36 (207)(2)	Surface mining permit applications—minimum requirements for reclamation and operation plan.	Part 780.
27–40.37 (207)	Underground mining permit applications—minimum requirements for information on environmental resources.	Part 783.
27–40.38 (207)(6)	Underground mining permit applications—minimum requirements for reclamation and operation plan.	Part 784.
27–40.39 (207)(2) and (3)	Requirements for permits for special categories of mining.	Part 785.
27–40.41 (207)	Permanent regulatory program—small operator assistance program.	Part 795.
27–40.51 (207)	Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.	Part 800.
27–40.61 (207)	Permanent program performance standards—general provisions.	Part 810.
27–40.62 (207)	Permanent program performance standards—coal exploration.	Part 815.
27–40.63 (207)	Permanent program performance standards—surface mining activities.	Part 816.
27–40.64 (207)	Permanent program performance standards—underground mining activities.	Part 817.

27 Iowa administrative code chapter 40, coal mining rules (IAC 27–40)	Topic	Federal regulations adopted by reference (30 CFR)
27–40.65 (207)	Special permanent program performance standards—auger mining.	Part 819.
27–40.66 (207)	Special permanent program performance standards—operations on prime farmland.	Part 823.
27–40.67 (207)	Permanent program performance standards—coal preparation plants not located within the permit area of a mine.	Part 827.
27–40.71 (207)	State regulatory authority—inspection and enforcement.	Part 840.
27–40.74 (207)	Civil penalties	Part 845.
27–40.75 (207)	Individual civil penalties	Part 846.
27–40.81 (207)	Permanent regulatory program requirements—standards for certification of blasters.	Part 850.
27–40.82 (207)	Certification of blasters	Part 955.
27–40.91 (17A, 207)	Procedural rules—contested cases and public hearings.	Part 775.11 and 775.13.
27–40.92 (17A, 207)(8)	Contested cases	Part 775.11 and 775.13.
27–40.93 (17A, 207)	Commencement of proceeding	Part 775.11 and 775.13.
27–40.94 (17A, 207)	Appeals of division notices and orders	Part 775.11 and 775.13.
27–40.95 (17A, 207)	Prehearing motions	Part 775.11 and 775.13.
27–40.96 (17A, 207)	Issuance of notices of hearing	Part 775.11 and 775.13.
27–40.97 (17A, 207)	Hearing procedures	Part 775.11 and 775.13.
27–40.98 (17A, 207)	Posthearing procedures	Part 775.11 and 775.13.
27–40.99 (17A, 207)	Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.	Part 775.11 and 775.13.

We find that Iowa's revised regulations adopted by reference are no less effective than the corresponding Federal regulations, and we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On August 31, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA–451.1). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, by letter dated August 31, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IA–451.1). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. By letter dated August 31, 2011, we requested comments on the amendment (Administrative Record No. IA–451.1), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Iowa sent us on August 25, 2011.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 2012.

Ervin J Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 915 is amended as set forth below:

PART 915—IOWA

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 915.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
August 25, 2011	May 2, 2012	Sections: IAC 27–40.1(17A, 207)(1); 40.3(207); 40.4(207); 40.5(207); 40.6(207); 40.7(207); 40.11(207); 40.12(207); 40.13(207); 40.21(207)(3) and (7); 40.22(207)(1); 40.23(207); 40.30(207); 40.31(207) (9), (10), and (11); 40.32(207)(7); 40.33(207); 40.34(207); 40.35(207); 40.36(207)(2); 40.37(207); 40.38(207)(6); 40.39(207)(2) and (3); 40.41(207); 40.51(207); 40.61(207); 40.62(207); 40.63(207); 40.64(207); 40.65(207); 40.66(207); 40.67(207); 40.71(207); 40.74(207); 40.75(207); 40.81(207); 40.82(207); 40.91(17A, 207); 40.92(17A, 207)(8); 40.93(17A, 207); 40.94(17A, 207); 40.95(17A, 207); 40.96(17A, 207); 40.97(17A, 207); 40.98(17A, 207); and 40.99(17A, 207).

[FR Doc. 2012–10567 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SATS No. OK–033–FOR; Docket No. OSM–2011–0001]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma revised its regulations regarding subsidence allegation reporting requirements and requirements for bond calculation at permit renewal. Oklahoma revised its regulatory program at its own initiative for operational efficiency.

DATES: *Effective Date:* May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15, and 936.16.

II. Submission of the Amendment

By letter dated February 25, 2011 (Administrative Record No. OK–1000), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Oklahoma submitted its proposed amendment at its own initiative. Oklahoma proposed revisions to the Oklahoma Administrative Code at sections 460:20–43–14(b)(7) and 460:20–45–14(b)(7) concerning size limitations on permanent impoundments, 460:20–43–38(1) concerning approximate original contour, 460:20–43–47(c)(3) and 460:20–45–47(c)(6) concerning subsidence reporting, and 460:20–17–4(b)(2)(C) concerning requirements for bond calculation at renewal.

We announced receipt of the proposed amendment in the April 27, 2011, **Federal Register** (76 FR 23522). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 27, 2011. We did not receive any public comments.

During our review of the amendment, we identified concerns regarding the proposed revisions to Oklahoma Administrative Code 460:20–43–14(b)(7) and 460:20–45–14(b)(7) concerning size limitations on permanent impoundments, as well as 460:20–43–38(1) concerning approximate original contour. We notified Oklahoma of these concerns by letter dated October 21, 2011 (Administrative Record No. OK–1000.04). By letter, dated November 18, 2011 (Administrative Record No. OK–1000.06), Oklahoma responded and withdrew these sections regarding impoundments and approximate original contour from the proposed amendment and requested that we process the sections regarding subsidence reporting and bond calculation.

III. OSM's Findings

We are approving the amendment as described below. The following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

A. Oklahoma Administrative Code 460:20–43–47(c)(3) & 460:20–45–47(c)(6) Subsidence Reporting

Oklahoma's regulations require the operator to comply with all provisions of the approved subsidence control plan. The proposed addition would require the operator to report to the Department of Mines all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the underground mine workings.

The Federal regulations, at 30 CFR 784.20(b)(4), provide for subsidence monitoring to determine what measures may be taken to prevent, reduce, or

correct material damage. This new reporting requirement will enhance Oklahoma's ability to ensure that an operation remains in compliance with permit requirements and that mining will be conducted in accordance with 30 CFR 817.121. We find Oklahoma's proposed revision will make its regulations no less effective than the Federal regulations. As such, we are approving Oklahoma's revision.

B. Oklahoma Administrative Code 460:20–17–4(b)(2)(C) Requirement for Bond Calculation at Renewal

Oklahoma's existing regulations contain minimum requirements for permit renewal that are no less effective than the Federal regulations. The proposed addition would require, for any permit renewal requested, the operator to submit a current bond calculation (less than 60 days old) detailing the costs to reclaim the permit by a third party under the approved worst case bond scenario, and evidence that the performance bond in effect will continue in full force, as well as any additional bond required by the Department of Mines.

The Federal regulations, at 30 CFR 774.15(b)(2)(iii), require evidence that a performance bond is in effect and will remain so for the renewal period, including any bond amount adjustments required by the state at renewal. The proposed new requirement for an operator to submit a current bond calculation at permit renewal will further clarify what an operator must submit with a renewal application. By requiring a current (less than 60 days old) bond calculation from the operator, Oklahoma will have the information it needs in making its required findings under the state counterpart to 30 CFR 774.15(c)(1)(v) and to determine if bond adjustments are necessary as required under the state counterparts to 30 CFR 800.4(c), 800.15(a), and 817.121(c)(5). Because the operator's estimate will be no more than 60 days old, the information can reasonably be expected to reflect both the extent of mining and reclamation, and the economic conditions at the time of renewal, both of which directly influence bonding adequacy. We find Oklahoma's proposed revision will make its regulations no less effective than the Federal regulations. As such, we are approving Oklahoma's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On March 8, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record No. OK–1000.03). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on March 8, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. OK–1000.03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 8, 2011, we requested comments on Oklahoma's amendment (Administrative Record No. OK–1000.03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the above specified portions of the amendment Oklahoma sent us on February 25, 2011.

To implement this decision, we are amending the Federal regulations at 30 CFR part 936, which codify decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-

recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 936 is amended as set forth below:

PART 936—OKLAHOMA

■ 1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 936.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 25, 2011	May 2, 2012	OAC 460:20–17–4(b)(2)(C), 460:20–43–47(c)(3), and 460:20–45–47(c)(6).

[FR Doc. 2012–10561 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–155–FOR; Docket ID: OSM–2010–0003]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; removal of required amendment.

SUMMARY: We are approving a request by Pennsylvania to remove a required amendment to Pennsylvania's regulatory program (the ''Pennsylvania program'') regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The provision that we are removing required Pennsylvania to demonstrate that all applications for surface mining permits

in Pennsylvania include the specific information for all cessation orders received by the applicant and anyone linked to the applicant through ownership and control, prior to the date of the application.

DATES: *Effective Date:* This rule is effective May 2, 2012.

FOR FURTHER INFORMATION CONTACT: George Rieger, Chief, Pittsburgh Field Division, Harrisburg Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (717) 782–4036, email: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description and Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7).

You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description and Submission of the Amendment

By letter dated March 4, 2010 (Administrative Record No. PA 844.14), Pennsylvania sent us a request to remove a required program amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The required amendment was imposed on the Pennsylvania program on December 30, 1992, **Federal Register** (57 FR 62222), and was codified at 30 CFR 938.16(bbb). The required amendment states the following: By May 1, 1993, Pennsylvania shall submit a proposed amendment to Section 86.63(a)(3) to require that all applications for surface mining permits include the specific information required by Section 86.63(a)(3)(i)–(viii) for all cessation orders received, by the applicant and anyone linked to the applicant through ownership and control, prior to the date of the application.

Pennsylvania provided the following information as support for its request for removal.

Pennsylvania states that under its program, a cessation order is a type of violation notice. A cessation order is a compliance order that requires cessation of all or part of a mining operation. Pennsylvania manages its enforcement program so that all violations are associated with an enforcement action. All enforcement actions are ''violation notices'' because they are the vehicle through which a violator is notified that there is a violation. In practice, the term ''violation notice'' in 25 Pa. Code 86.63(a)(3) includes the following enforcement actions: Compliance Orders, Cessation Orders, Failure to Abate Cessation Orders, Permit Suspensions, and Bond Forfeitures.

Pennsylvania also states that it manages violation and enforcement data using the eFACTS (Environment, Facility, Application, and Compliance Tracking System) database. The practice to include cessation orders along with the other enforcement actions is embedded in the report that is used to verify violation history data.

Further, the regulation at 25 Pa. Code 86.63(a)(3) requires cessation orders to be reported because in practice the term ''violation notice'' includes cessation orders. For these reasons, Pennsylvania is requesting that the required program amendment at 30 CFR 938.16(bbb) be removed.

III. OSM's Findings

For the reasons set forth below, we are approving Pennsylvania's request that we remove the required amendment codified at 30 CFR 938.16(bbb). This required amendment was imposed because the Federal counterpart to 25 Pa. Code 86.63(a)(3), at 30 CFR 778.14(c), explicitly required, in 1992, that specific information be provided for both violation notices and cessation orders. Pennsylvania's regulations required this information for violation notices, but did not explicitly require the same information with respect to cessation orders.

On December 19, 2000, OSM revised its regulations at 30 CFR 778.14(c) to drop the terms ''cessation orders,'' ''owned or controlled by the applicant,'' and ''owns or controls the applicant.'' Nevertheless, the revised Federal regulation requires that the information be provided for ''violations'' which, by definition promulgated in the same rulemaking, include ''cessation orders.'' See 30 CFR 701.5. Thus, in substance, the Federal reporting requirement did not change in 2000, **Federal Register** (65 FR 79582).

Nevertheless, Pennsylvania has demonstrated that it interprets the term ''violation notice,'' which is used in 25 Pa. Code 86.63(a)(3), to include cessation orders. Therefore, with the understanding that a violation notice includes a cessation order, we find that Pennsylvania's regulation is no less effective than its Federal counterpart, and we hereby approve the request to remove the required amendment at 30 CFR 938.16(bbb).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the June 21, 2010, **Federal Register** (75 FR 34960) (Administrative Record No. PA 844.20). No requests for public meetings were received. We received public comments on two occasions: (1) PennFuture (representing Citizens for Pennsylvania's Future) letter dated July 21, 2010 (Administrative Record No. PA 844.22); and (2) an email from a citizen sent on June 21, 2010 (Administrative Record No. PA. 844.21).

PennFuture Comments: PennFuture comments that OSM may remove the required amendment because it has deleted from 30 CFR 778.14(c) the specific reference to ''cessation order'' on which the subpart was based. However, PennFuture notes while the result Pennsylvania advocates is correct, it is so for a different reason than the one Pennsylvania provides.

PennFuture contends that the argument Pennsylvania advances today—namely that the term ''violation notice'' in Section 86.63(a)(3) includes cessation orders—was fully available to Pennsylvania in 1992, and Pennsylvania could have sought judicial review of subpart (bbb) on that basis pursuant to 30 U.S.C. 1276(a)(1). As a result, if nothing else had changed since December 30, 1992, Pennsylvania would be barred from seeking the removal of subpart (bbb) by the principle of administrative finality incorporated into Section 706(a)(1) of SMCRA, which requires that challenges to final rules on program amendments be filed within 60 days. Thus, without more than Pennsylvania offers, OSM could not validly grant the relief Pennsylvania seeks.

OSM Response: We disagree with PennFuture that the December 19, 2000,

revision to 30 CFR 778.14(c) provides the basis for removal of the required amendment, since the revised Federal regulation continues to require the relevant information to be provided for all violations, which, by definition, include cessation orders. Rather, our decision to approve Pennsylvania's request to remove the required amendment is based on our determination that Pennsylvania's regulations are no less effective than current Federal regulations. That determination, set forth above in our findings, stems from an explanation that Pennsylvania submitted on March 4, 2010 (Administrative Record No. PA 844.14).

We also disagree that Pennsylvania is time-barred by section 526(a)(1) of SMCRA, 30 U.S.C. 1276(a)(1), from submitting this explanation. Pennsylvania's interpretation is not a judicial challenge to our 1992 decision, but instead it is an attempt to explain how its program complies with a counterpart Federal regulation. Clarifications of this sort are authorized in the Federal regulations, at 30 CFR 732.17(a), which acknowledge that States may alter their programs on their own initiative. If States may propose program alterations, it follows logically that they may propose altered interpretations of their programs for OSM to consider, subject to public notice and opportunity for comment. The SMCRA regulatory scheme confers this privilege upon State regulatory authorities, but not upon private individuals or other ''persons.'' Instead, the remedy available to private entities is a Section 526(a)(1) challenge to an OSM program amendment decision. Whether this statutory remedy is even available to State regulatory authorities is uncertain; nevertheless, the applicable regulations are sufficiently flexible to allow States to request that OSM re-evaluate a previous decision on a program amendment.

Citizen Comment: The commenter expresses concern about Pennsylvania's laxity of enforcement on natural gas extraction and believes a fee should be added to every lease where drilling is taking place. The commenter also states the residents of Pennsylvania are at risk from their water turning into contamination.

OSM Response: We cannot respond to the comment since natural gas extraction is not germane to Pennsylvania's request, or to our finding with respect to the request.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 844.14). We received responses from two agencies: (1) The Mine Safety and Health Administration, District 1, in a letter dated March 31, 2010, (Administrative Record No. PA 844.18) responded that it does not have any comments or concerns with this request; and (2) the Fish and Wildlife Service, in an email sent March 30, 2010, (Administrative Record No. 844.17) responded that it has no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under Federal regulations at 30 CFR 732.17(h)(11) (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(bbb) in response to Pennsylvania's request sent to us on March 4, 2010.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the fact that the rule is administrative in nature. It revises the CFR, but the revision does not have a substantive effect on the State's regulatory program.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under

Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the rule is administrative in nature. It revises the CFR, but the revision does not have a substantive effect on the State's regulatory program.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is administrative in nature and it: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 25, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

Editorial Note: This document was received at the Office of the Federal Register on Friday, April 27, 2012.

For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (bbb).

[FR Doc. 2012–10563 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1210 and 1218

[Docket No. ONRR–2011–0023]

RIN 1012–AA10

Amendments to ONRR's Web Site and Mailing Addresses and Payment Definitions

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Final rule.

SUMMARY: On May 19, 2010, the Secretary of the Interior separated and reassigned responsibilities previously performed by the former Minerals Management Service (MMS) to three separate organizations. As part of this reorganization, on October 1, 2010, the Secretary established the Office of Natural Resources Revenue (ONRR) within the Office of the Assistant Secretary—Policy, Management and Budget (PMB). At the same time, ONRR reorganized its regulations from chapter II of title 30 of the *Code of Federal Regulations* (CFR) to chapter XII. This final rule amends Web site and mailing addresses and payment definitions listed in 30 CFR chapter XII.

DATES: This rule is effective on May 2, 2012.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Barbara Fletcher, Minerals Revenue Specialist, ONRR, telephone (303) 231–3605; or email *barbara.fletcher@onrr.gov*. For questions on procedural issues, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221; or email *armand.southall@onrr.gov*. You may obtain a paper copy of this rule by contacting Mr. Southall by phone or email.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 2010, by Secretarial Order No. 3299, the Secretary of the Department of the Interior (Secretary) announced the restructuring of MMS. On June 18, 2010, by Secretarial Order No. 3302, the Secretary announced the name change of MMS to the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). By these orders, the Secretary separated and reassigned the responsibilities that the former MMS previously performed to three separate organizations: The Office of Natural Resources Revenue (ONRR); the Bureau of Ocean Energy Management (BOEM); and the Bureau of Safety and Environmental Enforcement (BSEE). The ONRR is responsible for royalty management functions.

II. Explanation of Amendments

In this final rule, ONRR merely amends its Web site and mailing addresses and payment definitions listed in parts of title 30 CFR, chapter XII. This final rule does not make any substantive changes to the regulations or requirements in chapter XII. This rule will not have any effect on the rights, obligations, or interests of any affected parties. Thus, under 5 U.S.C. 553(b)(B), ONRR, for good cause, finds that notice and comment on this rule is impracticable, unnecessary and contrary to the public interest. Additionally, because this document is a ''rule[] of agency organization, procedure or practice'' under 5 U.S.C. 553(b)(A), this document is, in any event, exempt from the notice and comment requirements of 5 U.S.C. 553(b). Lastly, because this non-substantive rule makes no changes to the legal obligations or rights of any affected parties, and, because it is in the public interest for this rule to be effective just as soon as possible, ONRR finds that good cause exists under 5

U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register** rather than 30 days after publication.

As noted, this final rule amends the following 30 CFR parts and the related existing subparts:

- Part 1210—Forms and Reports.
- Part 1218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government.

These amendments to the regulations are explained further in the following sections:

A. Part 1210—Forms and Reports

We are revising part 1210, subparts A, B, C, D, E, and H.

ONRR's Web site and mailing address. The ONRR is amending its Web site and mailing addresses due to its reorganization. We also are updating these addresses to continually accomplish our mission and place the last burden on industry when manually submitting production and royalty forms, additional information, etc.

B. Part 1218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

We are revising part 1218, subparts B and H.

ONRR's Web site and mailing addresses. We are amending these addresses due to our reorganization and in order to accomplish our mission and to place the least burden on industry when manually submitting production and royalty forms, additional information, etc.

ONRR's payment definitions. We also are amending these payment definitions and adding the definition of *Pay.gov* to accomplish our mission and to place the least burden on industry when paying royalties, rentals, bonuses, and other monies due the Federal Government.

III. Procedural Matters

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will impact large and small entities but will not have a significant economic effect on either because this is a technical rule to amend ONRR's Web site and mailing addresses and payment definitions listed in title 30 CFR, chapter XII.

3. Small Business Regulatory Enforcement Fairness Act

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

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

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. This final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this final rule does not have any significant takings implications. This final rule applies to Outer Continental Shelf (OCS) and Federal and Indian onshore leases. It does not apply to private property. A takings implication assessment is not required.

6. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this final rule does not have sufficient federalism implications that warrant the preparation of a Federalism Assessment. This is a technical rule to amend ONRR's Web site and mailing addresses and payment definitions listed in title 30 CFR, chapter XII. A Federalism Assessment is not required.

7. Civil Justice Reform (Executive Order 12988)

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule:

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

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

8. Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this final rule and determined that it has no effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act

This final rule does not contain information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: ''(i) Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature.'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

11. Data Quality Act

In developing this final rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554), also known as the Information Quality Act. The Department of the Interior (DOI) has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *http://www.doi.gov/ocio/iq.html.*

12. Effects on the Energy Supply (Executive Order 13211)

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

13. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send your remarks to *Armand.Southall@onrr.gov.* To better help us revise the rule, your remarks should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 1210

Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 1218

Continental shelf, Electronic funds transfers, Geothermal energy, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: April 19, 2012.

Amy Holley,

Acting Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, under the authority provided by the Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Secretarial Order Nos. 3299 and 3302, ONRR amends parts 1210 and 1218 of title 30 CFR, Chapter XII, subchapter A, as follows:

PART 1210—FORMS AND REPORTS

■ 1. The authority citation for 30 CFR part 1210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.;* and 44 U.S.C. 3506(a).

§§ 1210.55, 1210.105, 1210.151, 1210.152, 1210.153, 1210.154, 1210.155, 1210.156, 1210.157, 1210.158, 1210.201, 1210.205 [Amended]

■ 2. In the following table, amend part 1210 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column.

Amend	By removing the reference to:	And adding in its place:
§ 1210.55(b)(1)	P.O. Box 5810, Denver, Colorado 80217–5810.	P.O. Box 25627, Denver, CO 80225–0627.
§ 1210.105(b)(1)	P.O. Box 17110, Denver, Colorado 80217–0110.	P.O. Box 25627, Denver, CO 80225–0627.
§ 1210.151(c)(2)	P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.152(c)(1)	P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.153(c)(1)	P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.154(c)(1)	P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.155(b)(2)(i)	P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.156(c)(1)	P.O. Box 25165, MS 382B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.157(c)(1)	P.O. Box 25165, MS 64220, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.158(c)(1)	P.O. Box 25165, MS 357B1, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.201(c)(3)(i)	P.O. Box 5810, Denver, Colorado 80217–5810.	P.O. Box 25627, Denver, CO 80225–0627.
§ 1210.205(c)(1)	P.O. Box 25165, MS 390B2, Denver, Colorado 80217–0165.	P.O. Box 25165, Denver, CO 80225–0165.

■ 3. Amend § 1210.54 by revising paragraph (b) to read as follows:

§ 1210.54 Must I submit this royalty report electronically?

* * * * *

(b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report royalty data directly or upload files using the ONRR electronic web form located at *https://onrrreporting.onrr.gov.* You must upload your files in one of the following formats: The American Standard Code for information interchange (ASCII) or Comma Separated Values (CSV) formats. You must create your external files in the proprietary ASCII and CSV file layout formats defined by ONRR. You can generate these external files from your system application. Reporters/payors also can access detailed information and instructions regarding how to use the eCommerce Reporting

Web site at *http://www.onrr.gov/FM/PDFDocs/eCommerce_FAQ.pdf.*

* * * * *

■ 4. Amend § 1210.56 by revising paragraphs (a) and (c) to read as follows:

§ 1210.56 Where can I find more information on how to complete the royalty report?

(a) Refer to the ONRR *Minerals Revenue Reporter Handbook* for specific guidance on how to prepare and submit Form MMS–2014. You may find the handbook at *http://www.onrr.gov/FM/Handbooks/default.htm* or from the contacts on that Web page.

* * * * *

(c) You may find Form MMS–2014 at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm* or from contacts listed on that Web page.

■ 5. Amend § 1210.104 by revising paragraph (b) to read as follows:

§ 1210.104 Must I submit these production reports electronically?

* * * * *

(b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report production data directly or upload files using the ONRR electronic web form located at *https://onrrreporting.onrr.gov.* You must upload your files in one of the following formats: The American Standard Code for information interchange (ASCII) or Comma Separated Values (CSV) formats. You must create your external files in the proprietary ASCII and CSV file layout formats defined by ONRR. You can generate these external files from your system application. Reporters/payors also can access detailed information and instructions regarding how to use the eCommerce Reporting Web site at *http://www.onrr.gov/FM/PDFDocs/eCommerce_FAQ.pdf.*

* * * * *

■ 6. Amend § 1210.106 by revising paragraphs (a) and (c) to read as follows:

§ 1210.106 Where can I find more information on how to complete these production reports?

(a) Refer to the ONRR *Minerals Production Reporter Handbook* for specific guidance on how to prepare and submit Forms MMS–4054 and MMS–4058. You may find the handbook at *http://www.onrr.gov/FM/Handbooks/default.htm* or from contacts listed on that Web page.

* * * * *

(c) You may find Forms MMS–4054 and MMS–4058 at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm* or from contacts listed on that Web page.

■ 7. Amend § 1210.151 as follows:

■ a. Revise paragraph (b) to read as set forth below.

■ b. Remove ''MS 392B2,'' from paragraph (c)(3).

§ 1210.151 What reports must I submit to claim an excess allowance?

* * * * *

(b) *Reporting options.* You may find Form MMS–4393 at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm* or from contacts listed on that Web page.

* * * * *

■ 8. Amend § 1210.152 as follows:

■ a. Revise paragraph (b) to read as set forth below.

■ b. Remove ''MS 396B2,'' from paragraph (c)(2).

§ 1210.152 What reports must I submit to claim allowances on an Indian lease?

* * * * *

(b) *Reporting options.* You must submit Forms MMS–4110, MMS–4109, and MMS–4295 manually. You may find the forms at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm* or from contacts listed on that Web page.

* * * * *

■ 9. Amend § 1210.153 as follows:

■ a. Revise paragraph (b) to read as set forth below.

■ b. Remove ''MS 396B2,'' from paragraph (c)(2).

§ 1210.153 What reports must I submit for Indian gas valuation purposes?

* * * * *

(b) *Reporting options.* You must submit Forms MMS–4410 and MMS–4411 manually. You may find the forms at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm* or from contacts listed on that Web page.

* * * * *

■ 10. Amend § 1210.154(c)(2) by removing ''MS 392B2,''.

■ 11. Amend § 1210.155 as follows:

■ a. Revise paragraph (b) to read as set forth below.

■ b. Remove ''MS 392B2,'' from paragraph (b)(2)(ii).

§ 1210.155 What reports must I submit for Federal onshore stripper oil properties?

* * * * *

(b) *Reporting options.* You may find Form MMS–4377 at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.* You may file the form:

* * * * *

■ 12. Amend § 1210.156(c)(2) by removing ''MS 382B2,''.

■ 13. Amend § 1210.158 as follows:

■ a. Revise paragraph (b) to read set forth below.

■ b. Remove ''MS 357B1,'' from paragraph (c)(2).

§ 1210.158 What reports must I submit to designate someone to make my royalty payments?

* * * * *

(b) *Reporting options.* You must submit Form ONRR–4425 manually. You may find the form at *http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.*

* * * * *

■ 14. Amend § 1210.205 as follows:

■ a. Revise paragraph (b) to read as set forth below.

■ b. Remove ''MS 390B2,'' from paragraph (c)(2).

§ 1210.205 What reports must I submit to claim allowances on Indian coal leases?

* * * * *

(b) *Reporting options.* You must submit the forms manually. You may find the forms at *http://www.onrr.gov/FM/Forms/AFSSol_Min.htm.*

* * * * *

■ 15. Revise § 1210.354 to read as follows:

§ 1210.354 Reporting instructions.

Refer to ONRR's *Minerals Revenue Reporter Handbook—Oil, Gas, and Geothermal Resources* for specific guidance on how to prepare and submit required information collection reports and forms to ONRR. You may find the handbook at *http://www.onrr.gov/FM/Handbooks/default.htm* or from contacts listed on that Web page.

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 16. The authority citation for 30 CFR part 1218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 17. Revise § 1218.50(d)(5) to read as follows:

§ 1218.50 Timing of payment.

* * * * *

(d) * * *

(5) You should submit your certifications under paragraph (d)(2) of this section to Financial Management, Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627.

* * * * *

■ 18. Amend § 1218.51 as follows:

■ a. Revise the definitions of *ACH, EFT,* and *Fedwire,* add a definition of *Pay.gov*

in alphabetical order, and remove the definition *RIK,* in paragraph (a) as set forth below.

■ b. Revise paragraph (d)(2) to read as set forth below.

■ c. Remove paragraph (d)(3).

■ d. Add ''6th Avenue and Kipling Street,'' after ''Denver Federal Center,'' and remove ''–0165'' after ''80225'' in paragraph (e).

§ 1218.51 How to make payments.

(a) *Definitions.*

ACH—Automated Clearing House. A type of EFT using the ACH bank-to-bank network.

* * * * *

EFT—Electronic Funds Transfer. Any paperless transfer of funds initiated through an electronic terminal. For ONRR purposes, EFT includes Fedwire and ACH transfers, such as *Pay.gov.*

Fedwire—A type of EFT using the Federal Reserve Wire network.

* * * * *

Pay.gov—A type of EFT using the ACH network that is initiated by a payor on the *Pay.gov* Web site.

* * * * *

(d) * * *

(2) For a Federal nonproducing lease rental or deferred bonus payment, send it to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627.

* * * * *

■ 19. Revise § 1218.560 to read as follows:

§ 1218.560 How do I submit Form MMS–4444?

You may obtain a copy of Form MMS–4444 and instructions from ONRR. This form is posted at *http://www.onrr.gov/FM/Forms/default.htm.* Submit the completed, signed form to the address designated on Form MMS–4444 instructions.

[FR Doc. 2012–10360 Filed 5–1–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1218

[Docket No. ONRR–2011–0010]

RIN 1012–AA03

Debt Collection and Administrative Offset for Monies Due the Federal Government

AGENCY: Office of Natural Resources Revenue.

ACTION: Final rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) is promulgating regulations to establish procedures governing collection of delinquent royalties, rentals, bonuses, and other amounts due under leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf. The regulations include provisions for administrative offset and clarify and implement the provisions of the Debt Collection Act of 1982 (DCA) and the Debt Collection Improvement Act of 1996 (DCIA).

DATES: *Effective Date:* June 1, 2012.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Hyla Hurst, Regulatory Specialist, ONRR, telephone (303) 231–3495. For questions on technical issues, contact Sarah L. Inderbitzin, Office of Enforcement, ONRR, telephone (303) 231–3748.

SUPPLEMENTARY INFORMATION:

I. Background

The ONRR is responsible for collecting, accounting for, and disbursing billions of dollars per year in bonus, rental, royalty, and other revenues derived from leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf. The ONRR also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, leases, agreements, and contracts.

The ONRR undertakes current debt collection activities under the DCA (Pub. L. 97–365), as amended by the DCIA (Pub. L. 104–134, Title III, Ch. 10, 110 Stat. 1321–359—1321–380 (codified at 31 U.S.C. 3711, 3716–18, and 3720A). The DCIA was enacted primarily to increase collection of nontax debts owed to the Federal Government. Among other provisions, the DCIA centralized the administrative collection of much delinquent nontax debt at the U.S. Department of the Treasury's Financial Management Service (Treasury) to increase the efficiency of collection efforts. Government agencies are required to transfer nontax debt that has been delinquent for 180 days to Treasury for further collection action, including administrative offset.

This final rule (1) implements statutory provisions of the DCA, as amended by the DCIA, and (2) supplements the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS) (31 CFR parts 900–904), as necessary and appropriate for ONRR operations. The DCIA grants the Secretary discretionary authority in many aspects of debt collection, and this final rule defines the parameters of this authority. This final rule also makes some nonsubstantive technical or clarifying changes to the proposed rule.

In the interim between development of the proposed rule and the final rule, the Secretary of the Interior separated the responsibilities previously performed by the former Minerals Management Service (MMS) and reassigned those responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's Minerals Revenue Management (MRM) the Office of Natural Resources Revenue and directed that ONRR transition to the Office of Policy, Management and Budget, effective October 1, 2010. This change required the reorganization of title 30 of the Code of Federal Regulations. In a direct final rule (effective October 1, 2010), ONRR removed the royalty and other revenue reporting, payment, valuation, and appeal regulations from 30 CFR, chapter II, and recodified them in the new chapter XII. Thus, the 30 CFR citations in this final rule are to part 1218 rather than to part 218, as they were in the proposed rule. Neither these nor any of the plain language changes discussed below effect any substantive change in meaning.

II. Comments on the Proposed Rule

The proposed rule was published on June 8, 2010 (75 FR 32343). We received comments on the proposed rule from one nonprofit organization and one trade association. We have analyzed these comments, which are discussed below:

A. General Comments

General comments on the proposed rule fall into five categories: (1) Plain language, (2) Treasury fees, (3) Treasury offsets, (4) Chronology of collection efforts, and (5) Early resolution of bills and demands.

(1) Plain Language

Public Comments: The nonprofit organization commented that the entire regulation should be rewritten in plain language.

ONRR Response: In order to be consistent with other debt collection regulations, ONRR specifically adopted regulatory language implementing the DCA and DCIA that other agencies and

the Department of the Interior (Department) have already promulgated. See, e.g., Department of the Interior, National Indian Gaming Commission, debt collection regulations at 25 CFR part 513, and the Department of Health and Human Services debt collection regulations at 45 CFR parts 30 and 33. In the proposed rule, ONRR used plain language where it was appropriate and did not change the substantive meaning of those regulations. Although we decline to rewrite the entire rule as the commenter suggested, we have used plain language in the final rule in instances where plain language is appropriate and does not change the substance of the rule. For example, in § 1218.702(a), we replaced ''The ONRR will collect debts from you in accordance with the regulations in this subpart * * *.'' with ''The ONRR will collect debts from you under the regulations in this subpart * * *.''

(2) Treasury Fees

Public Comments: The trade association commented that Treasury has sometimes duplicated offsets and collected the same debt twice. When this occurs, the commenter notes that, although ONRR refunds the duplicate payment to the company, companies cannot recover the duplicate fee Treasury charges. The commenter believes that this rulemaking should give Treasury authority to remit the duplicate fee charged.

ONRR Response: Treasury currently charges a fee of $17.00 per offset (beginning October 1, 2010). Treasury, not ONRR, charges and keeps this fee. The ONRR does not have authority in this rulemaking to refund fees charged by Treasury or to address Treasury's processes. Thus, debtors need to make requests to Treasury for refunds of duplicate offset fees.

(3) Treasury Offsets

Public Comments: The trade association commented that, because an ONRR debt referred to Treasury may be offset by another Federal Government overpayment or monies due the debtor, in some cases, it is difficult to know where the offset occurs. The commenter also believes that this may result in cascading debt collection notices due to differing accounting and reporting records of debtors and the Federal Government. The commenter is concerned that a company may believe that their records are reconciled while the Federal Government continues to impose fines and fees for unknown debts. The commenter observes that the proposed rule does not identify a system to reconcile records.

ONRR Response: Treasury performs administrative offsets. The ONRR merely refers the debts to Treasury; Treasury does not provide us with the details of its offsets, and we do not have the authority to address Treasury's offset processes in this rulemaking. Thus, debtors need to work with Treasury regarding concerns about offsets and reconciling records.

(4) Chronology of Collection Efforts

Public Comments: The trade association suggested that we add a description of the chronological order of ONRR's debt collection process to the final rule to help clarify that process.

ONRR Response: The ONRR provided the chronological description of our internal debt referral process in the preamble to the proposed rule (75 FR 32343). However, we do not believe it is appropriate to codify such internal processes in the final rulemaking.

(5) Early Resolution of Bills and Demands

The trade association observed that a company may receive a bill or demand for many reasons. The commenter stated examples such as the original invoice being misdirected or never received, or the original debt being for another company but the operating rights owner received the bill. The commenter notes that, after significant research, some bills are found to already have been paid. The commenter believes that better communication would ensure early resolution of debts. The commenter also believes that these items could be cleared earlier in the process if ONRR addressed information provided by industry in a timelier manner.

ONRR Response: The ONRR issues bills and demands to lessees of record, operating rights holders, payors, and designees to collect royalties, rents, and other revenues due on Federal and Indian leases. The ONRR makes every effort to send bills and demands to the correct company and to resolve debts prior to referral to Treasury. However, it is the responsibility of the company who receives the bill or demand to either acknowledge the debt by timely payment or disagree with the debt by appealing the bill or demand within 30 days of its receipt of the bill or demand. In addition, before appealing, the company may contact ONRR to discuss the bill or demand. Nevertheless, contacting ONRR to discuss the bill or demand does not relieve the company of the requirement to file an appeal within 30 days under 30 CFR part 1290, if the bill or demand is not resolved prior to that date. The ONRR provides contact information on all bills and demands. In addition, contact information for ONRR's Financial Services program is available on our Web site at *http://www.onrr.gov/fm/ContactInfo.htm.*

The ONRR also sends bills or demands to the lessee's or payor's address of record, which is obtained either from ONRR's system or from the Bureau of Land Management's (BLM) LR2000 system. It is the company's responsibility to keep ONRR and BLM informed of the company's current address and contacts so that ONRR does not misdirect mailed bills and demands. Companies must update their contact information on Form MMS–4444, Addressee of Record Designation for Service of Official Correspondence (we are in the process of updating our regulations to replace MMS in our form numbers with ONRR), available on the ONRR Web site, at *http://www.onrr.gov/FM/Forms/default.htm.* The company must contact the appropriate BLM office for BLM address changes.

Public Comments: The trade association believes that debts referred to Treasury have sometimes been caused by ONRR errors, such as misapplying payments or generating duplicate interest bills. The commenter encourages ONRR to dedicate time and resources to the accuracy of its internal accounting.

ONRR Response: The ONRR commits significant time and resources to reconcile payments with receivables in its system. However, when company accounts are deficient or when a company does not specify how the payment should be applied, payments are applied to receivables using the First-In First-Out method of accounting. This process is necessary because Treasury will not accept referrals until all payments have been applied to receivables, leaving only open receivables in an account.

The ONRR acknowledges that we have issued some duplicate interest bills. However, we have initiated process improvements to prevent future occurrences.

Public Comments: The trade association commented that limited detail provided on demand notices makes it difficult for companies to respond, resulting in escalation of collection efforts. The commenter believes that better information is needed to resolve collections in a timely manner. The commenter stated the belief that additional information exists in the Statement of Account system that could assist in resolving debt. The commenter recommended that companies be given access to the additional information from the

Statement of Account for timely bill resolution.

ONRR Response: With each initial bill or order to pay, ONRR includes related reports with detailed information. When a company does not timely pay a bill or order, if the original bill or order did not contain language stating that ONRR may refer the bill or order to Treasury to collect, then ONRR sends a followup letter to the original recipient, as well as to each potentially liable lessee, with an attachment that reflects a roll-up of the original bill. It is the recipient's responsibility to contact ONRR to request lease-specific information provided on the original bill or demand. Through ONRR's Data Warehouse, found at *https://dwportal.onrr.gov,* companies can access their Statement of Account, showing the dates and balances of all open receivables for each company's account. However, the Statement of Account does not contain detailed information on the items listed in an original bill or demand. Nevertheless, companies can access detailed information in the Data Warehouse for Interest (INT) bills and Indian over-recoupment (IOR) bills. When ONRR issues an INT or IOR invoice, we place the invoice and associated invoice reports (three different reports for INT, and one for IOR) in each company's folder in the Data Warehouse.

Public Comments: The trade association recommended that ONRR provide companies electronic notification of indebtedness by email to facilitate timely resolution of debts and decrease billing errors.

ONRR Response: As stated above, all INT and IOR bills are placed in a company's folder in the Data Warehouse. When a company receives access to their folder in the Data Warehouse, the designated contact receives an email notification when an invoice is issued and placed in their folder (eInvoice). The purpose of eInvoice is to address company complaints about the large volumes of paper invoice reports sent with the bill and the difficulty of analyzing reports in that format. To address this concern, eInvoice gives companies the opportunity to download the reports that accompany INT and IOR bills in order to more efficiently analyze those reports. The FIN bills (financial term bills for rent and minimum royalty) and OTH bills (usually penalty bills or compliance bills) have no associated reports. Thus, ONRR sends paper FINs and OTHs because they do not have the volume issue we addressed for INT and IOR bills. For the same reason, ONRR does not electronically send the followup demands issued to other liable companies, when the original recipient of a bill or demand does not pay.

B. Specific Comments on 30 CFR Part 1218—Subpart J—Debt Collection and Administrative Offset

(1) 30 CFR 1218.700 What definitions apply to this subpart?

Definitions of ''BIA,'' ''BLM,'' and ''BOEMRE''

We did not receive any comments regarding these definitions. However, in this final rule, we are removing references to specific leasing or regulatory agencies that were in the proposed rule in this definitions section and elsewhere. The Bureau of Indian Affairs (BIA) and BLM names remain the same. However, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is now two separate bureaus, the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE).

Definition of ''Debtor''

Public Comments: The nonprofit organization suggested defining the pronouns ''you'' in the regulatory texts and ''I'' in the headings to refer to the debtor.

ONRR Response: The ONRR agrees that, for purposes of plain language, ''you'' can be defined as the ''debtor,'' and ONRR has made that change in the final rule. Therefore, in the final rule, ''you'' would be defined as the debtor in a new paragraph (u). However, we decline to also define ''I'' as the debtor because the term ''I'' is not used in the headings in this final rule.

Definition of ''Delinquent''

Public Comments: The trade association suggested adding a definition of ''past due'' even though it appears to be covered by the definition of ''delinquent.'' The commenter believes that adding a definition for ''past due'' would support ONRR's stated goal of prescribing procedures specifically applicable to ONRR operations. As an alternative, the trade association suggested deleting ''past due.''

ONRR Response: The commenter is correct that ''past due'' means the same as ''delinquent.'' Therefore, in § 1218.700, ONRR has added a definition of ''past due'' stating that ''past due has the same meaning as 'delinquent,' as defined above.'' We are also adding the term ''past due'' to the definition of ''delinquent.'' In addition, to make clear that debts are not delinquent unless ''legally enforceable,'' we added that term to the definition and added language to clarify that debts or claims are delinquent when not paid by the time prescribed by the applicable act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, decision, or any other agreement. In the final rule the term is defined as follows: ''*Delinquent* or *past due* refers to the status of a debt and means a debt that is legally enforceable and has not been paid within the time limit prescribed by the applicable act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, decision, or any other agreement.''

Definition of ''Legally Enforceable''

Although we did not receive comments on this definition, we made a change to this term to make clear that we will refer debts or claims only for which there has been a final non-appealable agency determination that the debt, in the amount stated, is due. See discussion of the terms ''debt'' and ''claim'' below.

The rule still states that we also will determine there are no legal bars to collection by offset such as debts subject to the Bankruptcy Code (Title 11 of the United States Code). For such debts, bankruptcy law will govern the debt collection process.

Definition of ''Lessee''

Public Comments: The trade association commented that the definition of ''lessee'' under 30 CFR part 1218 in the proposed rule is broader than the definition of ''lessee'' in part 1290. The association believes that different definitions under the parts would create the potential for confusion, ambiguity, and inconsistent results. The commenter also believes that the definition in 30 CFR part 1218 expands the potential liability of a party's debts to include those of another owner in the same property. Finally, the commenter believes that the regulations regarding the underpayment or nonpayment of royalties by a responsible party should not deviate from definitions set forth in the Royalty Simplification and Fairness Act (RSFA), Public Law 104–185, 110 Stat. 1700, as corrected by Public Law 104–200.

ONRR Response: The ONRR intended the definition of ''lessee'' under this rulemaking to be broad because this rule applies to all mineral lessees, not just Federal oil and gas leases. As we stated in the preamble to the proposed rule, ''[t]he definition in subsection (o) is broader than the definition of 'lessee' in 30 CFR part 1206 because it is intended

to apply to holders of leases and other contracts and agreements for any type of Federal and Indian minerals and resources'' (75 FR 32344). However, nothing in this rulemaking purports to change a lessee's liability for payments. Indeed, under proposed § 1218.702(b), ONRR will transfer only ''legally enforceable'' delinquent debts (defined as a final, non-appealable agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset). If a person is not liable for the debt, then, by definition, it is not ''legally enforceable'' against that person. Finally, RSFA applies only to Federal oil and gas leases. Thus, the definition of ''lessee'' in this part needs to be broader than RSFA because the rule also applies to debts on leases other than Federal oil and gas leases.

Definition of ''Other Agreement'' and ''Lease''

Public Comments: The trade association noted that paragraph 1218.702(b) refers to ''other agreements'' but does not provide a definition or illustration of agreements here or elsewhere in this subpart.

ONRR Response: With respect to the use of the term ''other agreement'' in the definitions of ''delinquent debt'' and ''lessee,'' it means any ''agreement to pay the Department money, funds, or property,'' which is not necessarily tied to the extraction, development, or use of a mineral or other resource. For example, a gas storage agreement between BLM and a lessee would be an ''other agreement.'' Such agreements are distinguishable from leases that authorize exploration for and production of oil, natural gas, other minerals or geothermal resources, or production of renewable energy.

To be clear, ONRR is adding the following definition of ''other agreement'' in a new paragraph (p) in § 1218.700 in the final rule and making corresponding changes to the portions of the rule that refer to that term:

(p) *Other agreement* means any agreement other than a lease, and includes, but is not limited to, any agreement between you and the Department to pay the Department money, funds, or property, regardless of form.

For clarity, we have also added a definition of the term ''lease'' in the final rule as follows: ''*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under any statutory authority, including but not limited to a mineral leasing law, that authorizes exploration for and development or extraction of oil, gas, coal, any other mineral or geothermal resources, or power generation from renewable energy sources, on Federal or Indian tribal or allotted lands or the Outer Continental Shelf. Depending on the context, lease also may refer to the land area covered by that authorization.''

Definition of ''Debt'' and ''Claim''

The ONRR received no public comment on the proposed definition of these terms. However, in preparing the final rule, we have concluded that further clarity in this definition is appropriate. We added to this definition that debts or claims must be ''legally enforceable.'' We added that term to the definition to make clear that only non-appealable final decisions of the Department are referable debts or claims because when ONRR or the ONRR Director issues an order or decision that then is appealed or is appealable to a higher level within the Department, the lessee's or payor's ultimate liability has not been finally established within the Department. In these circumstances, referral to the Treasury Department for further collection action under the DCA and FCCS is not appropriate. As discussed above, ONRR also has made a corresponding change to the definition of ''legally enforceable'' in the final rule to refer to a final non-appealable agency determination that the debt is due.

This revised definition also refers only to debts owed to or collectible by the United States, because lessees and royalty payors and holders of permits, easements, or rights-of-way for production of renewable energy do not owe money to states or other political subdivisions. We added ''collectible by'' to cover debts the Department collects on behalf of others, including, but not limited to, individual Indian mineral owners and Indian tribes.

(2) 30 CFR 1218.701 What is ONRR's authority to issue these regulations?

We received no comments on this section. However, in the final rule, we have made clarifying technical revisions to paragraph (b) to make clear that the regulations adopted in this final rule will supplement and adapt the FCCS as necessary and appropriate to ONRR's particular enforcement circumstances and sphere of responsibility.

(3) 30 CFR 1218.702 What happens to delinquent debts you owe ONRR?

We received no comments on paragraph (a). In the final rule, however, we are clarifying that ONRR will collect debts under these regulations ''in addition to other applicable statutory and regulatory authorities.'' For example, the Federal Oil and Gas Royalty Management Act of 1982, as amended, 30 U.S.C. 1701–1758 (FOGRMA), provides ONRR with extensive enforcement tools including, particularly, authority to assess civil penalties. See 30 U.S.C. 1719 and 1720a. The FCCS, at 31 CFR 900.1(a), acknowledges the precedence of specific statutes and regulations that apply to a particular agency's activities.

Public Comments: Paragraph (b) of this proposed section states that ONRR will refer debts to Treasury ''within 180 days from'' the date the debt became delinquent, which the trade association interprets to mean that ONRR could refer the debt much sooner than 180 days. The commenter believes this creates confusion when compared to paragraphs 1218.703(a)(6) and (8), which describe situations in which enforced collection can be avoided. The commenter also believes it creates confusion when read with paragraph 1218.704(b), which says that penalties will not be assessed until the debt is 90 days old, and that they will be assessed at the time the debt is referred to Treasury. The commenter states that it is unclear if ONRR intends to refer debts to Treasury before they are 90 days old.

ONRR Response: In instances where other collection and enforcement efforts have proven unsuccessful or may not be economical, ONRR may refer a debt to Treasury for further collection efforts. The final rule reflects the principle that ONRR's enforcement tools are not limited to the DCA, as amended by the DCIA, and the FCCS. The Treasury regulations implementing 31 U.S.C. 3711 give agencies discretion to voluntarily refer debts that are delinquent for less than 180 days [31 CFR 285.5(d)(2) and 285.12(h)]. To be clear, the ONRR is retaining its discretion in this rulemaking to refer debts that are less than 180 days delinquent.

Our retention of that discretion does not conflict with § 1218.703(a)(6) and (8) of the proposed rule. Section 1218.702(b) deals with referral of delinquent debts whereas paragraph (a)(6) of § 1218.703 deals with how to avoid delinquency and late payment charges. In any event, we removed subparagraph § 1218.703(a)(8) in the final rule, and, instead, revised subparagraph § 1218.703(b)(1) to address the right to appeal a notice in the rare instance in which the recipient of an ONRR notice of an intent to refer a debt to Treasury has not had a previous opportunity to appeal the merits of the debt, as discussed below.

We also do not agree that proposed § 1218.702(b) created confusion with § 1218.704(b). However, the point is moot because in this final rule we have decided to remove the provision in § 1218.704(b) that deals with the assessment of penalties on delinquent debts under the DCA as amended by the DCIA. Rather, we will assess penalties at our discretion under our existing authority at 30 U.S.C. 1719.

(4) 30 CFR 1218.703 What notice will ONRR give you of our intent to refer a matter to the Department of the Treasury to collect a debt?

We did not receive any comments regarding this section. However, as discussed above, we have eliminated proposed subparagraph (a)(8) from this final rule. Subparagraph (a)(8) in the proposed rule stated that the notice we would provide of our intent to refer a debt would include ''[y]our opportunity for review under 30 CFR part 1290 or part 1241, if any. See paragraph (b) of this section.'' We removed this subparagraph because we added language to clarify that the notices ONRR issues under this section are not appealable unless the notice specifically gives the recipient appeal rights. This is because most debts we refer to Treasury will be ''legally enforceable,'' as discussed above, and, thus, would have already been subject to an appeal.

However, in some instances, a party who is or may be secondarily liable for all or part of an obligation (such as a lessee of record under a Federal oil and gas lease who is not an operating rights holder, see 30 U.S.C. 1712(a)) may not have received notice of the original order to pay addressed to the operator or other royalty payor whose failure to pay resulted in the debt. The notice provided under paragraph (a) of this section informs the recipient that ONRR intends to refer a particular debt to Treasury, not that it has already done so. In instances such as those described here, if ONRR sends the notice of its intent to refer the debt to Treasury to a liable lessee who did not receive the original order (or decision on appeal or other notice or decision) that is the basis of the debt, ONRR would advise the lessee that it has a right to appeal under 30 CFR part 1290. If the lessee pursues an appeal, ONRR would not refer it to Treasury to collect against that lessee unless and until the appeal is resolved against that lessee. (In the meantime, however, ONRR could refer to Treasury to collect against the operating rights holder or other payor who originally received the order and is primarily liable for the debt.) Thus, we have revised § 1218.703(b)(1) in the final rule to make clear that a notice is not appealable unless it specifically so states.

The notice will inform the lessee or payor of the potential for collection by administrative offset and administrative costs that may be assessed against you under the DCA, as amended by the DCIA, and the FCCS.

(5) 30 CFR 1218.704 What is ONRR's policy on interest and administrative costs?

Public Comments: The trade association noted that paragraph (b) of this section would impose penalties of 6 percent per year, but the existing regulation at 31 CFR 901.9(d) says penalties are ''not to exceed 6 percent.'' The trade association prefers the ''not to exceed'' language because the commenter believes it would give ONRR the flexibility to adjust penalties based on the specific situation. This commenter also suggested that, before ONRR assesses a $436 administrative fee under paragraph (c) of this section, ONRR should use every means to resolve the debt and minimize notices of referral to Treasury.

ONRR Response: Under the FCCS at 31 CFR 901.9(d), the 6-percent penalty described in the proposed rule will not be assessed under the DCIA because, under FOGRMA, at 30 U.S.C. 1719 and 1720a, penalties are ''otherwise established * * * by statute.'' Accordingly, we have revised the rule to state that ONRR will use its existing civil penalty authorities and have rewritten proposed paragraph (b) of this section to state that ''ONRR will assess penalties under our authority in 30 U.S.C. 1719 and 1720a, and implementing regulations at 30 CFR part 1241.''

In addition, we made certain changes to this section of the final rule for purposes of clarity. We added a new subparagraph (a)(2)(iii) to make clear that interest will accrue on civil penalties ONRR assesses under 30 CFR 1241.71.

We also made revisions to proposed paragraph (c) regarding administrative costs. Unlike penalties and interest, we are collecting fees to recover our costs to refer a debt under the DCIA. In addition, we removed proposed paragraph (d), which provided that interest, penalties, and administrative costs ''will continue to accrue throughout any appeal process,'' and moved a revised portion of that paragraph regarding administrative costs to paragraph (c) for two reasons. First, in this final rule, we removed references to the accrual of interest and penalties because interest and penalties will continue to accrue under the applicable portions of 30 CFR chapter XII cited in this final rule. Second, we added language to make clear that administrative costs may be assessed during the pendency of an appeal if the notice you received gave you the right to appeal and you exercised that right. Further, we clarified in paragraph (c) that the administrative costs that will be assessed during any appeal process are the $436 in administrative costs ONRR will incur if your appeal is denied and ONRR must refer the delinquent debt to Treasury.

(6) 30 CFR 1218.705 What is ONRR's policy on revoking your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

Public Comments: This section of the final rule provides that the ONRR Director may recommend to the agency with responsibility for issuing leases, rights-of-way, easements, permits, etc., that a person (or entity) may have its ability to engage in leasing either suspended or revoked if it ''inexcusably or willfully'' fails to pay. This section of the proposed rule stated that the former MMS could revoke a debtor's ability to engage in offshore leasing. However, ONRR is now a separate agency from the remainder of the former MMS [now the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE)], and ONRR has no authority over leasing either offshore or onshore.

The trade association believes that ONRR should define or delete the word ''inexcusably'' in this section because it is subject to interpretation. In addition, the commenter believes that, because barring a lessee from engaging in Federal offshore leasing, licensing, etc., in the event of ''inexcusably or willfully'' failing to pay is such a ''harsh penalty,'' this section should clearly state the lessee's appeal rights. Further, the commenter believes that the lessee also should have the right to seek relief through the judicial appeals process. To accomplish this end, the commenter believes that an Assistant Secretary of the Department of Interior should decide whether to bar the debtor from leasing or other activities.

Finally, the trade association states that, as written, the proposed rule provides that, when ONRR recommends to the leasing or regulatory agency that a debtor's lease be suspended, ONRR will recommend that the suspension ''should only last as long as the debtor's indebtedness.'' The commenter agrees with that limitation but believes the proposed rule does not apply that

limitation to Federal offshore leases. The commenter suggests adding that the suspension ''should only last as long as the debtor's indebtedness'' to the first sentence of § 1218.705.

ONRR Response: We are declining the commenter's suggestion that we should define ''inexcusably.'' Whether a particular failure to pay or series of failures to pay is sufficiently inexcusable as to warrant a recommendation of debarment from leasing depends on the particular circumstances, and it is difficult to formulate a single definition that would adequately anticipate all such situations. Each situation will have to be considered on a case-by-case basis.

Moreover, we disagree with the commenter's suggestion that we add appeal rights regarding the Director's recommendation to the leasing or regulatory agency to revoke a lessee's ability to obtain a lease, license, etc. in this rulemaking. The Director's recommendation in this rulemaking constitutes only a recommendation to the leasing or regulatory agency with authority to actually revoke, not the actual revocation. Moreover, § 1218.705 does not itself constitute debarment authority. The extent to which the leasing or regulatory agency possesses debarment authority is a function of the statutes and regulations those agencies administer, not of ONRR rules. However, if the leasing or regulatory agency refuses to issue a company a lease, permit, license, etc., based on ONRR's recommendation, then that decision may or may not be appealable under the particular bureau's regulations. Therefore, we are not adding appeal rights in this rulemaking for internal bureau-to-bureau communications.

Furthermore, as discussed above, in this final rule, we are removing references to specific leasing or regulatory agencies that were in the proposed rule both in this section and the definitions section. Although the names of BIA and BLM remain the same, the former Bureau of Ocean Energy Management, Regulation and Enforcement is now two separate organizations—BOEM and BSEE. The intent of this rule is to make such referrals to the appropriate leasing or regulatory agency within the Department regardless of that entity's name.

Finally, we also disagree with the commenter's suggestion that we should add the phrase ''should only last as long as the debtor's indebtedness'' to the first sentence of proposed § 1218.705. That section, as rewritten in plain English in this final rule states that the Director may recommend that the leasing or issuing agency, under statutory or regulatory authority applicable to that agency, revoke your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way if you inexcusably or willfully fail to pay a debt. The Director will recommend that revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way should last only as long as your debt remains unpaid or unresolved.

For clarity, we removed the word ''onshore'' in the first sentence to make it clear that the Director's recommendation may apply to any Federal or Indian leases. We are not adding the additional language to the first sentence because the second sentence of that section already contains the limitation the commenter suggests.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

This is a technical rule formalizing and enhancing current ONRR debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. The changes explained above will have no royalty impacts on industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. Industry will incur additional administrative costs under this rulemaking.

A. Industry

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* The ONRR will assess $436 for recovery of administrative costs for each referral of debt to Treasury. We calculated the $436 administrative costs based on our estimate of the average actual costs we incur to refer debts to Treasury.

(3) *Penalties.* The ONRR will assess penalties under existing authority at 30 U.S.C. 1719 and 1720a and 30 CFR part 1241. This final rule therefore will have no impact on penalties.

B. State and Local Governments

(1) *Royalty Impacts.* None.

(2) *Administrative Costs—State and Local Governments.* The ONRR determined that this rule will have no administrative costs for state and local governments.

(3) *Penalties.* None.

C. Indian Tribes and Individual Indian Mineral Owners

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* The ONRR determined that this rule will have no administrative costs to Indian tribes and individual Indian mineral owners.

(3) *Penalties.* None.

D. Federal Government

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* The rule will have insignificant or no net administrative costs to the Federal Government. The final rule provides for a fee that we will recover from industry for administrative costs to the Government incurred as a result of collection activities.

(3) *Penalties.* None.

2. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

3. Regulatory Flexibility Act.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will affect large and small entities but will not have a significant economic effect on either. Based on historical data, we estimate that the rule will affect approximately 85 small entities per year.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

This is a technical rule formalizing and enhancing current ONRR debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. Industry will incur fees for administrative costs for failure to pay a delinquent debt to the Federal Government. Industry may avoid these administrative costs by accurately and timely paying debts owed to the Federal Government.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

This is a technical rule formalizing and enhancing current ONRR debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. Under this rule, ONRR will impose fees to cover the administrative costs of recovering delinquent debts. Recovery of administrative costs is consistent with the DCA, DCIA, and 31 U.S.C. 9701.

6. Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have any significant takings implications. This rule will apply to Federal and Indian leases only. It will not apply to private property. A takings implication assessment is not required.

7. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is a technical rule formalizing and enhancing current ONRR debt collection practices and procedures. A Federalism Assessment is not required.

8. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

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

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

9. Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it will have no potential effects on federally recognized Indian tribes.

10. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

11. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: ''(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments will have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

12. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554), also known as the Information Quality Act. The Department of the Interior has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *http://www.doi.gov/ocio/iq.html.*

13. Effects on the Energy Supply (Executive Order 13211)

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

List of Subjects in 30 CFR Part 1218

Administrative offset, Administrative practice and procedure, Bonuses, Collections, Debt, Federal and Indian mineral leases, Royalties, Rentals.

Dated: April 19, 2012.

Amy Holley,

Acting Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Office of Natural Resources Revenue amends 30 CFR part 1218 as set forth below:

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 1. Revise the authority citation for part 1218 to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

Subpart I—[Added and Reserved]

■ 2. Add and reserve subpart I.

■ 3. Add subpart J to read as follows:

Subpart J—Debt Collection and Administrative Offset

Sec.
1218.700 What definitions apply to the regulations in this subpart?
1218.701 What is ONRR's authority to issue these regulations?
1218.702 What happens to delinquent debts you owe ONRR?
1218.703 What notice will ONRR give you of our intent to refer a matter to Treasury to collect a debt?
1218.704 What is ONRR's policy on interest and administrative costs?
1218.705 What is ONRR's policy on recommending revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?
1218.706 What debts may ONRR refer to Treasury to collect by administrative offset or tax refund offset?

Subpart J—Debt Collection and Administrative Offset

§ 1218.700 What definitions apply to the regulations in this subpart?

As used in this subpart:

Administrative offset means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a state government) to any person, or the withholding of funds held by the United

States for any person, in order to satisfy a debt owed to the United States.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

Debt and *claim* are synonymous and interchangeable. They refer to, among other things, royalties, rentals, and any other monies due to, or collectible by, the United States as well as fines, fees, assessments, penalties, and any other monies that have been determined to be legally enforceable and due to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716 and this subpart, the terms ''debt'' and ''claims'' include money, funds, or property owed to, or collectible by, the United States.

Debtor means a lessee, payor, or other person that owes a debt to the United States or ONRR, or from whom ONRR collects debts on behalf of the United States, the Department, or an Indian lessor.

Delinquent or *past due* refers to the status of a debt and means a debt that is legally enforceable and has not been paid within the time limit prescribed by the applicable act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, decision, or any other agreement.

Department means the Department of the Interior, and any of its bureaus or offices.

Director means the Director of the Office of Natural Resources Revenue, or his or her designee.

DOJ means the U.S. Department of Justice.

FCCS means the Federal Claims Collection Standards, which are published at 31 CFR parts 900 through 904.

FMS means the Financial Management Service, a bureau of the U.S. Department of the Treasury.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under any statutory authority including, but not limited to, a mineral leasing law that authorizes exploration for and development or extraction of oil, gas, coal, any other mineral or geothermal resources, or power generation from renewable energy sources, on Federal or Indian tribal or allotted lands or the Outer Continental Shelf. Depending on the context, lease may also refer to the land area covered by that authorization.

Legally enforceable means that there has been a final non-appealable agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.

Lessee means any person to whom the United States or an Indian tribe or individual Indian mineral owner issues a Federal or Indian mineral or other resource lease, easement, right-of-way, or other agreement, an assignee of all or a part of the record title interest, or any person to whom operating rights have been assigned.

ONRR means the Office of Natural Resources Revenue, an office of the Department.

Other agreement means any agreement other than a lease and includes, but is not limited to, any agreement between you and the Department to pay the Department money, funds, or property, regardless of form.

Past due has the same meaning as ''delinquent'' as defined above.

Payor means any person who reports and pays royalties under a lease, regardless of whether that person is also a lessee.

Person includes a natural person or persons, profit or nonprofit corporation, partnership, association, limited liability company, trust, estate, consortium, or other entity that owes a debt to the United States.

Tax refund offset means the reduction of a tax refund by the amount of a past-due, legally enforceable debt.

You and *your* refer to the debtor.

§ 1218.701 What is ONRR's authority to issue these regulations?

(a) The ONRR is issuing the regulations in this subpart under the authority of the FCCS, the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A.

(b) The regulations in this subpart adopt and supplement the FCCS as necessary.

§ 1218.702 What happens to delinquent debts you owe ONRR?

(a) The ONRR will collect debts from you under the regulations in this subpart in addition to other applicable statutory and regulatory authorities.

(b) The ONRR will transfer to the U.S. Department of the Treasury any past due, legally enforceable nontax debt that is delinquent within 180 days from the date the debt becomes delinquent so that Treasury may take appropriate action to collect the debt or terminate the collection action under 26 U.S.C. 6402(d)(1) and (2); 31 U.S.C. 3711, 3716, and 3720A; the FCCS; and 31 CFR 285.2 and 285.5.

§ 1218.703 What notice will ONRR give you of our intent to refer a matter to Treasury to collect a debt?

(a) When the Director determines that you owe, or may owe, a legally enforceable debt to ONRR, the Director will send a written notice to you informing you that ONRR intends to refer the debt to Treasury. We will send the notice by facsimile or mail to the most current address known to us. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt.

(2) The methods of offset that ONRR or Treasury may use.

(3) Your opportunity to inspect and copy agency records related to the debt.

(4) Your opportunity to enter into a written agreement with us to repay the debt.

(5) Our policy concerning interest and administrative costs under § 1218.704, including a statement that we will make such assessments against you unless we determine otherwise under the criteria of the FCCS and this part.

(6) The date by which you must remit payment to avoid additional late charges and enforced collection.

(7) The name, address, and telephone number of a contact person (or office) at ONRR who is available to discuss your debt.

(b)(1) You may not appeal the notice issued under this section unless the notice specifically provides you with the opportunity for review under 30 CFR parts 1290 or 1241 because you did not previously receive a notice of the order, decision on appeal, or any other notice or decision that is the basis of the debt that ONRR intends to refer to Treasury, and for which you may be liable in whole or in part under applicable law. You may not dispute matters related to your delinquent debt that were the subject of a final order or appeal decision of which you were the recipient, or to which you were a party that is the basis of your delinquent debt.

(2) This section applies whether or not you appealed the order, demand, notice of noncompliance, or assessment of civil penalties under 30 CFR parts 1290 or 1241.

§ 1218.704 What is ONRR's policy on interest and administrative costs?

(a) *Interest.* (1) The ONRR will assess interest on all delinquent debts as prescribed by applicable statutes and regulations.

(i) Interest will accrue on debts involving Federal and Indian oil and gas leases under 30 CFR 1218.54, 1218.102, and 1218.150.

(ii) Interest will accrue on debts involving Federal and Indian solid mineral and geothermal resource leases under 30 CFR 1218.202 and 1218.302.

(iii) Interest will accrue on civil penalties ONRR assesses under 30 CFR part 1241.

(2) Interest begins to accrue on all debts from the date that the payment was due unless otherwise specified by law or lease terms.

(b) *Penalties.* The ONRR will assess penalties under our authority in 30 U.S.C. 1719 and 1720a, and implementing regulations at 30 CFR part 1241.

(c) *Administrative costs.* The ONRR initially will assess $436 for administrative costs incurred as a result of your failure to pay a delinquent debt. We will publish a notice of any increase in administrative costs assessed under this section in the **Federal Register**. The ONRR also may assess $436 for administrative costs that continue to accrue during any appeal process if:

(1) The notice we provide you under 30 CFR 1218.703 grants you the right to appeal and you exercise that right; and

(2) Your appeal is denied and we refer the delinquent debt to Treasury under this subpart.

(d) *Allocation of payments.* The ONRR will apply a partial or installment payment you make on a delinquent debt sent to Treasury, first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The ONRR may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory or regulatory authority.

(f) *Waiver.* The Director may decide to waive collection of all or part of the administrative costs under paragraph (c) of this section either in compromise of the delinquent debt or if the Director determines collection of this charge would be against equity and good conscience or not in the Government's best interest.

(g) The ONRR's decision whether to collect or waive collection of administrative costs under paragraph (f) of this section is the final decision for the Department and is not subject to administrative review.

§ 1218.705 What is ONRR's policy on recommending revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

The Director may recommend that the leasing or issuing agency, under statutory or regulatory authority applicable to that agency, revoke your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way if you inexcusably or willfully fail to pay a debt. The Director will recommend that any revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way should last only as long as your debt remains unpaid or unresolved.

§ 1218.706 What debts may ONRR refer to Treasury to collect by administrative offset or tax refund offset?

(a) The ONRR may refer any past due, legally enforceable debt you owe to ONRR to Treasury to collect through administrative offset or tax refund offset at least 60 days after we give you notice under 30 CFR 1218.703 if the debt:

(1) Is at least $25.00 or another amount established by Treasury; and

(2) Does not involve Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

(b) The ONRR may refer debts reduced to judgment to Treasury for tax refund offset at any time.

[FR Doc. 2012–10361 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0305]

Drawbridge Operation Regulations; Niantic River, Niantic, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Railroad Bridge across the Niantic River, mile 0.0, at Niantic, Connecticut. The deviation allows the bridge to remain in the closed position for 20 nights to facilitate completion of work on machinery and the lift span.

DATES: This deviation is effective from May 15, 2012 through August 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0305 and are available online at *www.regulations.gov*, inserting USCG–2012–0305 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Amtrak Railroad Bridge, across the Niantic River, mile 0.0, at Niantic, Connecticut, has a vertical clearance in the closed position of 16 feet at mean high water. The drawbridge operation regulations are listed at 33 CFR 117.215(a).

The operator of the bridge, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the regulations to facilitate completion of machinery installation and lift span work at the new Niantic River RR Bridge. To facilitate completion of the work at the new bridge, Amtrak has requested a total of 20 nighttime closures between 11 p.m. through 6 a.m., Monday through Thursday, beginning May 15, 2012 until August 15, 2012.

The waterway users are recreational vessels and seasonal fishing boats.

Under this temporary deviation the Amtrak Railroad Bridge may remain in the closed position during the hours of 11 p.m. until 6 a.m., Monday through Thursday, beginning May 15, 2012 until August 15, 2012. The Amtrak Railroad Bridge will require 20 nighttime closures during this period. The exact calendar dates for the closures have not been established due to other related construction at the bridge. The exact closure dates will be published in the Local Notice to Mariners one week in advance of the closures.

Vessels that can pass under the bridge in the closed position may do so at all times.

The waterway users were advised of the requested bridge closure and offered no objection.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time periods. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 24, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–10601 Filed 5–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0344]

Drawbridge Operation Regulations; Manchester Harbor, Manchester, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Massachusetts Bay Transportation Bridge across Manchester Harbor, mile 1.0, at Manchester, Massachusetts. The deviation allows the bridge to remain in the closed position to facilitate timber replacement.

DATES: This deviation is effective from 1 a.m. on April 28, 2012 through 4 a.m. on May 7, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0344 and are available online at *www.regulations.gov*, inserting USCG–2012–0344 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, email *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Massachusetts Bay Transportation Bridge, across Manchester Harbor, mile 1.0, at Manchester, Massachusetts, has a vertical clearance in the closed position of 6 feet at mean high water and 15 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.603.

The operator of the bridge, Massachusetts Bay Transportation Authority, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, timber replacement at the bridge.

The timber replacement is vital necessary work that must be performed when no rail service is operating during weekend hours.

The waterway users are recreational vessels many of which can pass under the bridge in the closed position.

The bridge is normally crewed on a limited basis from 9 a.m. to 1 p.m. and from 1 p.m. to 6 p.m., April 1 through Memorial Day due to infrequent requests to open the bridge.

Under this temporary deviation the Massachusetts Bay Transportation Authority Bridge may remain in the closed position from 1 a.m. on Saturday, April 28, 2012 through 4 a.m. on Monday, April 30, 2012 and from 1 a.m. on Saturday, May 5, 2012 through 4 a.m. on Monday, May 7, 2012. Vessels that can pass under the bridge in the closed position may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time periods. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 24, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–10600 Filed 5–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0337]

RIN 1625–AA00

Safety Zone; 2012 Memorial Day Tribute Fireworks, Lake Charlevoix, Boyne City, Michigan

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Charlevoix near Boyne City, Michigan. This zone is intended to restrict vessels from a portion of Lake Charlevoix due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 10 p.m. until 10:45 p.m. on May 26, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0337 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0337 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email MST3 Kevin Moe, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–2429, email at *Kevin.D.Moe@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable.

Background and Purpose

On the evening of May 26, 2012, fireworks will be launched from a point on Lake Charlevoix to commemorate Memorial Day. The Captain of the Port, Sector Sault Sainte Marie, has determined that the Memorial Day Tribute Fireworks Display will pose significant risks to the public. The likely congested waterways in the vicinity of a fireworks display could easily result in serious injuries or fatalities.

Discussion of Rule

To mitigate the risks associated with the Memorial Day Tribute Fireworks Display, the Captain of the Port, Sector Sault Sainte Marie will enforce a temporary safety zone in the vicinity of the launch site. This safety zone will encompass all waters of Lake Charlevoix, in the vicinity of Sommerset Pointe, within the arc of a circle with an 800ft radius from the fireworks launch site located on a barge positioned 45°13′04″ N, 085°03′41″ W [DATUM: NAD 83]. The safety zone will be effective and enforced from 10 p.m. until 10:45 p.m. on May 26, 2012

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be relatively small and will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Charlevoix between 10 p.m. and 10:45 p.m. on May 26, 2012.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. Vessels may safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Sault Sainte Marie, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0337 to read as follows:

§ 165.T09–0337 Safety Zone; 2012 Memorial Day Tribute Fireworks, Lake Charlevoix, Boyne City, Michigan.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of Lake Charlevoix, in the vicinity of Sommerset Pointe, within the arc of a circle with 800-foot radius from a fireworks launch site located on a barge at position 45°13′04″ N, 085°03′41″ W [DATUM: NAD 83].

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10 p.m. until 10:45 p.m. on May 26, 2012.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter the or operate within the safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

Dated: April 23, 2012.

S.B. Lowe,

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

[FR Doc. 2012–10624 Filed 5–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0052]

RIN 1625–AA87

Security Zones; North Atlantic Treaty Organization (NATO) Summit, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: This document corrects the preamble of the Temporary Final Rule (TFR) published in the **Federal Register** on April 13, 2012. In the preamble, the Coast Guard stated that no comments were received regarding the proposed rule (77 FR 13232) that would establish four separate security zones in the Chicago Harbor and Chicago River during the NATO Summit. This statement is incorrect. The Coast Guard received one comment.

DATES: Effective May 2, 2012.

FOR FURTHER INFORMATION CONTACT: CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI (414) 747–7188.

SUPPLEMENTARY INFORMATION: *Correction:* On March 10, 2012, the Burnham Park Yacht Club (BPYC) submitted a comment in response to the Coast Guard's NPRM that preceded the aforesaid TFR. In its comment, the BPYC described itself as a non-profit organization that provides tender services, mast stepping, and dining to BPYC members and to the public in general. The BPYC explained that it expects the NATO conference to have

two impacts on its business. First, the BPYC expects the NATO conference to severely limit the BPYC's income stream, which is normally generated from the aforementioned services. Second, the BPYC expects the NATO conference to have an impact on the BPYC's membership development, which typically occurs in mid April. In light of these impacts, the BPYC asked to meet with an agent of the Coast Guard to discuss the BPYC's expected losses and to arrive at a reasonable compensation. On April 20, 2012, a member of the Coast Guard's offices in Cleveland, OH, on behalf of the Captain of the Port, Sector Lake Michigan, telephoned the BPYC and confirmed the above understanding of the BPYC's comment and its request.

In light of the BPYC's comment, the Coast Guard will not change the TFR published on April 13, 2012. Although the BPYC raised concerns about the economic impact of the Coast Guard's security zones, the BPYC's comment did not directly speak to the design, the establishment, or the enforcement of these security zones. The BPYC did not ask the Coast Guard to modify the security zones or to reconsider the manner in which they are enforced. Rather, the BPYC simply asked to meet with the Coast Guard to discuss compensation. While the Coast Guard takes seriously the economic impact that its rules might have on small entities, the Coast Guard is unable to provide compensation to small entities so impacted.

Although the Coast Guard is unable to directly compensate small entities for the economic impacts of its rules, the BPYC is encouraged to contact CWO Jon Grob via the contact information provided above to discuss the Coast Guard's enforcement of the security zones discussed herein and options for compliance.

Dated: April 24, 2012.

C.W. Tenney,

Commander, U.S. Coast Guard Captain of the Port, Sector Lake Michigan, Acting.

[FR Doc. 2012–10549 Filed 5–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 690

[Docket ID ED–2012–OPE–0006]

RIN 1840–AD11

Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary amends four sections of the Federal Pell Grant Program regulations to make them consistent with recent changes in the law that prohibit a student from receiving two consecutive Pell Grants in a single award year.

DATES: This interim final rule is effective May 2, 2012. We must receive your comments on or before June 18, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only once in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Jacquelyn Butler, U.S. Department of Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Butler, U.S. Department of Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542. Telephone: (202) 502–7890 or via Internet at: *Jacquelyn.Butler@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Although the Secretary has decided to issue these interim final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise these interim final regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Federal Pell Grant Program.

During and after the comment period, you may inspect all public comments about these interim final regulations by accessing *www.regulations.gov.* You may also inspect the comments in person in Room 8083, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4 p.m. Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Two Federal Pell Grants in One Award Year (§§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67)

In August of 2008, the Higher Education Opportunity Act (HEOA), Public Law 110–315, added section 401(b)(5) to the Higher Education Act of 1965, as amended (HEA), which provided that a student enrolled in a certificate, associate degree, or baccalaureate degree program at least half-time for more than one academic year may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year. Although the addition of section 401(b)(5) was effective beginning with the 2009–2010 award year, we did not publish final

regulations until October 29, 2009 (74 FR 55902). Those regulations were effective beginning with the 2010–2011 award year. Prior to the publication of the October 29, 2009, final regulations, we provided guidance to institutions on how to implement the provisions of section 401(b)(5) to allow certain students to receive two Pell Grants in one award year for the 2009–2010 award year.

Subsequently, section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10) repealed section 401(b)(5) of the HEA. The repeal of this provision became effective with the 2011–2012 award year.

Because there is no longer an opportunity for a student to receive a second Federal Pell Grant Scheduled Award, we are amending current §§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67.

Significant Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Part 690—Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67)

Statute: Section 401(b)(5) of the HEA, as amended by the HEOA, provided that a student may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year if the student is enrolled at least half-time for more than one academic year, more than two semesters, or the equivalent time during a single award year. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program. Section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10) repealed section 401(b)(5) of the HEA.

Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(g)(1))

Current Regulations: Current § 690.63(g)(1) provides that the amount of a student's award for the award year may not exceed his or her Scheduled Federal Pell Grant award for the award year unless the student is eligible to receive a second Scheduled Federal Pell Grant award in the same award year under current § 690.67.

New Regulations: We are revising current § 690.63(g)(1) to remove the reference to § 690.67.

Reasons: With the repeal of section 401(b)(5) of the HEA, it is no longer necessary to have procedures for awarding a student his or her second Scheduled Award in an award year. Therefore, these interim final regulations remove § 690.67, and we remove the unnecessary reference to § 690.67 from current § 690.63(g)(1).

Payment From Two Scheduled Awards (§ 690.63(h))

Current Regulations: Under current § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment is calculated using the annual award for his or her enrollment status for the payment period. The student's payment is the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

New Regulations: Current § 690.63(h) is removed.

Reasons: With the repeal of section 401(b)(5) of the HEA, which provided that an otherwise eligible student could receive more than one Federal Pell Grant in an award year, it is no longer necessary to provide regulations that calculate a student's Federal Pell Grant payment when the student is eligible to receive a payment from his or her first and second Scheduled Awards in a payment period. Therefore, we are removing current § 690.63(h).

Payment Period in Two Award Years (§ 690.64)

Current Regulations: Under current § 690.64, if a payment period is scheduled to occur in two award years, an institution must consider this ''crossover'' payment period to occur entirely in one award year and pay the student with funds from the award year to which the payment period is assigned. An institution must assign the payment period to that award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution is required to reassign the payment to the award year providing the greater payment.

New Regulations: Under new § 690.64(a) and (a)(1) of these interim final regulations, if a student enrolls in a payment period that is scheduled to occur in two award years, the entire payment period must be considered to occur within one award year.

New § 690.64(a)(2) provides that the institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed.

New § 690.64(a)(3) and (4) require an institution to pay a student with funds from the same award year to which the payment period was assigned.

New § 690.64(b) provides that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

Reasons: These interim final regulations amend § 690.64 to conform to the change in the law that repealed section 401(b)(5) of the HEA.

We have retained most of current § 690.64 with the exception of § 690.64(b) which requires an institution to assign a crossover payment period to the award year in which the student receives the greater Federal Pell Grant award. The purpose of current § 690.64(b) was to maximize the student's eligibility over the two award years in which the payment period was scheduled to occur in anticipation of a student receiving a second Federal Pell Grant Scheduled Award. Since a student may not receive a second Federal Pell Grant Scheduled Award, it is no longer necessary to require that the student's award for the payment period be based on the higher Federal Pell Grant payment. Therefore we are removing current § 690.64(b). Instead, under new § 690.64(a)(2), institutions have the ability to assign a crossover payment period in a way that meets the need of its students and maximizes a student's eligibility over the two award years in which the crossover payment period may occur. New § 690.64(b) is necessary to clarify that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

Transfer Student: Attendance at More Than One Institution During an Award Year (§ 690.65(c) and (f))

Current Regulations: Current § 690.65(c) provides that a student who receives a Federal Pell Grant at one institution and subsequently enrolls at a

second institution within the same award year may only be paid at the second institution for the period of time the student is enrolled at that institution. The institution must adjust the student's grant to ensure that funds received by the student for the award year do not exceed the student's Scheduled Federal Pell Grant for that award year, unless the student is eligible for a second Scheduled Federal Pell Grant during that same award year.

Current § 690.65(f) provides that a transfer student must repay any amount received in an award year that exceeds his or her first or second Scheduled Federal Pell Grant.

New Regulations: We are revising current § 690.65(c) and (f) to remove the references to § 690.67.

Reasons: With the removal of § 690.67 by these interim final regulations in accordance with the repeal of section 401(b)(5) of the HEA, it is no longer necessary to provide regulations that establish procedures for awarding a student his or her second Scheduled Award in an award year. Therefore the references to § 690.67 are removed from current § 690.65(c) and (f).

Receiving Up to Two Scheduled Awards During a Single Award Year (§ 690.67)

Current Regulations: Current § 690.67(a) provides that an institution participating in the Federal Pell Grant Program shall award a payment of a second Scheduled Award to a student in an award year if an otherwise eligible student is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year.

Current § 690.67(b) provides the methods by which an institution must determine the credit or clock hours that a transfer student has earned at other institutions during the award year.

Current § 690.67(c) provides that a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year if the administrator determines that the student was unable to complete those clock or credit hours due to circumstances beyond the student's control. In this situation, the financial aid administrator is required to make and document the determination on an individual basis.

Current § 690.67(d) provides that in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

New Regulations: Current § 690.67 is removed.

Reasons: With the repeal of section 401(b)(5) of the HEA, which provided that an otherwise eligible student could receive more than one Federal Pell Grant in an award year, it is no longer necessary to provide regulations that establish procedures for awarding a student his or her second Scheduled Award in an award year. Therefore, we are removing current § 690.67.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

1. Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

2. Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

The statutory elimination of the two Pell Grant option as reflected in this regulatory action is economically significant subject to review by OMB under section 3(f)(1) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

1. Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

2. Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

3. In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

4. To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

5. Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

1. Summary of Potential Costs and Benefits

These interim final regulations remove the regulatory provisions related

to the option of receiving two Pell Grants in one year, an option that was eliminated by section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. This option was originally authorized by the HEOA and was first available in the 2009–2010 award year. These interim final regulations generally restore the long-standing policy related to the timing and availability of Pell Grants within an award year as it existed before the 2009–2010 award year. In the following sections, the Department summarizes the effects these interim final regulations are likely to have on the Federal student aid programs, institutions of higher education, and students.

Federal Government: Because Pell Grants are an entitlement to eligible recipients, any changes to the program that reduce eligibility will result in reduced costs of the Pell Grant Program. According to the Department's estimates, the elimination of the option for two Pell Grants in one year will remove the eligibility of about 1.9 million students annually and reduce costs in the program by approximately $24.3 billion over five years. When discounted at a 3 percent rate and a 7 percent rate, this reduces costs in the Pell Grant Program over 5 years by $22.2 billion and $19.7 billion, respectively. These reduced costs were attributed to the passage of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and these interim final regulations make the regulatory changes to give effect to the statute but do not generate any further cost reductions.

Institutions: The effect of the statutory change reflected in these interim final regulations on institutions will depend on the extent to which the availability of two Pell Grants in one year induced students to pursue additional credits. The availability of two Pell Grants in one award year was meant to accelerate students' academic programs and hopefully lead to more completions in a timely period. If this occurred and students who received two Pell Grants were induced to take more courses and progress further in their academic pursuits, the institutions will lose some tuition and fee revenue from the statutory change related to these interim final regulations. To the extent students took classes they otherwise would have taken anyway, the availability of two Pell Grants just substituted one source of tuition and fee revenue for another and may have shifted the timing of when the institutions received those funds. The limited time the two Pell Grants option was available, however, makes it difficult to determine the extent to which revenues will be reduced or shifted to other sources. As shown in Table 1, approximately 10 percent of Pell Grant recipients received a second Pell Grant in Award Year (AY) 2009–2010, and that was expected to increase to 20 percent by AY 2012–2013. Given projected use of the two Pell Grants option, the estimated maximum revenue loss to institutions would be approximately $24.3 billion over 5 years from AY 2011–2012 to AY 2015–2016. However, as stated earlier in this discussion, it is likely that a significant portion of this revenue would be shifted to other sources or be captured over a different time period, so the cost to institutions from the statutory changes should be much less. The institutions' potential loss of revenue related to the elimination of the two Pell option will depend on tuition reductions institutions choose to grant and the students' response in finding alternative sources of funding or reducing credits taken. The exact effect on institutions cannot be quantified, but it is likely to be substantially lower than the $24.3 billion discussed above.

Table 1: AY 2009-2010 Use of Second Pell Grant by Recipients and Aid Amount

AY 2009-10 Pell Program by Sector								
	Second Pell				Total Program			
	Recipients	% of Total	Aid ($m)	% of Total	Recipients	% of Total	Aid ($m)	% of Total
Public 2 yr	200,102	26.18%	455	26.84%	2,206,270	27.25%	8381	27.94%
Public 4 yr	260,989	34.14%	538	31.74%	2,864,634	35.39%	10157	33.86%
Private	74,553	9.75%	157	9.26%	988408	12.21%	3860	12.87%
Proprietary	228,758	29.93%	545	32.15%	2,035,683	25.15%	7595	25.32%
Total	**764,402**		**1,695**		**8,094,995**		**29,993**	

Source: U.S. Department of Education, Pell Sample

Students: The effect of the statutory change reflected in these interim final regulations on students is the loss of grant aid and potential academic delay or decreased likelihood of completion. Students will have to replace the reduced grant aid with savings, earnings, increased debt, or tuition reductions granted by institutions. By AY 2012–2013 approximately 20 percent of Pell Grant recipients were expected to receive two Pell Grants in one year, and they could lose grant aid up to the Pell Grant maximum depending on their eligibility and anticipated credits. The mandatory money available from this statutory change was directed to the Pell Grant Program to maintain the maximum grant, to the benefit of all Pell Grant recipients. According to the Department's estimates, approximately $5 billion in grant aid to almost 2 million students annually would need to be made up through other sources. It is not clear if the option for a second Pell Grant in one year had a significant effect on completion rates, but this is another possible cost to some student recipients of a second Pell Grant.

The Department welcomes comments about the costs and benefits of the changes implemented in these interim final regulations.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. This table provides our best estimate of the changes in annual

monetized transfers as a result of the statutory elimination of the two Pell Grant option as reflected in these interim final regulations. Expenditures are classified as transfers from recipients of a second Pell Grant to the Federal Government.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$4,813 (7%). $4,838 (3%).
From Whom To Whom?	From recipients of a second Pell Grant to the Federal Government.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 690.64.)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

Send any comments that concern how the Department could make these regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA. Notice and comment to amend current § 690.64 is contrary to the public interest because, as discussed in more detail in the following paragraphs, delay in making this regulatory change will cause some students to lose some of their Pell Grant eligibility. Notice and comment to amend §§ 690.63, 690.65, and 690.67 are unnecessary because we are merely updating these sections to reflect statutory changes in Public Law 112–10 that prohibit a student from receiving two Pell Grants in a single award year.

The APA's rulemaking exception '' 'Contrary to the public interest' requires that public rule-making procedures shall not prevent an agency from operating.'' *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1484 n.2 (9th Cir. 1992), *quoting Levesque* v. *Block,* 723 F.2d 175, 184 (1st Cir. 1983), *quoting* S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945), *reprinted in* Senate Judiciary Committee, 79th Cong., 2d Sess., Administrative Procedure Act Legislative History 185, 200 (1946). It ''connotes a situation in which the interest of the public would be defeated by any requirement of advance notice, as when announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent.''

Rulemaking is ''unnecessary'' when the agency is issuing a minor rule in which the public is not particularly interested. It applies in those situations in which ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting* U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983).

The statutory change to prohibit a student from receiving two Pell Grants in a single award year results in unintended adverse effects on students under current § 690.64. Some students may lose Pell Grant eligibility under this provision. For example, under current § 690.64, in the summer of 2012, if a student had remaining eligibility from the 2011–2012 award year, he or she would not receive those funds. Instead, the student would receive funds under the 2012–2013 award year because the 2012–2013 Pell Grant would be greater. This would also reduce the amount of Pell Grant funds that would remain available to the student for the balance of the 2012–2013 award year.

Assuming a student had $1,500 in remaining eligibility for the 2011–2012 award year, the following table shows the student's eligibility under current § 690.64 and under the changes made by these interim final regulations:

	Current rule	Interim final regulations
Award Year 2011–2012 Summer 2012	.....	$1,500
Award Year 2012–2013 Summer 2012	$2,775	.....
Fall 2012	2,775	2,775
Spring 2013	.....	2,775

In this example, under the current regulations, a student would not receive an additional $1,500 of the remaining Pell Grant award and would exhaust eligibility by the Spring of 2013. These interim final regulations avoid this result. The student receives an additional $1,500 of his or her remaining eligible Pell Grant award and has not exhausted his or her eligibility by the Spring of 2013. It is precisely to avoid this harm to students that we are waiving rulemaking for the change to § 690.64.

With respect to §§ 690.63, 690.65, and 690.67, because these interim final regulations merely reflect statutory changes and remove obsolete regulatory provisions, notice and comment are unnecessary. The amendments reflect the statutory change to the HEA that prohibits a student from receiving two Pell Grants in a single award year. Accordingly, the Secretary has good cause to waive rulemaking with respect to the removal of these regulatory provisions.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner. (5 U.S.C. 553(d)(3)). Because these interim final regulations merely reflect statutory changes and remove obsolete regulatory provisions and, in the case of new § 690.64, protect students from receiving reduced amounts of Pell Grant funds, there is good cause to make them effective on the day they are published.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

These interim final regulations affect institutions that participate in Title IV, HEA programs, and individual Pell Grant recipients. The effect of the elimination of two Pell Grants in one year will depend on the extent students replace the funds from other sources or change their academic plans, the distribution of recipients of a second Pell Grant, and the alternative use of the funds. This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small institutions of the statutory changes implemented through these interim final regulations. The Department welcomes comments and information related to this analysis.

Succinct Statement of the Objectives of, and Legal Basis for, These Interim Final Regulations

These interim final regulations remove regulatory provisions related to the availability of two Pell Grants in one year to comply with section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which repealed section 401(b)(5) of the HEA under which an otherwise eligible student could receive more than one Federal Pell Grant in an award year.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which These Interim Final Regulations Will Apply

These interim final regulations affect institutions that participate in Title IV, HEA programs and loan borrowers. The definition of ''small entity'' in the Regulatory Flexibility Act encompasses ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The definition of ''small business'' comes from the definition of ''small business concern'' under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a ''small business concern'' as one that is ''organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor * * *'' ''Small organizations'' are further defined as any ''not-for-profit enterprise that is independently owned and operated and not dominant in its field.'' The definition of ''small entity'' also includes ''small governmental jurisdictions,'' which includes ''school districts with a population less than 50,000.''

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 3,448 institutions representing approximately 63 percent of those institutions participating in the Federal student assistance programs meet the definition of ''small entities'' when all private nonprofit institutions are classified as small because none is dominant in the field. If the $7 million in revenue requirement were applied to private nonprofit institutions, the number of small entities would be reduced to 2,386 or 43.6 percent of institutions. Table 2 summarizes small institutions and their percent of AY 2008–2009 Pell Grant recipients and amounts by sector.

Table 2: AY 2008-2009 Pell Grant Recipients and Amounts by Sector

	Small Institutions		% of Pell Grant	
	#	% of Sector	Recipients	$
Public 4-year	4	0.7%	0.0%	0.0%
Private nonprofit 4-year*	444	30.0%	5.6%	5.9%
Private for-profit 4-year	52	24.6%	1.0%	1.0%
Public 2-year	88	8.5%	0.8%	0.7%
Private nonprofit 2-year*	147	86.5%	54.6%	53.3%
Private for-profit 2-year	405	69.6%	21.1%	21.5%
Public <2-year	202	87.4%	62.6%	61.6%
Private nonprofit <2-year*	61	93.8%	51.4%	51.1%
Private for-profit <2-year	983	89.4%	44.5%	44.4%

Source: IPEDS 2008-2009

*Applies $7 million revenue standard to private nonprofit institutions for informational purposes. If not applied, the number of institutions in the private nonprofit sectors would be 1,479 four-year, 170 two-year, and 65 less-than-two-year institutions. All Pell Grant recipients and Pell Grant disbursements in the private nonprofit sectors would be small entities.

Using the distribution of Pell Grant recipients and amounts at small institutions from Table 2 and the Department's estimated two Pell Grant recipients and amounts, the estimated maximum cost to small institutions across all sectors for the period from 2011–2012 to 2015–2016 is approximately $1.67 billion. The estimated recipients and amounts by type of institution are summarized in Table 3. The amount of grant aid lost for any individual institution will depend on the extent the second Pell Grant option was utilized at that school. If distributed evenly across all small entities, with nonprofit institutions subject to the $7 million revenue requirement for a more uniform profile of institutions, an annual average of $150,000 would not be available from second Pell Grants in one award year. As discussed in the Summary of Potential *Cost and Benefits* section, much of this revenue will be available from other sources including the preservation of the maximum grant level in the Pell Grant Program, student earnings or savings, and increased student debt.

Table 3: Estimated Pell Grant Recipients and Amounts at Small Institutions

	Estimated Pell Grant Recipients at Small Institutions				
	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16
Public 2 yr	4,060	4,963	4,997	5,123	5,256
Public 4 yr	143	175	176	181	185
Private	18,152	22,190	22,342	22,904	23,501
Proprietary	78,907	96,459	97,120	99,562	102,157
Total	**101,263**	**123,787**	**124,636**	**127,770**	**131,100**

	Estimated Pell Grant Amounts at Small Institutions				
	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16
Public 2 yr	10.6	13.0	13.3	13.8	14.5
Public 4 yr	0.4	0.5	0.5	0.5	0.5
Private	43.9	53.8	55.1	57.3	59.9
Proprietary	215.7	264.4	270.8	282.0	294.6
Total	**270.5**	**331.6**	**339.6**	**353.7**	**369.4**

Source: IPEDS 2008-2009 and Department of Education estimates

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of These Interim Final Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

These interim final regulations do not impose any new reporting, record keeping, or other compliance requirements on institutions.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap or Conflict With These Interim Final Regulations

These interim final regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

No alternatives were considered for the amendments to §§ 690.63(g)(1), 690.63(h), 690.65(c), 690.65(f), and 690.67 because these changes implement changes to the HEA enacted by Congress and the Department did not exercise discretion in developing these amendments. With respect to § 690.64, the Department could have left the current regulations in place. However, such an action would have led to potentially serious adverse effects on students, as described in the *Waiver of Rulemaking and Delayed Effective Date* section of this preamble.

Paperwork Reduction Act of 1995

These interim final regulations do not create any information collection requirements. With the removal of §§ 690.63(h) and 690.67 and the revision of § 690.64, due to the statutory changes, the paperwork burden associated with those sections are also removed. This change results in the discontinuation of information collection 1845–0098 and, therefore, the elimination of 109,605 burden hours associated with that collection.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.063 Federal Pell Grants)

List of Subjects in 34 CFR Part 690

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: April 27, 2012.

Anne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 690 of title 34 of the Code of Federal Regulations as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

■ 1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.63 [Amended]

■ 2. Amend 690.63:

■ a. In paragraph (g)(1), by removing the words and citation, ''except as provided in § 690.67''; and

■ b. By removing paragraph (h).

■ 3. Section 690.64 is revised to read as follows:

§ 690.64 Determining the award year for a Federal Pell Grant payment period that occurs in two award years.

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed;

(3) If an institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(4) If an institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

(Authority: 20 U.S.C. 1070a)

■ 4. Section 690.65 is amended:

■ a. In paragraph (c), by removing the words and citation, ''except as provided under § 690.67''; and

■ b. By revising paragraph (f) to read as follows:

§ 690.65 Transfer student: attendance at more than one institution during an award year.

* * * * *

(f) A transfer student shall repay any amount received in an award year that exceeds his or her Scheduled Federal Pell Grant.

* * *

§ 690.67 [Removed and Reserved]

■ 5. Section 690.67 is removed and reserved.

[FR Doc. 2012–10559 Filed 5–1–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0271; FRL–9664–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of the 1980 Consent Order for the Maryland Slag Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision removes a 1980 Consent Order issued to the Maryland Slag Company (now known as MultServ). The 1980 Consent Order is no longer required to satisfy any applicable Federal regulations and the Clean Air Act (CAA). EPA is approving this revision in accordance with the requirements of the CAA.

DATES: This rule is effective on July 2, 2012 without further notice, unless EPA receives adverse written comment by June 1, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0271 by one of the following methods:

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

B. *Email: spink.marcia@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0271, Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0271. 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 electronic docket are listed in the *www.regulations.gov* index. Although

listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215) 814–2104, or by email at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Maryland Slag Company (now MultiServ) operates a blast furnace slag processing plant at the Bethlehem Steel Corporation's (now ISG Sparrows Point) steel mill located in Sparrows Point, Baltimore County. Hot metal slag from Bethlehem Steel's blast furnace that is not processed by the Atlantic Cement Company's (now LaFarge North America) granulated slag cement plant is allowed to cool before being sent to the Maryland Slag processing facility. At the slag processing facility, slag is reduced in size with a crusher and segregated into different group sizes by a screening operation. The processed slag material is used as an aggregate material in road construction and parking lots. The slag processing facility is subject to the requirements under SIP-approved regulation COMAR 26.11.10.04B(1) which prohibits the discharge of fugitive particulate matter emissions from iron and steel production installations unless reasonably available control measures are employed to minimize emissions.

In 1980, the Atlantic Cement Company proposed to construct a slag cement processing facility within the confines of the Bethlehem Steel Corporation's Sparrows Point steel mill. At the time of the proposed project, the Sparrows point area was nonattainment for total suspended particulates (TSP). In order to construct the plant, the Atlantic Cement Company was required to secure particulate matter emission offsets. These offsets were obtained from the Maryland Slag Company and were formalized and made enforceable in the October 31, 1980 Consent Order. The October 31, 1980 Consent Order was approved as a SIP revision by EPA on September 8, 1981 (41 FR 44757).

II. Summary of SIP Revision

On February 13, 2007, the Maryland Department of the Environment submitted a formal revision to its SIP. The SIP revision consists of a request to remove the Consent Order, issued on October 31, 1980, to the Maryland Slag Company (now MultiServ). The Consent Order provided particulate matter offsets from the Maryland Slag Company to the Atlantic Cement Company. The 1980 Consent Order is no longer necessary because the affected facilities are no longer located in a nonattainment area for TSP, and the Atlantic Cement Company (now Lafarge North America) was re-permitted in 2001 demonstrating compliance with the more stringent national ambient air quality standard for particulate matter with a diameter of 10 microns or less (PM_{10}). In addition, the Maryland Slag Company (now MultiServ) has reduced its annual PM emissions by reducing the material it processes from one million tons annually in 1980 to less than 100,000 tons annually today.

III. Final Action

EPA is approving MDE's February 13, 2007 SIP revision to remove the October 31, 1980 Consent Order issued to the Maryland Slag Company (now MultiServ) because it is no longer required to satisfy any applicable Federal regulations and the Clean Air Act (CAA). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 2, 2012 without further notice unless EPA receives adverse comment by June 1, 2012. If EPA receives adverse comment, 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. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to remove the 1980 Consent Order for the Maryland Slag Company may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: April 12, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (d) is amended by removing the entry for Maryland Slag Co.

[FR Doc. 2012–10339 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–1079; FRL–9344–9]

Thiamethoxam; Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of March 2, 2012, concerning the establishment of tolerances for the insecticide thiamethoxam on multiple commodities. This document is being issued to correct various typographical omissions, specifically, the omission of previously established tolerances for caneberry subgroup 13–07A; mustard, seed; onion, dry bulb; papaya; safflower, seed; and nut, tree, group 14.

DATES: This final rule is effective May 2, 2012.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–1079. All documents in the docket are listed in the docket index available in *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8735; email address: *chao.julie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical correction do?

This technical correction reinstates previously established tolerances for the insecticide thiamethoxam in or on: Caneberry subgroup 13–07A at 0.35 parts per million (ppm); mustard, seed at 0.02 ppm; nut, tree, group 14 at 0.02 ppm; onion, dry bulb at 0.03 ppm; papaya at 0.40 ppm; and safflower, seed at 0.02 ppm. These tolerances were inadvertently deleted from the table in paragraph (a) under 40 CFR Part 180.565 in the final rule establishing new tolerances for thiamethoxam on several commodities that published in the **Federal Register** of March 2, 2012 (77 FR 12731) (FRL–9331–8).

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because the tolerances being reinstated in the table in paragraph (a) of 40 CFR 180.565 are permanent tolerances that were inadvertently omitted from that table in the course of a rulemaking that amended the table to establish several new tolerances. As part of that rulemaking, EPA prepared a revised table listing the current and new tolerances. In preparing the revised table, that contains tolerances on over 80 commodities, EPA inadvertently overlooked the tolerances identified in Unit II. It is clear on the face of the rulemaking document that the omission of the tolerances identified in Unit II

was a typographical error because the document in no place mentions, or suggests, an intention of removing those tolerances. Public comment is unnecessary on an action to correct such a clear inadvertent error. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

This final rule corrects a technical error and does not otherwise change the requirements in the final rule. As a technical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Unit IV. in the **Federal Register** of March 2, 2012.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 18, 2012.

Lois Rossi,

Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR 180.565 is corrected as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.565 is corrected by alphabetically adding: Caneberry subgroup 13–07A; mustard, seed; onion, dry bulb; papaya; safflower, seed; and nut, tree, group 14 to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Caneberry subgroup 13–07A	0.35
* * * * *	
Mustard, seed	0.02
Nut, tree, group 14	0.02
* * * * *	
Onion, dry bulb	0.03
* * * * *	
Papaya	0.40
* * * * *	
Safflower, seed	0.02
* * * * *	

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[FR Doc. 2012–10343 Filed 5–1–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0449; FRL–9346–4]

Acequinocyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acequinocyl in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes several established individual tolerances, as they will be superseded by inclusion in crop subgroup tolerances or by updated commodity terminology. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 2, 2012. Objections and requests for hearings must be received on or before July 2, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0449. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR

site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0449 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 2, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0449, by one of the following methods:

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

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7864) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.599 be amended by establishing tolerances for residues of the miticide acequinocyl, [2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione] and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, expressed as acequinocyl equivalents, in or on bean, succulent shelled at 0.15 parts per million (ppm); caneberry subgroup 13–07A at 4.5 ppm; cherry at 0.8 ppm; cowpea, forage at 9.0 ppm; cucumber at 0.15 ppm; melon subgroup 9A at 0.06 ppm; soybean, vegetable, succulent at 0.25 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.6 ppm; and berry, low growing, subgroup 13–07G at 0.4 ppm. The petition additionally requested that 40 CFR 180.599 be amended by removing the established tolerances for residues of acequinocyl in or on grape at 1.6 ppm and strawberry at 0.4 ppm, as they will be superseded by inclusion in subgroup 13–07F and 13–07G, respectively. That notice referenced a summary of the petition prepared on behalf of IR–4 by Arysta LifeScience North America LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for several commodities. Additionally, the Agency has determined that tolerances should be established on the meat byproducts of livestock commodities and the previously established tolerances on the liver of livestock commodities should be removed. The Agency also determined that a tolerance is necessary on cowpea, hay. Finally, EPA determined that the proposed tolerance on cherry should be established as two tolerances on sweet and tart cherry. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Acequinocyl exhibits low acute toxicity via the oral, dermal and inhalation routes of exposure, as well as in primary eye and primary skin irritation studies. It is not a dermal sensitizer. Acequinocyl is a known Vitamin K antagonist; therefore, it is thought to produce adverse effects by disrupting the blood coagulation system, as indicated by increased prothrombin time, increased activated partial thromboplastin time, and internal hemorrhages.

In rat studies, including a subchronic oral toxicity study, a 28-day dermal toxicity study, and a chronic feeding/oncogenicity study, acequinocyl increased prothrombin and activated partial thromboplastin. Internal hemorrhages were observed in both a rat and rabbit developmental toxicity study, a mouse subchronic/chronic toxicity study, and in a 2-generation reproduction rat study. In a combined chronic toxicity/oncogenicity study in rats, enlarged eyeballs were observed. Hepatotoxicity in the mouse was evidenced by histopathology and increased liver enzymes.

In both rat and rabbit developmental toxicity studies, acequinocyl increased the number of resorptions noted. Developmental effects (i.e., resorptions) occurred at a dose that was higher than or the same as the dose that caused maternal toxicity. In the 2-generation

reproduction toxicity study in the rat, there was no evidence of reproductive toxicity, though there were notable toxic effects observed in offspring that were not observed in adults including swollen body parts, protruding eyes, clinical signs, delays in pupil development and increased mortality occurring mainly after weaning.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies. There was also no concern for mutagenic activity as indicated by several mutagenicity studies. Therefore, acequinocyl is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by acequinocyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Acequinocyl; Human-Health Risk Assessment for Proposed Section 3 Uses on Succulent Soybean Vegetable; Succulent Shelled Beans; Cowpea Forage; Caneberry Subgroup 13–07A; Melon Subgroup 9A; Cucumber, Cherry; Low-Growing Berry Subgroup 13–07G; and Small Fruit Vine Climbing, Except Fuzzy Kiwifruit, Subgroup 13–07F,'' pp. 31–33 in docket ID number EPA–HQ–OPP–2011–0449.

B. Toxicological Points of Departure/Levels of Concern

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

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACEQUINOCYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	N/A	N/A	An endpoint attributable to a single dose was not identified in the database.
Chronic dietary (All populations).	NOAEL = 2.7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.027 mg/kg/day. cPAD = 0.027 mg/kg/day	Carcinogenicity study in mice (18 month); LOAEL = 7.0 mg/kg/day based on the clinical chemistry and microscopic non-neoplastic lesions (brown pigmented cells and perivascular inflammatory cells in liver).
Dermal, short-term (1 to 30 days)	Dermal study NOAEL = 200 mg/kg/day.	LOC (occupational/residential) for MOE = 100.	28-day dermal study in rats; LOAEL = 1,000 mg/kg/day based on increased clotting factor times.
Inhalation, short-term (1 to 30 days).	Oral NOAEL = 60 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x	LOC (occupational/residential) = MOE <100.	Developmental toxicity study in rabbits; Maternal LOAEL = 120 mg/kg/day based on clinical signs (hematuria, reduced fecal output, body weight loss, and reduced food consumption) and gross necropsy findings (pale lungs and liver, hemorrhaging uterus, fluid in the cecum, fur in the stomach, blood stained vaginal opening, blood-stained urinary bladder contents/urine).
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be Carcinogenic to Humans.''		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. mg/kg/day = milligram/kilogram/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acequinocyl, EPA considered exposure under the petitioned-for tolerances as well as all existing acequinocyl tolerances in 40 CFR 180.599. EPA assessed dietary exposures from acequinocyl in food as follows:

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

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA utilized tolerance level residues and 100 percent crop treated (PCT) information for all registered and proposed uses. The assessment also used Dietary Exposure

Evaluation Model (DEEM–FCID™) ver. 7.81 default processing factors, with the exception of those for grape juice and raisins.

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

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

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of acequinocyl for chronic exposures for non-cancer assessments are estimated to be 6.69 parts per billion (ppb) for surface water and 0.0036 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 6.69 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acequinocyl is currently registered for the following use by commercial applicators and homeowners that could result in residential exposure: Landscape ornamentals in residential and public areas. Residential handlers are expected to complete all tasks associated with the use of acequinocyl including mixing and loading (if needed), and application of acequinocyl with either a low-pressure hand wand or with a hose-end sprayer. EPA assessed potential short-term dermal and inhalation exposures to residential handlers from these scenarios. Residential handler exposure scenarios are considered to be short-term only, due to the infrequent use patterns associated with homeowner products. Postapplication exposure was not anticipated for the registered residential uses; therefore, a quantitative postapplication assessment was not conducted. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The acequinocyl toxicity database is adequate to evaluate potential increased susceptibility of infants and children, and includes developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. In the rat prenatal developmental toxicity study, developmental toxicity was indicated by increased resorptions and fetal variations. The developmental toxicity study in rabbits identified an increased number of complete resorptions. In the rat 2-generation reproductive toxicity study, both the maternal and reproductive toxicity LOAELs were not observed; however, the LOAEL for parental males was 58.9/69.2 mg/kg/day, based on hemorrhagic effects. The offspring systemic LOAEL was also 58.9 mg/kg/day. Though the offspring LOAEL was similar to that of parental males, the study noted increased qualitative susceptibility of pups (swollen body parts, protruding eyes, clinical signs, delays in pupil development and increased mortality). These effects occurred mainly after weaning.

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

i. The toxicity database for acequinocyl is complete except for immunotoxicity and acute and subchronic neurotoxicity testing. Recent changes to 40 CFR part 158 imposed new data requirements for immunotoxicity testing (OPPTS Guideline 870.7800) and acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200) for pesticide registration. The toxicology database for acequinocyl does not show any evidence of treatment-related effects on the immune system, and the overall weight-of-evidence suggests that this chemical does not directly target the immune system. Therefore, the Agency does not believe that conducting a functional immunotoxicity study will result in a lower POD than that currently in use for overall risk assessment, and additional UFs are not needed to account for a lack of this study.

Previously, EPA concluded that exposure to acequinocyl does not pose a neurotoxicity concern. Acequinocyl is a known Vitamin K antagonist; neurotoxic compounds of similar structure were not identified. While there is potential evidence of neurotoxicity or neuropathology in the 2-generation reproduction study as well as the rat subchronic oral toxicity study, these toxicities are not considered to be primary effects because they were observed at very high doses and in the presence of more severe systemic effects

in both studies. The Agency does not believe that conducting the acute and subchronic neurotoxicity studies will result in a lower POD than that currently used for overall risk assessment; therefore, additional UFs to account for neurotoxicity are not necessary.

ii. There is no evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to acequinocyl. In the 2-generation reproduction study in rats, increased qualitative susceptibility was observed in offspring. However, EPA determined that the degree of concern is low for the noted effects because the effects were observed at the same doses as parental effects, and there is a clear NOAEL established which was used in endpoint selection.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acequinocyl in drinking water. Residential uses are not expected to result in postapplication exposure to infants and children. These assessments will not underestimate the exposure and risks posed by acequinocyl.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acequinocyl from food and water will utilize 55% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acequinocyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acequinocyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acequinocyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,500 for the general U.S. population, and 2,600 for females 13–49 years old. Because EPA's level of concern for acequinocyl is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, acequinocyl is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for acequinocyl.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Morse Methods (Meth-135 and #Meth-133, revision #3), two high-performance liquid chromatography methods with tandem mass-spectroscopy detection (HPLC/MS/MS), are adequate enforcement methodologies available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established MRLs for acequinocyl.

C. Revisions to Petitioned-For Tolerances

Based on analysis of the residue field trial data supporting the petitions, EPA revised the proposed tolerances on berry, low growing, subgroup 13–07G from 0.4 ppm to 0.50 ppm; bean, succulent shelled from 0.15 ppm to 0.30 ppm; cowpea, forage from 9.0 ppm to 6.0 ppm; caneberry subgroup 13–07A from 4.5 ppm to 4.0 ppm; and melon subgroup 9A from 0.06 ppm to 0.15 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures. EPA also determined that the proposed tolerance on cherry at 0.8 ppm should be established as two separate tolerances on cherry, tart at 1.0 ppm; and cherry, sweet at 0.50 ppm because residues were generally higher in tart cherries than in sweet cherries. EPA determined

that a tolerance is necessary on cowpea, hay at 18 ppm. Based on the results of the data supporting the cowpea tolerance, the appropriate tolerance for residues of acequinocyl in or on cowpea, forage is 6.0 ppm. Typically, forage is harvested before the plant has bloomed. Because it was not specified at what plant stage the product can be applied, EPA deemed it necessary to establish a tolerance on cowpea, hay as well. There is typically a 3-fold drying factor between forage and hay; therefore, EPA is establishing a tolerance for residues of acequinocyl in or on cowpea, hay at 18 ppm.

Finally, because cowpea forage and hay are significant feedstuff commodities for livestock, the maximum reasonable dietary burdens of acequinocyl were recalculated for acequinocyl using the Agency's most recent guidance on constructing reasonably balanced livestock diets. The Agency determined that the currently established tolerance level of 0.02 ppm for residues of acequinocyl in the fat of cattle, goat, horse, and sheep are still appropriate. Furthermore, the established 0.02 ppm tolerance level in the liver of cattle, goat, horse, and sheep is appropriate. However, EPA is revising the commodity definition to meat byproducts rather than liver in order to reflect the correct terminology. Therefore, EPA determined that tolerances should be established at 0.02 ppm for the meat byproducts of cattle, goat, horse, and sheep; and the established tolerances in the liver of cattle, goat, horse, and sheep should be removed.

V. Conclusion

Therefore, tolerances are established for residues of acequinocyl, including its metabolites and degradates, in or on the commodities in the table in paragraph (a) of § 180.599. Compliance with the tolerance levels specified in the table of paragraph (a) of § 180.599 is to be determined by measuring only the sum of acequinocyl [2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione] and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, calculated as the stoichiometric equivalent of acequinocyl, in or on soybean, vegetable, succulent at 0.25 ppm; berry, low growing, subgroup 13–07G at 0.50 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.6 ppm; bean, succulent shelled at 0.30 ppm; cowpea, forage at 6.0 ppm; cowpea, hay at 18 ppm; caneberry subgroup 13–07A at 4.0 ppm; melon subgroup 9A at 0.15 ppm; cucumber at 0.15 ppm; cherry, tart at 1.0 ppm; cherry, sweet at 0.50; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. This regulation additionally removes established tolerances in or on grape at 1.6 ppm; strawberry at 0.40 ppm; cattle, liver at 0.02 ppm; goat, liver at 0.02 ppm; horse, liver at 0.02 ppm; and sheep, liver at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 20, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.599, paragraph (a), the table is amended by removing the entries for ''Cattle, liver''; ''Goat, liver''; ''Grape''; ''Horse, liver''; ''Sheep, liver''; and ''Strawberry'' and by alphabetically adding the following commodities to read as follows:

§ 180.599 Acequinocyl; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Bean, succulent shelled	0.30
Berry, low growing, subgroup 13–07G	0.50
Caneberry subgroup 13–07A	4.0
* * * * *	
Cattle, meat byproducts	0.02
Cherry, sweet	0.50
Cherry, tart	1.0
* * * * *	
Cowpea, forage	6.0
Cowpea, hay	18
Cucumber	0.15
* * * * *	
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	1.6
* * * * *	
Goat, meat byproducts	0.02
* * * * *	
Horse, meat byproducts	0.02
Melon subgroup 9A	0.15
* * * * *	
Sheep, meat byproducts	0.02
Soybean, vegetable, succulent	0.25
* * * * *	

* * * * *

[FR Doc. 2012–10346 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[Docket No. EP 702]

National Trails System Act and Railroad Rights-of-Way

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) is changing, clarifying, and updating some of its existing regulations and procedures regarding the use of railroad rights-of-way (ROW) for rail banking and interim trail use under the National Trails System Act (Trails Act). New rules are adopted that require the parties jointly to notify the Board when an interim trail use/rail banking agreement has been reached. The new rules also require parties to ask the Board to vacate a trail condition and issue a replacement trail condition covering the portion of right-of-way subject to the trail use agreement if their trail use agreement covers only part of the right-of-way. In addition, the final rules clarify that a new party who assumes responsibility for a recreational trail must acknowledge that the interim trail use is subject to future reactivation of the railroad line.

DATES: This rule is effective on May 30, 2012.

ADDRESSES: Information or questions regarding this final rule should reference Docket No. EP 702 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Julia Farr at (202) 245–0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 16, 2011, the Board served a notice of proposed rulemaking (NPRM), in which it proposed to change, clarify, and update some of its existing regulations at 49 CFR 1152.29 regarding the use of railroad rights-of-way for rail banking and interim trail use under the Trails Act, 16 U.S.C. 1247(d).[1] The Board asked for comments on a proposed rule requiring the railroad and the trail sponsor jointly to notify the Board when a trail use agreement has been reached and to notify the Board of the exact location of the right-of-way subject to the interim trail use agreement by including a map and milepost marker information. We also proposed a rule to require parties to ask the Board to vacate the Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU) when an interim trail use agreement covers only a portion of the right-of-way and request a replacement CITU/NITU to cover the portion of the right-of-way subject to the trail use agreement. Finally, we proposed a rule to clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to reactivation at any time and suggested other minor modifications to clarify and update the existing regulations at 49 CFR 1152.29. In addition to these specific proposals, we invited comments on what, if any, changes to the Trails Act rules would address concerns about the Board's regulations specifying what a state must do to satisfy the Trails Act's assumption-of-liability requirement, and whether the current methods of providing notice to adjoining landowners could be augmented by additional methods of indirect notice that take advantage of advances in technology without creating an undue burden on rail carriers.

Background. The Trails Act was enacted in 1968 to establish a nationwide system of recreation and scenic trails. *National Trails System Act,* Public Law. 90–543, § 2(b), 82 Stat. 919 (1968) (codified, as amended, at 16 U.S.C. 1241–1251). As originally enacted, it did not contain any special provisions for railroad rights-of-way. In 1983, however, Congress added a rail section, codified at 16 U.S.C. 1247(d), to advance two declared policies: preserving unused railroad rights-of-way for possible future rail use and promoting nature trails. *See Preseault* v. *ICC,* 494 U.S. 1, 17–18 (1990).

The enactment of the ''Rails-to-Trails'' provision followed a history of Congressional concern about the loss of rail corridors as a national transportation resource. *See id.* at 5; *Birt* v. *STB,* 90 F.3d 580, 582–83 (DC Cir. 1996). Under 16 U.S.C. 1247(d), the STB must ''preserve established railroad rights-of-way for future reactivation of rail service'' by prohibiting abandonment where a trail sponsor offers to assume managerial, tax, and legal responsibility for a right-of-way for use in the interim as a trail. *Nat'l Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 699–702 (DC Cir. 1988). The statute provides that, if such interim use is subject to restoration or reconstruction for railroad purposes, the ''interim use shall not be treated, for purposes of any law or rule of law, as an abandonment. * * *'' 16 U.S.C. 1247(d). Instead, the right-of-way is ''rail banked,'' which means that the railroad (or any other approved rail service provider) may reassert control at any time in order to restore service on the line. 49 CFR 1152.29(c)(2), (d)(2); *Birt,* 90 F.3d at 583.[2] If a line is rail banked and designated for trail use, any reversion to adjoining landowners that might otherwise occur under state law upon

[1] The notice of proposed rulemaking was published at 76 FR 8992–95.

[2] The Board's predecessor, the Interstate Commerce Commission (ICC), promulgated final rules implementing the Trails Act in *Rail Abans.—Use of Rights-of-Way as Trails (49 CFR parts 1105 & 1152),* 2 I.C.C. 2d 591 (1986) (*Rail Abandonments*). The agency has modified or clarified its Trails Act rules since that time. *See, e.g., Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903,* 1 S.T.B. 894 (1996); *Policy Statement on Rails to Trails Conversions,* EP 272 (Sub-No. 13B) (ICC served Jan. 29, 1990); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* 4 I.C.C. 2d 152 (1987).

abandonment is postponed. *Preseault,* 494 U.S. at 8; *Birt,* 90 F.3d at 583.

To invoke the Trails Act, a prospective trail sponsor must first file a request with the STB accompanied by a Statement of Willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 CFR 1152.29(a), (d). If the railroad indicates its willingness to negotiate a rail banking/interim trail use agreement, the STB will issue a CITU (in an abandonment application proceeding) or a NITU (in an abandonment exemption proceeding) for the line.[3] 49 CFR 1152.29(c)(1), (d)(1). The CITU/NITU permits parties to negotiate for a 180-day period (which can be extended by Board order) to reach a rail banking interim trail use agreement. *Id.; Preseault,* 494 U.S. at 7 n.5; *Birt,* 90 F.3d at 583.

The terms of any subsequently reached trail use agreement (including compensation issues related to the potential reactivation of rail service) are the product of private negotiations between the railroad and trail sponsor. The Board has never required that trail use agreements, or notice that the parties have even reached an agreement, be submitted to the agency. *Ga. Great S. Div.—Aban. & Discontinuance Exemption—Between Albany & Dawson, in Terrell, Lee, & Dougherty Counties, Ga.,* 6 S.T.B. 902, 907 (2003).

If the parties reach an agreement, the CITU/NITU automatically authorizes rail banking/interim trail use. *Preseault,* 494 U.S. at 7 n.5. Without further action from the STB, the trail sponsor may then assume management of the right-of-way, subject to the right of a railroad to reassert control of the property for restoration or reconstruction of rail service. 49 CFR 1152.29(c)(2), (d)(2); *Birt,* 90 F.3d at 583. If, on the other hand, no rail banking/interim trail use arrangement is reached, then upon expiration of the CITU/NITU 180-day negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to ''exercise its option to fully abandon'' the line by consummating the abandonment, without further action by the agency, *see Birt,* 90 F.3d at 583, provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied. *See* 49 CFR 1152.29(c)(1) and (d)(1); *Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678, slip op. at 3–4 (STB served Apr. 23, 2008); *Puget Sound & Pacific R.R.—Aban. Exemption—in Grays Harbor Cnty., Wash.,* AB 1023 (Sub-No. 1X) (STB served Sept. 13, 2011). During the negotiating period, the railroad is authorized to discontinue service and salvage track materials from the line, as such actions are fully consistent with rail banking/interim trail use. *Preseault,* 494 U.S. at 7 n.5; *Birt,* 90 F.3d at 583, 586.

A rail banking/interim trail use arrangement is subject to being cut off at any time for the reinstitution of rail service. 49 CFR 1152.29(c)(2), (d)(2). A rail-banked line is not abandoned, but rather remains part of the national rail system, albeit temporarily unused for railroad operations. Thus, if and when a railroad wishes to restore rail service on all or part of the property, it may request that the CITU/NITU be vacated to permit reactivation of the line for continued rail service. *See, e.g., Ga. Great S.,* 6 S.T.B. at 906.

Alternatively, rail banking/interim trail use may be terminated by the trail sponsor, pursuant to any applicable terms of the privately negotiated trail use agreement. In that instance, upon notice from the trail sponsor that it is terminating interim trail use, the Board will issue a decision vacating the CITU/NITU and permitting immediate abandonment for the involved portion of the right-of-way, thereby allowing, but not requiring, the railroad to consummate abandonment, subject to compliance with any conditions that must be satisfied. 49 CFR 1152.29(c)(2) and (d)(2); *see* 49 CFR 1152.29(e)(2).

Rail banking/interim trail use authorization also may be transferred from one trail sponsor to another. 49 CFR 1152.29(f). To effect a transfer, the existing and proposed trail sponsors jointly submit to the Board a copy of the governing CITU/NITU, a statement of the proposed trail sponsor's willingness to assume the management, liability, and tax responsibilities for the trail, and the date on which responsibility for the right-of-way is to transfer to the new trail sponsor. *Id.* The Board will then reopen the abandonment proceeding to vacate the existing CITU/NITU and replace it with a new CITU/NITU reflecting the new trail sponsor. *Id.*

The STB's role under the Trails Act is limited and largely ministerial. *Citizens Against Rails-to-Trails* v. *STB,* 267 F.3d 1144, 1151–52 (D.C. Cir. 2001) (*CART*); *Goos* v. *ICC,* 911 F.2d 1283, 1295 (8th Cir. 1990) (agency has ''little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use''). The STB plays no part in the negotiations between trail sponsors and railroads, nor does it analyze, approve, or set the terms of rail banking/interim trail use agreements. *Ga. Great S.,* 6 S.T.B. at 907. The Board does not ''regulate activities over the actual trail, and [has] no involvement in the type, level, or condition of the trail. * * *'' *Id.* Moreover, the Board has no specific fitness or qualification test for trail sponsors; it requires only the Statement of Willingness from the trail sponsor to assume liability and to pay taxes, and the acquiescence of the railroad in rail banking. The Board has the authority to terminate rail banking/interim trail use if it determines that the trail sponsor does not have the ability to continue to meet the management, tax, and liability conditions of interim trail use. *See* 49 CFR 1152.29(a)(3); *Jost* v. *STB,* 194 F.3d 79, 89–90 (D.C. Cir. 1999).

The STB retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of rail banking/interim trail use, and any period during which rail service is restored. It is only upon a railroad's lawful consummation of abandonment authority that the Board's jurisdiction ends. *See* 16 U.S.C. 1247(d); *Preseault,* 494 U.S. at 6. At that point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. *Preseault,* 494 U.S. at 5, 8.

Discussion. Pursuant to the procedural schedule set forth in the NPRM, comments were filed by the Association of American Railroads (AAR), Maryland Transit Administration (MTA), Madison County Transit (MCT), and the Rails-to-Trails Conservancy (RTC). On May 12, 2011, AAR filed a reply to the comments submitted by MTA, MCT, and RTC. The comments are summarized in the discussion below.

Sovereign Immunity and the Statutory Assumption of ''Full Liability'' Requirement. The plain language of 16 U.S.C. 1247(d) requires states and political subdivisions, as well as qualified private organizations, to ''assume full responsibility for management'' of the right-of-way, for ''any legal liability arising out of such transfer or use'' of a right-of-way for trail purposes, and for ''the payment of any and all taxes that may be levied or assessed against such rights-of-way.'' Thus, the trail sponsor must agree to take complete responsibility for whatever legal liability might arise due to interim trail use.

This acceptance-of-liability requirement might seem potentially at odds with the statutory language expressly allowing states and political subdivisions to be trail sponsors, given that such entities often have some form of immunity from legal liability. In

[3] There is no substantive difference between rail banking authorized under a NITU and a CITU.

1986, the ICC resolved this conundrum by adopting a rule allowing an entity with legal immunity to satisfy the statutory requirement by filing a Statement of Willingness agreeing either to ''assume full responsibility'' or to indemnify the railroad against any potential liability. *See* 49 CFR 1152.29(a)(2), (3).

Questions have been raised about the ability of state entity trail sponsors to file the required Statements of Willingness to indemnify the railroad.[4] Thus, in the NPRM we requested comments from the public on what, if any, changes in our Trails Act rules could accommodate concerns about the indemnity requirement in our current rules, given the plain language of the statute.[5]

MTA, RTC, MCT, and AAR filed comments addressing this issue. MTA argues that the Board's current regulations fail to acknowledge state law limitations that may prevent an entity from fully satisfying a claim of liability or indemnity at the time such a claim arises because the state must first obtain legislative authority to obligate funds. MTA proposes a qualified Statement of Willingness that would allow a trail sponsor to express willingness to assume full responsibility for any legal liability arising out of the transfer or use of the ROW, ''to the fullest extent allowed under applicable state law.''

RTC and MCT contend that the indemnification language in the Statement of Willingness is not statutorily required. MCT also notes that, in most instances, the state sponsor purchases all of the railroad's interests in the right-of-way. It claims that, by accepting the deed, the state sponsor, as the new owner, automatically assumes full responsibility for taxes, legal liability, and management. Thus, MCT states, the issue of limitations on state indemnification only arises in the infrequent instances where the railroad retains a fee interest and merely leases or allows use of its property for a trail. RTC further notes that there are ways in which a governmental entity can assume full responsibility without indemnifying railroads. For instance, it asserts that many states have enacted recreational use statutes that protect railroads from liability arising from recreational trail use. RTC and MTA urge the Board to refrain from interfering with the private contractual arrangements between trail sponsors and railroads and suggest that the Board should defer to the parties to negotiate an agreement that adequately protects railroads from any additional liability resulting from interim trail use.

AAR opposes any changes that would permit a state entity to qualify its Statement of Willingness. AAR concurs in the Board's view in the NPRM that the plain language of 16 U.S.C. 1247(d) specifically requires a trail sponsor to ''assume full responsibility'' for any legal liability arising out of the interim trail use—or, as permitted by the Board's regulations, to indemnify the railroad against any potential liability, which is the functional equivalent. Thus, it points out that, even if a qualified Statement of Willingness were to be acceptable to the parties, the arrangement would not comply with the express requirements of the Trails Act. AAR also notes that the Board's current rule is consistent with the legislative history, which makes it clear that one of the policies of the Trails Act is to encourage railroads to enter into Trails Act arrangements by ensuring that they will be protected from potential liability during the period of interim trail use.[6] It disagrees with MCT's argument that, where the Trails Act agreement involves a sale or a donation of the railroad's property, state government entities with immunity can satisfy the hold harmless requirement simply by accepting title. AAR explains that there is still a need to protect an abandoning railroad from potential legal liability and taxes where the transfer of the railroad's interest is by sale or donation. That is because the railroad often may not be the actual owner of the right-of-way, but may be only the holder of a railroad easement that the railroad is permitting the trail sponsor to use as a trail on an interim basis, subject to the railroad's right to reactivate rail service pursuant to the existing railroad easement should circumstances warrant.

We will not adopt MTA's proposed qualification to the Statement of Willingness. The proposal is inconsistent with the plain language of § 1247(d), which specifically requires that parties assume full responsibility for legal liability, taxes, and management of the right-of-way. MTA's proposed language potentially limits the liability of the trail sponsor and thus raises the possibility of a carrier being legally liable for activities related to interim trail use, depending on state law provisions. This would be contrary to the express statutory requirement that every trail sponsor agree to accept ''full responsibility'' for any legal liability arising out of interim trail use. Further, attempting to determine whether the provisions of a given state's laws conform to the requirements of § 1247(d) would be inconsistent with the Board's generally ministerial role under the Trails Act and Congress' intent to adjudicate rail abandonments expeditiously. Accordingly, for the reasons discussed above and in *Chesapeake,* with one exception,[7] we do not here make any changes to the Statement of Willingness rules at 49 CFR 1152.29(a)(2), (3), other than the minor clarifying changes proposed in the NPRM.[8]

Notice of Trail Use Agreement: In the NPRM, we proposed requiring parties to notify the Board when an interim trail use agreement has been reached through a notice jointly filed by the railroad and trail sponsor. The notice would require parties to include a map and specific description, by milepost markers, of the right-of-way covered by the trail use agreement, a certification that the trail use agreement requires the user to fulfill the obligations set forth at 49 CFR 1152.29(a)(2), and a statement as to whether the agreement covers the entire right-of-way under the CITU/NITU or only a portion of that right-of-way.

AAR and MCT support a notification requirement, and RTC does not object to

[4] *See, e.g., Chesapeake R.R.—Certificate of Interim Trail Use and Termination of Modified Rail Certificate,* FD 32609 (STB served Feb. 24, 2011), *pet. for judicial review pending sub nom. Maryland Transit Administration* v. *STB,* No. 11–1412 (4th Cir. filed Apr. 25, 2011) (*Chesapeake*), where we declined to allow qualifications to a Statement of Willingness that would limit the trail sponsor's legal liability.

[5] As we noted in the NPRM, states interested in rail banking also have the option to revise their sovereign immunity laws to accommodate the Trails Act or can designate trail sponsors other than the state itself who would not be limited by the state sovereign immunity laws. Moreover, state entities have the ability to acquire railroad rights-of-way for use as recreational trails outside of the framework of the Trails Act, either through negotiations with the railroad after the line has been abandoned or through their power of eminent domain if it authorizes the state to acquire the necessary property interests on lines that have been abandoned. *See e.g., Consol. Rail Corp.—Aban. Exemption—in Lancaster & Chester Cntys., Pa.,* AB 167 (Sub-No. 1095X), slip op. at 4 (STB served Jan. 19, 2005).

[6] *See* H.R. Rept. 98–28, 98th Cong. 1st Sess. 8–9 (if ''a state, political subdivision, or qualified private organization is prepared to assume full responsibility for the management of such right-of-way, for any legal liability, and for the payment of any and all taxes * * *—that is to save and hold the railroad harmless from all these duties and responsibilities—then the route will not be ordered abandoned'').

[7] In addition to the changes proposed in the NPRM, we are changing the word ''user's'' to ''sponsor's'' in the Statement of Willingness for consistency of terminology.

[8] There are some other prior decisions dealing with non-conforming Statements of Willingness, consisting of conflicting Director decisions, none of which were appealed to the full Board or discussed the liability issue in depth. In *Chesapeake,* we expressly declined to rely on those decisions as precedent because the Statements of Willingness in those cases conflicted with the language of the Trails Act, and we reaffirm that determination here.

it. RTC and MCT, however, request that the Board clarify what constitutes an ''agreement'' and address whether it refers to an agreement in principle (*i.e.,* an agreement to agree), a definitive contract for sale (subject to customary due diligence or financial conditions), or a formal conveyance of a property interest. MCT also opposes the requirement that the notice be jointly filed, stating that the extra level of coordination required for the joint filing is unnecessary.

We will adopt the rule as proposed in the NPRM. We do not find it necessary to define what constitutes an agreement because the involved parties can themselves determine when an agreement has been reached. Requiring parties to file the notice jointly will ensure that parties have reached an agreement and remove any uncertainty as to which party is responsible for filing the notice. Also, the joint-filing requirement is not burdensome. In lieu of a filing under the signatures of both parties, one party may file the notice and indicate that it has been authorized to express the other party's consent.

Modifying/vacating a CITU/NITU: The Board proposed that, if a trail sponsor and rail carrier reach an interim trail use agreement that applies to less of the right-of-way than is covered by the CITU/NITU, the notice of trail use agreement must also include: (1) a request to vacate the CITU/NITU, thus permitting abandonment of the portion of the right-of-way not subject to the interim trail use agreement; and (2) a request for a replacement CITU/NITU that covers only the portion of the right-of-way subject to the interim trail use agreement.

MCT has no objection to this proposed rule. AAR believes that the proposed rule is unnecessarily cumbersome and fails to reflect the fully self-executing nature of the CITU/NITU (that is, if parties are unable to reach a trail use agreement, the CITU/NITU automatically allows for a carrier to exercise its right to abandon the portion of the line not included in the trail use agreement once the negotiation period has expired). Also, AAR is of the view that the new notice of interim trail use agreement requirement would address the Board's need for information on any portion of the ROW that the carrier is authorized (and actually intends) to abandon under the original CITU/NITU.

We will adopt the rule as proposed. As explained in the NPRM, the new rule will promote clarity and ensure that the Board has accurate information about any portions of the right-of-way that will not be rail banked, particularly if a trail use agreement for a portion of the right-of-way is reached before the end of the negotiating period. The new rule will not impose any appreciable burden on the parties.

Providing Additional Notice to Landowners: In the NPRM, we explained that the Board and the ICC previously declined to require abandoning railroads to give actual notice to adjacent landowners following issuance of a CITU/NITU, because providing actual notice would not be practical. NPRM at 7–8.[9] However, we specifically requested comments on whether there are additional means of providing notification of CITU/NITUs to landowners that could be used to augment the current method of newspaper and **Federal Register** notice that could take advantage of advances in technology but do not create an undue burden on railroads.

No commenters proposed changes to the Board's current notice requirements (beyond supporting providing notice of trail use agreements). Moreover, both AAR and MCT noted that in addition to the Board's longstanding notice requirements, all filings and decisions are now posted on the Board's electronic Web site, which improves indirect notice to adjoining landowners of the status of abandonment proposals and interim trail use requests. As a result, we will not make any changes to our rules beyond those proposed in the NPRM.

Other Issues

In the NPRM, the Board clarified that: (1) Parties need not file a request to extend the time for filing the notice of abandonment consummation when legal or regulatory conditions (including a CITU/NITU) remain in effect that bar consummation of abandonment until the conditions have been satisfied or removed; and (2) a substitute trail sponsor must affirmatively acknowledge that the continued interim trail use is subject to possible future restoration of the right-of-way and reactivation of rail service. The Board also proposed to clarify and update certain other language in 49 CFR 1152.29.[10] Specifically, we proposed to modify the language in 49 CFR 1152.29(a)(2), (a)(3), (c)(2), and (d)(2), so that the wording more closely conforms to the language of the Trails Act. We also proposed minor modifications to the Statement of Willingness in 49 CFR 1152.29(a)(3) to describe more accurately the responsibilities of an interim trail sponsor. In addition, we proposed to eliminate the reference to ''NERSA abandonment proceedings'' in 49 CFR 1152.29(c), because NERSA is no longer in effect. We further proposed to modify the language in 49 CFR 1152.29(c)(1) and (d)(1), to clarify that the Board will issue a CITU/NITU for the portion of the right-of-way as to which both parties are willing to negotiate interim trail use, rather than the portion ''to be covered by the agreement,'' as what the agreement may ultimately cover is unknown at that time. Finally, we proposed to modify the language in 49 CFR 1152.29(c)(2) to make clear that a trail sponsor may choose to terminate interim trail use over only a portion of the right-of-way covered by the trail use agreement, while continuing interim trail use over the remaining portion of the right-of-way covered by the trail use agreement. We received no opposition to these clarifications and thus will adopt the clarifications as proposed.

Finally, MCT submitted comments regarding service reactivation over rail banked lines and compensation. However, we specifically stated in the NPRM that we would not address reactivation issues in this proceeding. Accordingly, we will not discuss those comments here.

Applicability of New Rules. As stated in the NPRM, when these rules become effective, they will be applicable both to new CITUs/NITUs and cases where the CITU/NITU negotiating period has not yet expired.

Paperwork Reduction Act. In our NPRM, we described the proposed collection of information, and we noted that we had submitted this information to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3507(d) and OMB regulations at 5 CFR 1320.11.

By notice dated May 6, 2011, OMB assigned to this information collection OMB Control No. 2140–0017. We are today submitting this final rule to OMB for approval. Once approval is received, we will publish a notice in the **Federal Register** to announce the expiration date assigned by OMB. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a

[9] *See Nat'l Ass'n of Reversionary Property Owners* v. *STB,* 158 F.3d 135 (DC Cir. 1998); *Rail Abandonments—Use of Rights-of-way as Trails—Supplemental Trails Act Procedures,* EP 274 (Sub-No. 13) (ICC served July 28, 1994).

[10] In addition to the changes proposed in the NPRM, we are clarifying the language in 49 CFR 1152.29(c)(1), so that ''30 days after the date it is issued,'' will now read ''30 days after the date the CITU is issued,'' and ''180 days after it is issued,'' will now read, ''180 days after the CITU is issued.'' Similarly, we are changing the wording in 49 CFR 1152.29(d)(1), so that ''30 days after the date it is issued,'' will now read ''30 days after the date the NITU is issued,'' and ''180 days after it is issued,'' will now read, ''180 days after the NITU is issued.''

collection of information unless the collection displays a currently valid OMB control number.

In our NPRM, we specifically sought comments on the proposed collection regarding: (1) Whether the particular collection of information described above is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

The comments received in response to our NPRM give us no reason to modify the regulations as proposed. No party has challenged our burden estimates or proposed a way to further minimize the burden on respondents from collection of the information and still provide the required information.[11]

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C 601–612, generally requires a description and analysis of rules that would have significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), we reaffirm our finding in the NPRM that our action in this proceeding will not have a significant impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts.

Decided: April 25, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

[11] In the discussion pertaining to small entities in our NPRM, we explained why the burden of collection would be minimal. No party has disputed our explanation.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.29 by revising paragraphs (a)(2), (a)(3), (c) heading, (c)(1), (c)(2) introductory text, (c)(2)(iii), (d)(1), (d)(2) introductory text, and (d)(2)(iii) and by adding paragraphs (f)(1)(iii) and (h) to read as follows:

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) * * *

(2) A statement indicating the trail sponsor's willingness to assume full responsibility for:

(i) Managing the right-of-way;

(ii) Any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and

(iii) The payment of any and all taxes that may be levied or assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by _____ (Railroad) and operated by _____ (Railroad), _____ (Interim Trail Sponsor) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way. The property, known as _____ (Name of Branch Line), extends from railroad milepost _____ near _____ (Station Name), to railroad milepost _____, near _____ (Station name), a distance of _____ miles in [County(ies), (State(s)]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB _____ (Sub-No. _____). A map of the property depicting the right-of-way is attached.

_____ (Interim Trail Sponsor) acknowledges that use of the right-of-way is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

* * * * *

(c) *Regular abandonment proceedings.* (1) If continued rail service does not occur pursuant to 49 U.S.C. 10904 and Sec. 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail sponsor for that portion of the right-of-way as to which both parties are willing to negotiate. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date the CITU is issued; and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after the CITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The CITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the CITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the CITU and request that it be vacated on a specified date. If a party requests that the CITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement CITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the

abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

* * * * *

(iii) The current trail sponsor.

* * * * *

(d) * * *

(1) If continued rail service does not occur under 49 U.S.C. 10904 and 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail sponsor for the portion of the right-of-way as to which both parties are willing to negotiate. The NITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date the NITU is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after the NITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The NITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the NITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the NITU and request that it be vacated on a specific date. If a party requests that the NITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement NITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

* * * * *

(iii) The current trail sponsor.

* * * * *

(f) (1) * * *

(iii) An acknowledgement that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

* * * * *

(h) When the parties negotiating for rail banking/interim trail use reach an agreement, the trail sponsor and railroad shall jointly notify the Board within 10 days that the agreement has been reached. The notice shall include a map depicting, and an accurate description of, the involved right-of-way or portion thereof (including mileposts) that is subject to the parties' interim trail use agreement and a certification that the interim trail use agreement includes provisions requiring the sponsor to fulfill the responsibilities described in paragraph (a)(2) of this section. Additionally, if the interim trail use agreement establishes interim trail use over less of the right-of-way than is covered by the CITU or NITU, the notice shall also include a request that the Board vacate the CITU or NITU and issue a replacement CITU/NITU for only the portion of the right-of-way covered by the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU or NITU, issue an appropriate replacement CITU or NITU for only the portion of the right-of-way covered by the interim trail use agreement, and issue a decision permitting immediate abandonment of the portion of the right-of-way not subject to the interim trail use agreement. Copies of the decision will be sent to:

(1) The rail carrier that sought abandonment authorization;

(2) The owner of the right-of-way; and

(3) The current trail sponsor.

[FR Doc. 2012–10467 Filed 4–30–12; 11:15 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120424023–1023–01]

RIN 0648–XA921

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2012 Management Measures

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

ACTION: Final rule; request for comments; notice of availability of an environmental assessment.

SUMMARY: Through this final rule NMFS establishes fishery management measures for the 2012 ocean salmon fisheries off Washington, Oregon, and California and the 2013 salmon seasons opening earlier than May 1, 2013. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 NM) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide for inside fisheries (fisheries occurring in state internal waters). This document also announces the availability of an environmental assessment (EA) analyzing the environmental impacts of implementing the 2012 ocean salmon management measures.

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 1, 2012, until the effective date of the 2013 management measures, as published in the **Federal Register**.

Comments must be received by May 17, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0079, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0079 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* 206–526–6736 Attn: Peggy Mundy, or 562–980–4047 Attn: Heidi Taylor.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are

received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, and are posted on its Web site (*www.pcouncil.org*).

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses listed above and to Office of Management and Budget (OMB), by email at *OIRA.Submission@omb.eop.gov* or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323, or Heidi Taylor at 562–980–4039.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

The management measures for the 2012 and pre-May 2013 ocean salmon fisheries that are implemented in this final rule were recommended by the Pacific Fishery Management Council (Council) at its April 1 to 6, 2012, meeting.

Schedule Used To Establish 2012 Management Measures

The Council announced its annual preseason management process for the 2012 ocean salmon fisheries in the **Federal Register** on December 20, 2011 (76 FR 78904), and on the Council's Web site at (*www.pcouncil.org*). This notice announced the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings were published in the **Federal Register** and posted on the Council's Web site prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared four reports for the Council, its advisors, and the public. All four reports were posted on the Council's Web site and otherwise made available to the Council, its advisors, and the public upon their completion. The first of the reports, ''Review of 2011 Ocean Salmon Fisheries,'' was prepared in February when the scientific information necessary for crafting management measures for the 2012 and pre-May 2013 ocean salmon fishery first became available. The first report summarizes biological and socio-economic data for the 2011 ocean salmon fisheries and assesses how well the Council's 2011 management objectives were met. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2012 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2012 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2011 regulations and regulatory procedures were applied to the projected 2012 stock abundances. Completing the PRE I is the initial step in evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met in Sacramento, CA from March 2 to 7, 2012, to develop 2012 management alternatives to propose to the public. The Council proposed three alternatives for commercial and recreational fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to protect weak stocks of coho and Chinook salmon, and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2012 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2012 management alternatives.

The Council sponsored and held public hearings to receive testimony on the proposed alternatives on March 26, 2012, in Westport, WA and Coos Bay, OR; and on March 27, 2012, in Eureka, CA. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office.

The Council met from April 1 to 6, 2012, in Seattle, WA to adopt its final 2012 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2012 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter and also posted them on the Council Web site (*www.pcouncil.org*).

National Environmental Policy Act

PRE I, PRE II, and PRE III collectively comprise the Environmental Assessment (EA) for this action, and analyze environmental and socioeconomic effects under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The EA and its related Finding of No Significant Impact (FONSI) are posted on the NMFS Northwest Region Web site (*www.nwr.noaa.gov*).

Implementation of Amendment 16

The Council adopted Amendment 16 to the Salmon FMP in 2011 (76 FR 81852, December 29, 2011). Amendment 16 brought the Salmon FMP into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as amended in 2007, and the corresponding revised National Standard 1 Guidelines (NS1Gs) to end and prevent overfishing. As modified by Amendment 16, the FMP identifies stocks that are in the fishery, including

stock complexes and indicator stocks for those complexes, establishes status determination criteria (SDC), and establishes formulas for specifying overfishing limits (OFLs), acceptable biological catch (ABC), and annual catch limits (ACLs). Amendment 16 also added to the FMP ''de minimis'' fishing provisions that allow for low levels of fishing impacts on specified stocks that are at low levels of abundance. Management measures for 2012 are the first developed under Amendment 16.

In 2012, NMFS set annual catch limits (ACLs) for the first time for two stocks: Sacramento River Fall Chinook (SRFC) and Klamath River Fall Chinook (KRFC). These stocks are indicator stocks for the Central Valley Fall Chinook complex and the Southern Oregon/Northern California Chinook complex, respectively. The Far North Migrating Coastal Chinook complex includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon, Oregon and other fisheries that occur north of the U.S./Canada Border. No ACL is set for these stocks because they are managed according to the Pacific Salmon Treaty with Canada (PST). Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced. Coho stocks are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for SRFC and KRFC are escapement based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds to maintain healthy stocks. They are set based on the annual abundance projection and a fishing rate reduced to account for scientific uncertainty. The abundance forecasts for 2012 are described in more detail below in the ''Resource Status'' section of this final rule. For SRFC in 2012, the overfishing limit (OFL) is S_{OFL} = 819,400 (projected abundance) multiplied by F_{MSY} (.78) or 180,260 returning spawners. ABC is 819,400 multiplied by F_{ABC} (F_{MSY} reduced for scientific uncertainty = .70) or 245,820. ACL is set equal to ABC. For KRFC in 2012, OFL is 269,649 (abundance projection) multiplied by F_{MSY} (.71), or 78,198 returning spawners. ABC is 269,649 multiplied by F_{ABC} (F_{MSY} reduced for scientific uncertainty = .68) or 86,200 returning spawners. As with SRFC, the ACL for KRFC is its ABC.

As explained in more detail below under ''Resource Status,'' fisheries south of Cape Falcon, which are the fisheries that impact SRFC and KRFC, are constrained by impact limits necessary to protect ESA-listed salmon stocks, including California Coastal Chinook and Sacramento River Winter Chinook. For 2012, the large KRFC and SRFC abundance projections, in combination with the constraints for ESA-listed stocks, are expected to result in escapements for SRFC and KRFC that exceed ACL escapement levels.

Rebuilding Plan for Sacramento River Fall Chinook

On March 2, 2010, NOAA Fisheries notified the Council that SRFC was overfished, having failed to meet its conservation objective for three consecutive years (2007–2009). In response, the Council was required to develop a rebuilding plan within two years (75 FR 28564, May 21, 2010). In December 2011, NOAA Fisheries approved Amendment 16 to the FMP, which established new status determination criteria, consistent with National Standard 1 Guidelines. Under the new criteria, SRFC are determined to be overfished when the 3-year geometric mean spawning escapement falls below the minimum stock size threshold (MSST) of 91,500 adult natural and hatchery spawners, and the stock is determined to be subject to overfishing if the fishing mortality rate exceeds the maximum fishing mortality threshold (MFMT) of 78 percent. Under the criteria of Amendment 16, SRFC continue to meet the definition of overfished. Therefore, the STT presented and the Council approved rebuilding alternatives for public review at its March 2012 meeting. The Council adopted its rebuilding plan at its April 2012 meeting.

In the amended FMP, the default criterion for rebuilt status is when the 3-year geometric mean spawning escapement exceeds maximum sustainable yield spawning escapement (S_{MSY}). For SRFC, S_{MSY} is defined as 122,000 adult natural and hatchery spawners. On April 5, 2012, based on the recommendation of the STT, the Council adopted the FMP default rebuilt criterion for SRFC, whereby the stock is rebuilt when the 3-year geometric mean spawning escapement exceeds S_{MSY}. As this rebuilt criterion is based on S_{MSY}, the escapement level that is intended to maximize yield on a continuing basis, the STT did not recommend modifying the default rebuilt criterion.

Given the strong abundance projections for SRFC in 2012, and the resulting likelihood that SRFC will be rebuilt in 2012, the STT recommended adopting the existing FMP control rule for managing SRFC until the stock is rebuilt. The existing control rule sets a maximum exploitation rate of 70 percent at high abundance, an annual management target of 122,000 adult natural and hatchery spawners at moderate abundance, and de minimis fishing rates of no more than 25 percent at low abundance (see FMP section 3.3.6 for specifics of the control rule). The STT presented the Council with two additional rebuilding alternatives: (1) A minimum escapement target of 180,000 adult spawners, the upper end of the conservation objective goal range, and the existing maximum fishing rate of .70; or (2) a maximum fishing rate of .65 and the existing minimum escapement target of 122,000. These alternatives, in addition to the STT's recommended rebuilding plan, were analyzed by the STT, and this analysis is included in the EA.

The 2012 SRFC abundance forecast is 819,400 adults. Given this large abundance, the STT determined that SRFC are expected to rebuild in 2012 regardless of which alternative rebuilding plan is used. Abundance of 819,400 reduced by the F_{ACL} of 70 percent should result in 245,820 adult natural and hatchery spawners. With the anticipated escapement in 2012 under the STT's recommended plan, and given the spawning escapements in 2010 and 2011, the 3-year geometric mean spawning escapement would be 151,903. Based on the above-described rebuilt criterion, the stock would then be rebuilt by the end of 2012. The alternative rebuilding strategies would have resulted in higher escapement projections for 2012, but all of the strategies resulted in the same time to rebuild—one year. As discussed in more detail below, conservation constraints for other stocks will limit Chinook harvests beyond that required under the rebuilding plan, resulting in an anticipated escapement of 455,800 adult hatchery and natural spawners. The Scientific and Statistical Committee (SSC) agreed with the recommendations of the STT, and the Council adopted the FMP default control rule for managing SRFC as the rebuilding plan. In consideration of the 2012 abundance forecast, the Council also adopted a rebuilding period of one year (the shortest time possible given that status determinations are made annually for salmon). This rebuilding plan is consistent with the mandate in the MSA that a rebuilding plan for an overfished fishery ''specify a time period for rebuilding the fishery that shall * * * be as short as possible'' (16 U.S.C. 1854(e)(4)(A)). The management measures recommended by the Council are consistent with this rebuilding plan.

Resource Status

Fisheries south of Cape Falcon, OR are limited in 2012 primarily by the

status of Sacramento River winter Chinook salmon and California Coastal Chinook salmon, which are both evolutionarily significant units (ESUs) listed under the Endangered Species Act (ESA). Fisheries north of Cape Falcon are limited in 2012 primarily by Lower Columbia River Chinook salmon and Lower Columbia River coho salmon, stocks which are also listed under the ESA, and by Thompson River coho from Canada. At the start of the preseason planning process for the 2012 management season, NMFS provided a letter to the Council, dated February 27, 2012, summarizing its ESA consultation standards for listed species as required by the Salmon FMP. The Council's recommended management measures comply with NMFS ESA consultation standards and guidance for those listed salmon species that may be affected by Council fisheries. In many cases, the recommended measures are more restrictive than NMFS's ESA requirements.

The SRFC stock is the major contributing stock to ocean Chinook salmon fisheries off Oregon and California and the indicator stock for the Central Valley Fall Chinook stock complex. The STT uses the Sacramento Index (SI) to forecast abundance of SRFC. The SI forecast has exceeded the postseason estimate of SRFC abundance for three consecutive years (2009–2011). Each of these years has been characterized by the most recent jack [1] escapement estimate (year t–1) exceeding the jack escapement estimate from the previous year (year t–2) by a large margin. This is the case again for the 2012 SI forecast, where the 2011 jack escapement estimate is the largest on record (85,719 jacks).

For a variety of potential reasons, including the increasing trend in jack escapement, the relationship between jack escapement and the SI for years 2009–2011 exhibits a markedly different pattern than what existed for years prior to 2009. To address this pattern and the related preseason overestimation of SRFC abundance in recent years, the STT determined it was appropriate to limit the data set used in calculating the 2012 SI to data from 2009–2011, rather than the full 1990–2011 data set. The SSC reviewed the STT's recommendation and concurred. The adopted 2012 SI forecast, based on data from 2009–2011, is 819,400 (a much more conservative projection than the SI forecast of 2.2 million that would result from using the full 1990–2011 data set). The Council received comments from the San Joaquin Tributaries Authority (SJTA) concerning the SRFC forecast and potential for bias in the SI. Based on the STT's modifications to applying the model in 2012, explained above, the Council followed the recommendations of the STT and SSC and adopted the SRFC abundance forecast.

The SJTA also commented that the alternatives for the management measures were developed without considering Federal and California State laws mandating the doubling of natural production of salmon in the Central Valley. However, the Central Valley Improvement Act (CVPIA) does not tie achievement of the doubling goal to annual abundance of SRFC; rather, it is tied to average Chinook production from 1967–1991. The CVPIA does not purport to address fishing impacts on Chinook, but states its purposes are to protect, restore, and enhance fish habitat in the Central Valley and to address impacts of the Central Valley project on fish and associated habitats. The CVPIA does not call for any measures addressing fishery impacts. In fact, the SJTA's March 26, 2012 letter to the Council indicates that the United State's Fish and Wildlife Service measures natural production based upon estimates that include ocean harvest. In short, the CVPIA does not appear to apply to managing ocean fisheries, and is not considered ''other applicable law'' under the MSA. California Fish and Game Code section 6902 likewise does not address ocean fishery impacts.

In 2012, NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of Council area fisheries on the Sacramento River winter Chinook salmon ESU. NMFS completed a Biological Opinion that includes a reasonable and prudent alternative (RPA) to avoid jeopardizing the continued existence of this ESU. The RPA includes management-area-specific fishing season openings and closures, and minimum size limits for both commercial and recreational fisheries, as developed in the 2010 Biological Opinion. The 2012 Biological Opinion adds a second component based on a new abundance-based framework, which will supplement the above management restrictions with maximum allowable impact rates that will apply when abundance is low. The Council met the requirements of this new RPA in their recommended 2012 management measures.

NMFS last consulted under ESA section 7 regarding the effects of Council area fisheries on California Coastal Chinook salmon in 2005. Klamath River fall Chinook are used as a surrogate to set limits on ocean harvest impacts. The Biological Opinion requires that management measures result in an age-4 ocean harvest rate of no greater than 16%. The Council's recommended 2012 management measures meet this objective.

In 2012, NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of Council area fisheries on the Lower Columbia River (LCR) Chinook salmon ESU. NMFS completed a Biological Opinion that applies to fisheries beginning in 2012, which concludes that the proposed 2012 fisheries, if managed consistent with the terms of the Biological Opinion, are not likely to jeopardize the continued existence of LCR Chinook. The LCR Chinook salmon ESU is comprised of a spring component, a ''far-north'' migrating bright component, and a component of north migrating tules. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon, Oregon. The total exploitation rate on tule populations has been reduced from 49 percent in 2006, to 42 percent in 2007, 41 percent in 2008, 38 percent in 2009 and 2010, and then to 37 percent in 2011. Under the 2012 Biological Opinion, NMFS will use an abundance based management (ABM) framework for the first time to set annual exploitation rates for LCR tule Chinook salmon below Bonneville Dam. This framework was developed by an ad hoc Tule Chinook Work Group composed of state, tribal, Council, and NMFS scientists. Applying the ABM framework to the 2012 preseason abundance forecast, the LCR tule exploitation rate is limited to a maximum of 0.41. The Council's recommended 2012 management measures meet this objective .

In 2008, NMFS conducted an ESA section 7 consultation and issued a biological opinion regarding the effects of Council fisheries and fisheries in the Columbia River on LCR coho. The states of Oregon and Washington use a harvest matrix for LCR coho that Oregon developed after the species was listed under Oregon's State ESA. Under the matrix the allowable harvest in a given year depends on indicators of marine

[1] Jacks are male salmon that return to fresh water one to two years younger than ''mature'' male salmon. Jacks are reproductive despite their immature size and appearance, but are not generally included in enumeration of adult spawning escapement.

survival and brood year escapement. The matrix has both ocean and in-river components which can be combined to define a total exploitation rate limit for all ocean and in-river fisheries. Generally speaking, NMFS supports using management planning tools that allow harvest to vary depending on the year-specific circumstances. Conceptually, we think Oregon's approach is a good one. However, NMFS has taken a more conservative approach for LCR coho in recent years because of unresolved issues related to applying the matrix. NMFS will continue to apply the matrix as we have in the past, by limiting the total harvest to that allowed in the portion of the matrix that applies to ocean fisheries. As a consequence, ocean salmon fisheries under the Council's jurisdiction in 2012, and commercial and recreational salmon fisheries in the mainstem Columbia River, including select area fisheries (e.g., Youngs Bay), must be managed subject to a total exploitation rate limit on LCR coho not to exceed 15 percent. The recommended management measures that would affect LCR coho are consistent with this requirement.

The ESA listing status of Oregon Coast (OC) coho has changed over the years. On June 20, 2011, NMFS again listed OC coho as threatened under the ESA (76 FR 35755). Regardless of their listing status, the Council has managed OC coho consistent with the terms of Amendment 13 of the Salmon FMP as modified by the expert advice provided by the 2000 ad hoc Work Group appointed by the Council. NMFS approved the management provisions for OC coho through its section 7 consultation on Amendment 13 in 1999, and has since supported use of the expert advice provided by the Council's ad hoc Work Group. For the 2012 season, the applicable spawner status is in the ''high'' category for three of the four sub-aggregate stocks and ''low'' for the southern sub-aggregate. The marine survival index is in the ''low'' category. Under these circumstances, the Work Group report requires that the exploitation rate be limited to no more than 15 percent. The recommended management measures that would affect OC coho are consistent with this requirement.

Interior Fraser (Thompson River) coho, a Canadian stock, continues to be depressed, remaining in the ''low'' status category under the Pacific Salmon Treaty and, along with LCR coho, is the coho stock most limiting the 2012 ocean fisheries north of Cape Falcon. The recommended management measures for 2012 satisfy the maximum 10.0 percent total U.S. exploitation rate called for by the Pacific Salmon Treaty agreements and the Salmon FMP.

Management Measures for 2012 Fisheries

The Council-recommended ocean harvest levels and management measures for the 2012 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries, while allowing the maximum harvest of natural and hatchery runs that are surplus to the needs of inside fisheries and spawning escapement. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. Accordingly, NMFS has adopted them.

North of Cape Falcon, the 2012 management measures for non-Indian commercial troll and recreational fisheries have a significantly higher Chinook salmon quota and a similar coho quota relative to the 2011 season. Chinook abundance in this area is generally improved in 2012 relative to 2011 and conservation constraints are reduced. The exploitation rate limit for ESA-listed Lower Columbia River (LCR) tule Chinook is 41 percent in 2012, compared to 37 percent in 2011, due to adoption of a new ESA consultation standard. Harvest impacts on ESA-listed LCR tule Chinook salmon in Alaskan and Canadian fisheries are also reduced relative to 2011. The North of Falcon fisheries are also managed to protect threatened Lower Columbia River coho, threatened Oregon Coastal Natural coho, and coho salmon from the Thompson River in Canada. Washington coastal and Puget Sound Chinook generally migrate to the far north and are not significantly affected by ocean salmon harvests from Cape Falcon, OR, to the U.S.-Canada border. Nevertheless, ocean fisheries in combination with fisheries inside Puget Sound are restricted in order to meet ESA related conservation objectives for Puget Sound Chinook. North of Cape Alava, WA, the Council recommended a provision prohibiting retention of chum salmon in the salmon fisheries during August and September to protect ESA listed Hood Canal summer chum. The Council has recommended such a prohibition since 2002 (67 FR 30616, May 7, 2002).

South of Cape Falcon, the commercial salmon fishery will have area specific openings throughout the season for all salmon except coho. As in 2011, there will not be a commercial salmon fishery for coho south of Cape Falcon in 2012. The Council also included provisions for non-retention sampling for salmon genetic stock identification (GSI) research during closed periods under a scientific research permit to be issued by NMFS. Recreational fisheries south of Cape Falcon will be directed primarily at Chinook salmon, with opportunity for coho limited to the area between Cape Falcon and the Oregon/California Border. Recreational fisheries south of Cape Falcon will have area specific openings throughout the season. As noted above, the projected abundance of Sacramento River Fall Chinook is significantly higher in 2012 than in 2011. Under the management measures in this final rule, and including anticipated in-river fishery impacts, spawning escapement for SRFC is projected at 455,800. Projected abundance for KRFC is also significantly higher in 2012 than in 2011. Under the management measures in this rule, and including anticipated in-river fishery impacts, spawning escapement for KRFC is projected at 86,288.

The treaty-Indian commercial troll fishery quota for 2012 is 55,000 Chinook salmon in ocean management areas and Washington State Statistical Area 4B combined. This quota is higher than the 41,000 Chinook salmon quota in 2011, for the same reasons discussed above for the non-tribal fishery. The treaty-Indian commercial troll fisheries include a Chinook-directed fishery in May and June with a quota of 27,500 Chinook salmon, and an all-salmon season beginning July 1 with a 27,500 Chinook salmon sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B, for the July–September period is 47,500 coho, somewhat increased over the 42,000 coho quota in 2011.

Management Measures for 2013 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons beginning before May 1 of the same year. Therefore, this action also establishes the 2013 fishing seasons that open earlier than May 1. The Council recommended, and NMFS concurs, that the commercial season off Oregon from Cape Falcon to the Oregon/California border, the commercial season off

California from Horse Mountain to Point Arena, the recreational season off Oregon from Cape Falcon to Humbug Mountain, and the recreational season off California from Horse Mountain to the U.S./Mexico border will open in 2013 as indicated in the Season Description section of this document. At the March 2013 meeting, the Council may consider inseason recommendations to adjust the commercial and recreational seasons prior to May 1 in the areas off Oregon and California.

Inseason Actions

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2012 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council and approved and implemented here for 2012 and, as specified, for 2013.

Section 1. Commercial Management Measures for 2012 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

—North of Cape Falcon, OR

—U.S./Canada Border to Cape Falcon

May 1 through earlier of June 30 or 31,700 Chinook quota. Seven days per week (C.1). All salmon except coho (C.7). Chinook minimum size limit of 28 inches total length (B). Cape Flattery, Mandatory Yelloweye Rockfish Conservation Area, and Columbia Control Zones closed (C.5). See gear restrictions and definitions (C.2, C.3). An inseason conference call will occur when it is projected that 24,975 Chinook have been landed to consider modifying the open period to five days per week and adding landing and possession limits to ensure the guideline is not exceeded (C.8.f).

July 1 through earlier of September 17 or 15,800 preseason Chinook guideline (C.8) or a 13,280 marked coho quota (C.8). July 1–4, then Friday through Tuesday July 6–August 21 with a landing and possession limit of 40 Chinook and 35 coho per vessel per open period; Friday through Monday August 24–September 17, with a landing and possession limit of 20 Chinook and 40 coho per vessel per open period (C.1, C.8.f). No earlier than September 1, if at least 5,000 marked coho remain on the quota, inseason action may be considered to allow non-selective coho retention (C.8.e). All salmon except no chum salmon retention north of Cape Alava, Washington in August and September (C.7). All coho must be marked except as noted above (C.8.e). Chinook minimum size limit of 28 inches total length; coho minimum size limit of 16 inches total length (B). See gear restrictions and definitions (C.2, C.3). Mandatory Yelloweye Rockfish Conservation Area, Cape Flattery and Columbia Control Zones, and beginning August 1, Grays Harbor Control Zone Closed (C.5).

Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify Oregon Department of Fish and Wildlife (ODFW) within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts.

—South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

April 1 through August 29;

September 5 through October 31. (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Landing and possession limit of 100 Chinook per vessel per calendar week in September and October. Chinook minimum size limit of 28 inches total length (B). All vessels fishing in the area must land their fish in the State of Oregon. See gear restrictions and definitions (C.2, C.3) and Oregon State regulations for a description of special regulations at the mouth of Tillamook Bay.

In 2013, the season will open March 15 for all salmon except coho with a 28-inch minimum Chinook size limit and the same gear restrictions as in 2012. This opening could be modified following Council review at its March 2013 meeting.

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

April 1 through May 31;

June 1 through earlier of June 30, or a 2,000 Chinook quota;

July 1 through earlier of July 31, or a 1,500 Chinook quota;

August 1 through earlier of August 29, or a 1,000 Chinook quota;

September 5 through earlier of September 30, or a 1,000 Chinook quota (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Chinook minimum size limit of 28 inches total length (B). June 1 through September 30, landing and possession limit of 30 Chinook per vessel per day (C.8.f). Any remaining portion of the June and/or July Chinook quotas may be transferred inseason on an impact neutral basis to the next open quota period (no transfer to September quota allowed) (C.8.b). Prior to June 1, all fish caught in this area must be landed and delivered in the State of Oregon. Beginning June 1, all vessels fishing in this area must land and deliver all fish within this area or Port Orford, within 24 hours of any closure in this fishery, and prior to fishing outside of this area (C.1, C.6). Oregon State regulations require all fishers landing salmon from any quota managed season within this area to notify ODFW within 1 hour of delivery or prior to transport away from the port of landing by either calling (541) 867–0300 ext. 252 or sending notification via email to *KMZOR.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

See gear restrictions and definitions (C.2, C.3).

June 1 through October 31

When otherwise closed to Chinook retention, collection of 200 genetic stock identification samples per week will be permitted (C.4). All salmon must be released in good condition after collection of biological samples.

In 2013, the season will open March 15 for all salmon except coho, with a 28-inch minimum Chinook size limit and the same gear restrictions as in 2012. This opening may be modified following Council review at its March 2013 meeting.

—Oregon/California Border to Humboldt South Jetty (California KMZ)

May 1 through September 14.

Closed except for sufficient impacts to collect 200 genetic stock identification samples per week (C.4). All salmon must be released in good condition after collection of biological samples.

September 15 through earlier of September 30, or 6,000 Chinook quota (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Chinook minimum size limit of 27 inches total length (B). Landing and possession limit of 25 Chinook per vessel per day (C.8.f). All fish caught in this area must be landed within the area and within 24 hours of any closure of the fishery and prior to fishing outside of this area. See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed (C.5.e). See California State regulations for additional closures adjacent to the Smith and Klamath Rivers. When the fishery is closed between the Oregon/California Border and Humbug Mountain and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival (C.6).

—Humboldt South Jetty to Horse Mountain

May 1 through September 30.

Closed except for collection of the genetic stock identification samples noted above, see California KMZ (C.4). All salmon must be released in good condition after collection of biological samples.

—Horse Mountain to Point Arena (Fort Bragg)

May 1 through July 10.

Closed except for sufficient impacts to collect 200 genetic stock identification samples per week (C.4). All salmon must be released in good condition after collection of biological samples.

July 11 through August 29;

September 1 through 30 (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Chinook 27-inch minimum size limit (B). All fish must be landed in California and offloaded within 24 hours of the August 29 closure. During September, all fish caught in the area must be landed north of Point Arena; all fish caught in the area when the California KMZ fishery is open must be landed between Horse Mountain and Point Arena (C.1). See gear restrictions and definitions (C.2, C.3).

In 2013, the season will open April 16 through 30 for all salmon except coho, with a 27-inch minimum Chinook size limit and the same gear restrictions as in 2012. All fish caught in the area must be landed in the area. This opening could be modified following Council review at its March 2013 meeting.

—Point Arena to Pigeon Point (San Francisco)

May 1 through June 4;

June 27 through August 29;

September 1 through 30 (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Chinook minimum size limit of 27 inches total length prior to September 1, 26 inches thereafter (B). All fish must be landed in California and offloaded within 24 hours of the August 29 closure. During September, all fish caught in the area must be landed south of Point Arena. See gear restrictions and definitions (C.2, C.3).

June 5 through 26.

Closed except for sufficient impacts to collect 400 genetic stock identification samples per week (C.4). All salmon must be released in good condition after collection of biological samples.

• Point Reyes to Point. San Pedro (Fall Area Target Zone)

October 1 through 12.

Monday through Friday. All salmon except coho (C.7). Chinook minimum size limit 26 inches total length (B). All vessels fishing in this area must land and deliver all fish between Point Arena and Pigeon Point (C.1). See gear restrictions and definitions (C.2, C.3).

—Pigeon Point to Point Sur (Monterey)

Same as Point Arena to Pigeon Point, except June 5 through 26: closed except for sufficient impacts to collect 200 genetic stock identification samples per week (C.4). All salmon must be released in good condition after collection of biological samples.

—Point Sur to U.S./Mexico Border (Monterey)

May 1 through August 29;

September 1 through 30 (C.9).

Seven days per week (C.1). All salmon except coho (C.7). Chinook minimum size limit of 27 inches total length prior to September 1, 26 inches thereafter (B). All fish must be landed in California and offloaded within 24 hours of the August 29 closure; all fish caught in the area June 5 through 26 must be landed south of Point San Pedro; during September, all fish caught in the area must be landed south of Point Arena. See gear restrictions and definitions (C.2, C.3).

California State regulations require that all salmon be made available to a California Department of Fish and Game (CDFG) representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFG, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Inches) (See C.1)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	28.0	21.5	16.0	12.0	None.
Cape Falcon to OR/CA Border	28.0	21.5			None.
OR/CA Border to Humboldt South Jetty	27.0	20.5			None.
Horse Mt. to Point Arena	27.0	20.5			None.
Point Arena to U.S./Mexico Border					
Prior to Sept. 1	27.0	20.5			None.

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
Sept. 1 to Oct. 12	26.0	19.5	.....	.....	None.

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.6 cm, 26.0 in = 66.0 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 19.5 in = 49.5 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open. Salmon may be landed in an area that has been closed more than 96 hours only if the salmon meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may be landed in an area that has been closed less than 96 hours only if the salmon meet the minimum size, landing/possession limit, or other special requirements for the areas in which they were caught and landed.

States may require fish landing/receiving tickets to be kept on board the vessel for 90 days after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. *Cape Falcon, Oregon, to the OR/CA border:* No more than 4 spreads are allowed per line.

c. *OR/CA border to U.S./Mexico border:* No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear defined: One or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread defined: A single leader connected to an individual lure or bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement (OLE), U.S. Coast Guard (USCG), CDFG, and Oregon State Patrol (OSP) at least 24 hours prior to sampling and provide the following information: the vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23′00″ N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N. lat.) and east of 125°05′00″ W. long.

b. Mandatory Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from 48°00.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°16.50′ W. long. to 48°00.00′ N. lat.; 125°16.50′ W. long. and connecting back to 48°00.00′ N. lat.; 125°14.00′ W. long.

c. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°36′00″ N. lat., 124°10′51″ W. long.).

d. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and on the south, by 41°26′48″ N. lat. (approximately six nautical miles south of the Klamath River mouth).

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the U.S. Coast Guard, vessels fishing south of the Oregon/California border must notify CDFG within one hour of leaving the management area by calling 800–889–8346 and providing the same

information as reported to the U.S. Coast Guard. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825). ODFW and Washington Department of Fish and Wildlife (WDFW) will monitor landings. If the landings are projected to exceed the 30,568 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Beginning May 1, IPHC license holders may possess or land no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 20 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

A ''C-shaped'' yelloweye rockfish conservation area (YRCA) is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
and connecting back to 48°18′ N. lat.; 125°18′ W. long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline, if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook remaining from the June and/or July non-Indian commercial troll quotas in the Oregon KMZ may be transferred to the Chinook quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer fish between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding the preseason impact expectations on any stocks.

d. At the March 2013 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2012).

e. If retention of unmarked coho is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected mortality of critical stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters. Check state regulations for details.

C.10. For the purposes of CDFG Code, Section 8232.5, the definition of the Klamath Management Zone (KMZ) for the ocean salmon season is the area from Humbug Mountain, Oregon, to Horse Mountain, California.

Section 2. Recreational Management Measures for 2012 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada Border to Queets River

June 16 through earlier of June 30 or a coastwide marked Chinook quota of 8,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point

June 9 through earlier of June 23 or a coastwide marked Chinook quota of 8,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon

June 9 through earlier of June 22 or a coastwide marked Chinook quota of 8,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—U.S./Canada Border to Cape Alava (Neah Bay)

July 1 through earlier of September 23 or 7,250 marked coho subarea quota with a subarea guideline of 4,700 Chinook (C.5). Seven days per week. All salmon except no chum beginning August 1; two fish per day. All coho must be marked (C.1). Beginning August 1, Chinook non-retention east of the Bonilla-Tatoosh line (C.4.a) during

Council managed ocean fishery. See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Cape Alava to Queets River (La Push Subarea)

July 1 through earlier of September 23 or 1,760 marked coho subarea quota with a subarea guideline of 2,050 Chinook (C.5).

September 29 through earlier of October 14 or 50 marked coho quota or 50 Chinook quota (C.5) in the area north of 47°50′00″ N. lat. and south of 48°00′00″ N. lat. Seven days per week. All salmon; two fish per day. All coho must be marked (C.1). See gear restrictions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point (Westport Subarea)

June 24 through earlier of September 23 or 25,800 marked coho subarea quota with a subarea guideline of 25,600 Chinook (C.5).

Sunday through Thursday. All salmon; two fish per day, no more than one of which can be a Chinook. All coho must be marked (C.1). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 23 through earlier of September 30 or 34,860 marked coho subarea quota with a subarea guideline of 11,100 Chinook (C.5).

Seven days per week. All salmon; two fish per day, no more than one of which can be a Chinook. All coho must be marked (C.1). See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

Except as provided below during the all-salmon mark-selective and non-mark-selective coho fisheries, the season will be March 15 through October 31 (C.6). All salmon except coho; two fish per day (B, C.1). See gear restrictions and definitions (C.2, C.3).

Cape Falcon to OR/CA Border all-salmon mark-selective coho fishery: July 1 through earlier of July 31 or a landed catch of 8,000 marked coho.

Seven days per week. All salmon, two fish per day. All retained coho must be marked (C.1). Any remainder of the mark selective coho quota may be transferred on an impact neutral basis to the September non-selective coho quota listed below (C.5.e). The ''all salmon except coho'' season reopens the earlier of August 1 or attainment of the coho quota, through August 31.

Cape Falcon to Humbug Mountain non-mark-selective coho fishery: September 1 through the earlier of September 22 or a landed catch of 10,000 non-mark-selective coho quota (C.5).

September 1 through 3, then Thursday through Saturday thereafter; all salmon, two fish per day (C.5);

September 4 through 5, then Sunday through Wednesday thereafter; all salmon except coho, two fish per day. The all salmon except coho season reopens the earlier of September 23 or attainment of the coho quota. Open days may be adjusted inseason to utilize the available coho quota (C.5).

Fishing in the Stonewall Bank Yelloweye Rockfish Conservation Area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 800–662–9825 for specific dates) (C.3.b, C.4.d).

In 2013, the season between Cape Falcon and Humbug Mountain opens March 15 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2012 (C.2, C.3). This opening could be modified following Council review at its March 2013 meeting.

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

Except as provided above during the all-salmon mark-selective coho fishery, the season will be May 1 through September 9 (C.6). All salmon except coho, except as noted above in the all-salmon mark-selective coho fishery. Seven days per week, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

—Oregon/California Border to Horse Mountain. (California KMZ)

May 1 through September 9 (C.6).

All salmon except coho. Seven days per week, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed in August (C.4.e). See California State regulations for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

—Horse Mountain to Point Arena (Fort Bragg)

April 7 through November 11.

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2013, season opens April 6 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2012 (C.2, C.3). This opening could be modified following Council review at its March 2013 meeting.

—Point Arena to Pigeon Point (San Francisco)

April 7 through November 11.

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through July 5, 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2013, season opens April 6 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2012 (C.2, C.3). This opening could be modified following Council review at its March 2013 meeting.

—Pigeon Point to U.S./Mexico Border (Monterey)

April 7 through October 7.

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through July 5, 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2013, season opens April 6 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2012 (C.2, C.3). This opening could be modified following Council review at its March 2013 meeting.

California State regulations require that all salmon be made available to a CDFG representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFG, shall immediately relinquish the

head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Total Length in Inches) (See C.1)

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Humbug Mountain	24.0	16.0	None.
Humbug Mt. to OR/CA Border	24.0	16.0	None.
OR/CA Border to Horse Mountain	20.0		20.0.
Horse Mountain to Point Arena	20.0		20.0.
Point Arena to U.S./Mexico Border			
April 7 to July 5	24.0		24.0.
July 6 to November 11	20.0		20.0.

Metric equivalents: 24.0 in = 61.0 cm, 20.0 in = 50.8 cm, and 16.0 in = 40.6 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of salmon for all licensed and juvenile anglers aboard has been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. *U.S./Canada Border to Point Conception, California:* No more than one rod may be used per angler; and no more than two single point, single shank barbless hooks are required for all fishing gear. [**Note:** ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.]

b. *Horse Mountain, California, to Point Conception, California:* Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. *Recreational fishing gear defined:* Angling tackle consisting of a line with no more than one artificial lure or natural bait attached. Off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. *The Bonilla-Tatoosh Line:* A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N. lat., 124°44′12″ W. long.) to the buoy adjacent to Duntze Rock (48°28′00″ N. lat., 124°45′00″ W. long.), then in a straight line to Bonilla Point (48°35′30″ N. lat., 124°43′00″ W. long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°36′00″ N. lat., 124°10′51″ W. long.).

c. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. *Stonewall Bank Yelloweye Rockfish Conservation Area:* The area defined by the following coordinates in the order listed:

44°37.46′ N. lat.; 124°24.92′ W. long.;
44°37.46′ N. lat.; 124°23.63′ W. long.;
44°28.71′ N. lat.; 124°21.80′ W. long.;
44°28.71′ N. lat.; 124°24.10′ W. long.;
44°31.42′ N. lat.; 124°25.47′ W. long.;
and connecting back to 44°37.46′ N. lat.; 124°24.92′ W. long.

e. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas,

harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action permitting the retention of unmarked coho. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho. If retention of unmarked coho is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

e. Marked coho remaining from the July Cape Falcon to Oregon/California border recreational coho quota may be transferred inseason to the September Cape Falcon to Humbug Mountain non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2012 Ocean Salmon Fisheries

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

A. Season Descriptions

May 1 through the earlier of June 30 or 27,500 Chinook quota. All salmon except coho. If the Chinook quota for the May through June fishery is not fully utilized, the excess fish may be transferred into the later all-salmon season (C.5.a). If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season (C.5). See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 27,500 preseason Chinook quota (C.5), or 47,500 coho quota. All salmon. See size limit (B) and other restrictions (C).

B. Minimum Size (Inches)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

Metric equivalents: 24.0 in = 61.0 cm, 18.0 in = 45.7 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Special Requirements, Restrictions, and Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (All).

MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Pt.) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.)

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of September 15 through October 15 in the same manner as in 2004 through 2011. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2012 season (estimated harvest during the October ceremonial and subsistence fishery: 100 Chinook; 200 coho).

C.4. Area Closures

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On March 22, 2012, NMFS published a final rule (77 FR 16740) to implement the IPHC's recommendations, to announce fishery regulations for U.S. waters off Alaska

and fishery regulations for treaty commercial and ceremonial and subsistence fisheries, some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast, and approval of and implementation of the Area 2A Pacific halibut Catch Sharing Plan and the Area 2A management measures for 2012. The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone: 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825). ODFW and WDFW will monitor landings. If the landings are projected to exceed the 30,568 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery.

Beginning May 1, IPHC license holders may possess or land no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 20 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' YRCA (North Coast Recreational YRCA, also known as the Salmon Troll YRCA) in order to protect yelloweye rockfish. Coordinates for the Salmon Troll YRCA are defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3). See Section 1.C.7. in this document for the coordinates.

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA	48°23′00″ N. lat.
Cape Alava, WA	48°10′00″ N. lat.
Queets River, WA	47°31′42″ N. lat.
Leadbetter Point, WA	46°38′10″ N. lat.
Cape Falcon, OR	45°46′00″ N. lat.
Florence South Jetty, OR	44°00′54″ N. lat.
Humbug Mountain, OR	42°40′30″ N. lat.
Oregon-California Border	42°00′00″ N. lat.
Humboldt South Jetty, CA	40°45′53″ N. lat.
Horse Mountain, CA	40°05′00″ N. lat.
Point Arena, CA	38°57′30″ N. lat.
Point Reyes, CA	37°59′44″ N. lat.
Point San Pedro, CA	37°35′40″ N. lat.
Pigeon Point, CA	37°11′00″ N. lat.
Point Sur, CA	36°18′00″ N. lat.
Point Conception, CA	34°27′00″ N. lat.

Section 6. Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This final rule is necessary for conservation and management and is consistent with the Magnuson-Stevens Act. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

This notification of annual management measures is exempt from review under Executive Order 12866.

The provisions of 50 CFR 660.411 state that

> if time allows, NMFS will invite public comment prior to the effective date of any action published in the **Federal Register**. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

Accordingly, NMFS will receive public comments on this action until May 17, 2012. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time-frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available.

Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January and February because spawning escapement continues through the fall.

The Council initiated the preseason planning and public review process to develop their recommendations in February, as soon as the forecast information becomes available. The public planning process requires four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks to coordinate management actions. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period culminating at the April Council meeting when the Council adopts a recommendation for fishing regulations that is forwarded to NMFS for review, approval and implementation by May 1.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would delay these measures 30 to 60 days in addition to the two-month period required to develop the regulations. This delay would require that fishing regulations for May and June be set in the previous year, and without the benefit of information regarding current stock status. For the 2012 fishing regulations, the current stock status was not available to the Council until February. Because the May and June salmon fisheries are relatively substantial fisheries, managing them with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May are managed under the prior year's measures, as modified by the Council at its March meeting, relatively little harvest occurs during that period (e.g., on average, less than 5 percent of commercial and recreational harvest occurred prior to May 1 during the years 2001 through 2010). Allowing the much more substantial harvest levels normally associated with the May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA listed salmon stocks that are impacted by the fishery, and to provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the need to manage the fishery using the best available scientific information.

If these measures are not in place on May 1, the previous year's management measures will continue to apply in most areas. This would result in lost fishing opportunities coastwide, especially commercial fisheries north of Cape Falcon which have higher quotas proposed for 2012 than in 2011.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action. Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries (AA) also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data are not available until February and management measures not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. Failure to implement these measures immediately could compromise the ability of some stocks to attain their conservation objectives preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

To enhance notification to the fishing industry of these new measures, NMFS announces new measures over the telephone hotline used for inseason management actions, and also posts the regulations on both of its West Coast regional Web sites (*www.nwr.noaa.gov* and *swr.nmfs.noaa.gov*). NMFS also advises the states of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The public reporting burden for notifying that landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA.Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS has current ESA biological opinions that cover fishing under these regulations on all listed salmon species. NMFS reiterated their consultation standards for all ESA listed salmon and steelhead species in their annual Guidance letter to the Council dated February 27, 2012. Some of NMFS' past biological opinions have found no jeopardy to salmon and steelhead species, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid that jeopardy. The management measures for 2012 are consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. NMFS consulted this year on the effects of the 2012 annual regulations on LCR Chinook salmon. NMFS concluded that the proposed 2012 fisheries are not likely to jeopardize the continued existence of LCR Chinook salmon. NMFS also consulted this year on the effects of the 2012 annual regulations on Sacramento River winter Chinook salmon. NMFS provided a reasonable and prudent

alternative in its jeopardy biological opinion, and the 2012 annual regulations are consistent with that RPA. The Council's recommended management measures therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In many cases, the recommended measures result in impacts that are more restrictive than NMFS' ESA requirements.

In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW. The 2012 salmon management measures are consistent with the terms of that biological opinion.

This final rule was developed after meaningful consultation and collaboration with the affected tribes. The tribal representative on the Council made the motion for the regulations that apply to the tribal vessels.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: April 27, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–10597 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 85
Wednesday, May 2, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0414; Directorate Identifier 2011–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A310–203, –221, and –222 airplanes. This proposed AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principal structural elements (PSE) with replacement due at or before their calculated fatigue lives. This proposed AD would require replacing certain slat extension eccentric bolts with new bolts. We are proposing this AD to prevent fatigue cracking which could result in the loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 18, 2012.

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

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

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0414; Directorate Identifier 2011–NM–210–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0187, dated September 27, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Slat extension eccentric bolts have been re-classified as Principal Structural Elements (PSE). As a result, associated fatigue lives will be published in the Airbus A310 Airworthiness Limitations Section (ALS) Part 1 and bolts must be replaced at or before their calculated fatigue lives.
>
> The slat extension eccentric bolt Part Number (P/N) A5786451220800 installed at slat 2, track 6 of the left hand (LH) and right hand (RH) wings is manufactured by SONACA, but some bolts with the same P/N, manufactured by FOKKER, may have been installed on A310–200 series aeroplanes and are identical in appearance. The calculated fatigue life of the FOKKER bolt is lower than that of the SONACA equivalent bolt.
>
> The difference between the FOKKER and SONACA bolt cannot be distinguished by a visual inspection. To remedy this, the SONACA bolt part number was changed from P/N A5786451220800 to P/N A5784307920000.
>
> Failure to replace the bolts within the new fatigue life limits constitutes an unsafe condition.
>
> For the reasons described above, this [EASA] AD requires the replacement of all slat extension eccentric bolts, P/N A5786451220800, with slat extension eccentric bolts P/N A5784307920000 at the slat 2 tracks 4, 6 and 7 positions, as well as at the slat 3 track 8 position, on both LH and RH wings.
>
> In addition, it is required to replace the slat extension eccentric bolt P/N A57843624200 at slat 2 track 5 with a bolt P/N A57843624202.

Required actions also include a concurrent inspection of the removed bolts for cracking. If cracking is found, certain bolts at slat 2 track 5 are replaced with new bolts before further flight. If cracking is not found, certain bolts at slat 2 track 5 are replaced with new bolts at 35,900 total flight cycles or 71,800 total flight hours, whichever occurs first. The unsafe condition is fatigue cracking which could result in the loss of structural integrity of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010; Mandatory Service Bulletin A310–57–2098, dated July 22, 2011; and Mandatory Service Bulletin A310–57–2099, dated July 22, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 48 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $35,365 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,746,480, or $36,385 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0414; Directorate Identifier 2011–NM–210–AD.

(a) Comments Due Date

We must receive comments by June 18, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–203, -221, and -222 airplanes; certificated in any category; all manufacturer serial numbers (MSN), except airplanes having MSN 0415, 0419, 0424, 0427, 0430, 0454, 0468, 0486, and 0487.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principal structural elements (PSE) with replacement due at or before their calculated fatigue lives. We are issuing this AD to prevent fatigue cracking which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

(g) Bolt Replacement at Slat 2 Track 6 and Visual Inspection

(1) At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD: Replace the slat extension eccentric bolts having part number (P/N) A5786451220800 at slat 2 track 6 on both wings with bolts having P/N A5784307920000, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, September 29, 2010.

(i) Before the accumulation of 14,000 total flight cycles or 19,000 total flight hours, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) Concurrently with the actions specified in paragraph (g)(1) of this AD: Do a general visual inspection of the removed slat extension eccentric bolts having P/N A5786451220800 to detect cracking, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, September 29, 2010.

(i) If any cracking is found during the inspection required by paragraph (g)(2) of this AD: Before further flight, replace the slat extension eccentric bolt having P/N A57843624200 at slat 2 track 5, on the right or left wing as applicable, with a bolt having P/N A57843624202, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

(ii) If no cracking is found during the inspection required by paragraph (g)(2) of this AD: Before the accumulation of 35,900 total flight cycles or 71,800 total flight hours, whichever occurs first, replace the slat extension eccentric bolt having P/N A57843624200 at slat 2 track 5, on the right or left wing as applicable, with a bolt having P/N A57843624202, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

(h) Bolt Replacement at Slat 2 Track 4 and Track 7, and Slat 3 Track 8

Within 30 months after the effective date of this AD: Replace the slat extension

eccentric bolts having P/N A5786451220800 at slat 2 track 4 and track 7, and slat 3 track 8, on both wings, with bolts having P/N A5784307920000, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2098, dated July 22, 2011.

(i) Parts Installation

After modification of an airplane as required by this AD, do not install any slat extension eccentric bolt having P/N A5786451220800 on any airplane.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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.

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0187, dated September 27, 2011, and the following service information, for related information.

(1) Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010.

(2) Airbus Mandatory Service Bulletin A310–57–2098, dated July 22, 2011.

(3) Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

Issued in Renton, Washington, on April 25, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–10573 Filed 5–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 120105018–2011–01]

RIN 0694–AF53

Revisions to the Export Administration Regulations (EAR): Control of Energetic Materials and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this proposed rule describing how energetic materials and related articles that the President determines no longer warrant control under Category V (Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 1B608, 1C608, 1D608, and 1E608. If implemented, this proposed rule would also control under ECCN 1C111 some of the aluminum powder and hydrazine and derivatives thereof that are now controlled under Category V of the USML. This proposed rule also would control equipment for the ''production'' of explosives and solid propellants, currently controlled under ECCN 1B018.a, and related ''software,'' currently controlled under ECCN 1D018, under new ECCNs 1B608 and 1D608, respectively. In addition, this proposed rule would control commercial charges and devices containing energetic materials, which are currently controlled under ECCN 1C018, under new ECCN 1C608. This is one of a planned series of proposed rules describing how various types of articles that the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant control on the USML, under the International Traffic in Arms Regulations (ITAR), would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR). This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category V.

DATES: Comments must be received by June 18, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2012–0008.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF53 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF53.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–6105, Email: *Michael.Rithmire@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (herein ''the July 15 proposed rule'') that set forth a framework for how articles, which the President determines in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)) would no longer warrant control on the United States Munitions List (USML), would be controlled on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). On November 7, 2011 (76 FR 68675) (herein ''the November 7 proposed rule''), BIS published a rule proposing several changes to the framework initially proposed in the July 15 rule.

Following the structure of the July 15 and November 7 proposed rules, this proposed rule describes BIS's proposal for controlling some energetic materials and related articles, which currently are controlled by USML Category V under the International Traffic in Arms Regulations (ITAR), under the EAR and its CCL in new Export Control Classification Numbers (ECCNs) 1B608, 1C608, 1D608 and 1E608, and current ECCN 1C111. The changes described in this proposed rule and the State Department's proposed companion rule on Category V of the USML are based on a review of this USML Category by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed

rules. That review focused on identifying the types of articles that are now controlled by USML Category V that are either: (i) Inherently military and otherwise warrant control on the USML; or (ii) common to civil applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and almost exclusively available from the United States. If an article satisfies either or both of these criteria, the article remains on the USML. If an article does not satisfy either criterion, but is determined, nonetheless, to be a type of article that is now on the corresponding USML or the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement Munitions List or WAML), then it has been identified in one of the new ECCNs in this proposed rule. The license requirements, licensing policies, and other EAR-specific controls for such items, as described in this proposed rule, would, when considered in the context of the other proposed amendments to the USML and the CCL, enhance national security by: (i) Allowing for greater interoperability with NATO and other allies while maintaining and expanding robust controls that, in some instances, include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing the U.S. defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1).

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement Munitions List and are already controlled elsewhere on the CCL. That proposed rule referred to this new series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML Category that covers items that are the same or similar to items in a particular 600 series ECCN.

This proposed rule describes how some energetic materials and related articles currently in USML Category V would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML. Specifically, this proposed rule would create four new 600 series ECCNs in CCL Category 1 (ECCNs 1B608, 1C608, 1D608, and 1E608). ECCN 1B608 would cover ''equipment,'' not elsewhere specified on the CCL or the USML, that is ''specially designed'' for commodities in ECCN 1C608 or articles in USML Category V. ECCN 1C608 would cover energetic materials and related commodities not listed elsewhere in USML Category V or the CCL. ECCN 1D608 would cover ''software'' ''specially designed'' for commodities controlled by 1B608 or 1C608; and ECCN 1E608 would cover ''technology'' ''required'' for ''equipment'' controlled in 1B608 or materials controlled by 1C608. Additionally, the rule would amend current ECCN 1C111 to describe the EAR controls that would apply to aluminum powder and hydrazine and derivatives thereof the President determines no longer warrant control under USML Category V.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Detailed Description of Changes Proposed by This Rule

This proposed rule would create four new 600 series ECCNs in CCL Category 1 (ECCNs 1B608, 1C608, 1D608, and 1E608) and amend current ECCN 1C111 to describe the EAR controls that would apply to energetic materials and related items the President determines no longer warrant control under USML Category V. In addition, consistent with the regulatory construct identified in the July 15 proposed rule (i.e., to move items from 018 ECCNs to the appropriate 600 series ECCNs in order to consolidate the WAML and former USML items into one series of ECCNs), this rule would move ''equipment'' for the ''production'' of explosives and solid propellants, currently classified under ECCN 1B018.a, and related ''software,'' currently classified under ECCN 1D018, to new ECCNs 1B608 and 1D608, respectively. Similarly, this rule would move commercial charges and devices containing energetic materials, which are currently classified under ECCN 1C018, to new ECCN 1C608 (except for chlorine trifluoride, which is not on the WAML and would be controlled under ECCN 1C111.a.3.f). In a corresponding change, this rule would remove ECCN 1C238, which controls chlorine trifluoride, from the CCL as it would no longer be necessary.

These proposed changes are discussed in more detail, below.

New ECCN 1B608 (''Equipment'' ''Specially Designed'' for Commodities in ECCN 1C608 or USML Category V) and ECCN 1B018 Amended

Paragraph .a of ECCN 1B608 would control test, inspection, and production ''equipment'' not specified elsewhere on the CCL or the USML that is ''specially designed'' for the ''production'' of energetic materials and related commodities controlled by proposed new ECCN 1C608 or USML Category V. This ''equipment'' would include items currently controlled under ECCN 1B018.a.2 or .a.3. Paragraph .b of ECCN 1B608 would control complete installations not specified elsewhere on the CCL or the USML (including complete installations currently controlled under ECCN 1B018.a.1) that are ''specially designed'' for the ''production'' of energetic materials and related commodities controlled by proposed new ECCN 1C608 or USML Category V. Paragraph .c of ECCN 1B608 would control environmental test facilities that are ''specially designed'' for the certification, qualification, or

testing of items controlled by proposed new ECCN 1C608 or USML Category V. Paragraphs .d through .w would be reserved for possible future use. Paragraph .x would control ''parts,'' ''components,'' and ''accessories and attachments'' (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are ''specially designed'' for a commodity controlled under paragraph .a, .b, or .c of ECCN 1B608 and not specified elsewhere on the CCL or the USML. These ''parts,'' ''components,'' and ''accessories and attachments'' would include ''specially designed'' ''parts'' and ''components'' currently controlled under ECCN 1B018.a.4. Incorporating ECCN 1B018.a items into new ECCN 1B608 is consistent with the regulatory construct identified in the July 15 proposed rule, under which WAML items in 018 ECCNs will be consolidated with former USML items into 600 series ECCNs—ECCN 1B018, as amended, would cross reference ECCN 1B608, and ECCN 1B018.a would be removed and reserved. Paragraph .y of ECCN 1B608 would control specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities controlled by ECCN 1B608 or a defense article in USML Category V, and ''parts,'' ''components,'' and ''accessories and attachments'' ''specially designed'' therefor. Because this proposed rule does not list specific equipment under paragraph .y, sub-paragraphs .y.1 through .y.98 would be reserved for possible future use.

New ECCN 1C608 (Energetic Materials and Related Commodities Not Listed Elsewhere in USML Category V or the CCL) and ECCN 1C018 Amended

ECCN 1C608.a would control single base, double base, and triple base propellants having nitrocellulose with a nitrogen content greater than 12.6 percent in the form of either: (i) Sheetstock or carpet rolls or (ii) grains with a diameter greater than 0.10 inches. Paragraphs .b through .m of ECCN 1C608 would control commercial charges and devices, containing energetic materials, that are now controlled under ECCN 1C018.b through .m—as is currently the case with ECCN 1C018.i, ECCN 1C608.i would be reserved. However, a Note following 1C608.m would indicate that chlorine trifluoride, which is currently controlled under ECCNs 1C018.m and 1C238, would be controlled under ECCN 1C111.a.3.f only, and not under new ECCN 1C608. Incorporating ECCN 1C018 items into new ECCN 1C608 is consistent with the regulatory construct identified in the July 15 proposed rule, under which WAML items in 018 ECCNs will be consolidated with former USML items into 600 series ECCNs. ECCN 1C018, as amended, would cross-reference ECCN 1C608 and current ECCNs that control commercial charges and devices containing energetic materials. ECCN 1C608.n would control any explosives, propellants, oxidizers, pyrotechnics, fuels, binders, or additives that are ''specially designed'' for military application and are not listed elsewhere in the CCL or the USML. Paragraphs .o through .y would be reserved for possible future use.

New ECCN 1D608 (''Software'' ''Specially Designed'' for Commodities Controlled by 1B608 or 1C608) and ECCN 1D018 Amended

ECCN 1D608.a would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by proposed new ECCN 1B608 or 1C608. This ''software'' would include ''software,'' currently controlled by ECCN 1D018, for ''equipment'' described in ECCN 1B018.a. Incorporating ECCN 1D018 ''software'' for ECCN 1B018.a items into new ECCN 1D608 is consistent with the regulatory construct identified in the July 15 proposed rule, under which WAML items in 018 ECCNs will be consolidated with former USML items into 600 series ECCNs—ECCN 1D018, as amended, would cross-reference ECCN 1D608. Paragraphs .b through .x of ECCN 1D608 would be reserved for possible future use. Paragraph .y of ECCN 1D608 would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by proposed ECCN 1B608.y. Because this proposed rule does not list specific ''software'' under paragraph .y, sub-paragraphs .y.1 through .y.98 would be reserved for possible future use.

New ECCN 1E608 (''Technology'' ''Required'' for ''Equipment'' Controlled in 1B608 or Materials Controlled by 1C608)

ECCN 1E608.a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by ECCN 1B608 or 1C608. This ''technology'' would include ''technology,'' currently controlled by ECCN 1E001, for ''equipment'' currently described in ECCN 1B018.a—accordingly, ECCN 1E001 would be amended to exclude both ''technology'' for current 1B018.a items that would be moved to ECCN 1B608 and ''technology'' for 1C608 items and to cross reference ECCN 1E608 (the proposed amendments to ECCN 1E001 are described in more detail, below). Paragraph .b of 1E608 would control ''technology'' for the ''development'' or ''production'' of nitrocellulose with a nitrogen content over 12.6 percent and at rates greater than 2000 pounds per hour. Paragraph .c of 1E608 would control ''technology'' for the ''development'' or ''production'' of nitrate esters (e.g., nitroglycerine) at rates greater than 2000 pounds per hour. Paragraph .y of 1E608 would control specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 1B608.y or ''software'' controlled by ECCN 1D608.y. Because this proposed rule does not list specific ''technology'' under paragraph .y, sub-paragraphs .y.1 through .y.98 would be reserved for possible future use.

Inclusion of ''.y.99'' Paragraphs in 600 Series ECCNs

Proposed new ECCNs 1B608, 1D608, and 1E608 would also contain a paragraph ''.y.99'' that would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 1, 600 series, ECCNs because, for example, the item was ''specially designed'' for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism (AT Column 1) controls only.

Applicable Controls for New 600 Series ECCNs

ECCN 1B608, 1C608, 1D608, and 1E608 items (except for items in ECCN 1B608.y, 1D608.y, or 1E608.y—1C608.y is reserved) would be subject to national security (NS Column 1), regional stability (RS Column 1), and antiterrorism (AT Column 1) controls.

In addition, missile technology (MT Column 1) controls would apply to: equipment controlled by ECCN 1B608 that is ''specially designed'' for the ''production'' of rocket propellants; oxidizers or mixtures controlled under ECCN 1C608.m; ''software'' in ECCN 1D608 that is ''specially designed'' for oxidizers or mixtures controlled under

ECCN 1C608.m; and ''technology'' in ECCN 1E608 that is ''required'' for oxidizers or mixtures controlled under ECCN 1C608.m.

Under ECCN 1B018.a, ''equipment'' for the ''production'' of military explosives and solid propellants is controlled for national security, regional stability, antiterrorism and United Nations reasons. In addition, such ''equipment'' that is for the ''production'' of rocket propellants, is controlled for missile technology reasons. Under ECCN 1C018, commercial charges and devices containing energetic materials are controlled for national security, antiterrorism and United Nations reasons, and items classified under ECCN 1C018.m are also controlled for missile technology reasons. Items moving to proposed ECCN 1B608 and to proposed 1C608 would no longer be controlled for United Nations reasons, although they would retain their other current reasons for control. Controlling these items for United Nations reasons is unnecessary in light of the November 7 proposed rule's amendment to the RS Column 1 licensing policy, which stated that there would be a general policy of denial for ''600 series'' items if the destination is subject to a United States arms embargo. A list of such destinations is identified in proposed section 740.2(a)(12), published in the November 7 proposed rule.

ECCN 1C111 Amended and ECCN 1C238 Removed

This proposed rule would amend ECCN 1C111 by adding under 1C111.a and 1C111.d, respectively, aluminum powder and hydrazine and derivatives thereof, which the President determines no longer warrant control under USML Category V. These items would be added to ECCN 1C111 because they possess characteristics that are more similar to the propellants, and constituent chemicals therefor, that are controlled under ECCN 1C111 than the energetic materials that would be controlled under proposed ECCN 1C608. Like the items currently controlled under ECCN 1C111, these additional items would be subject to missile technology (MT Column 1) controls and anti-terrorism (AT Column 1) controls. In addition, this proposed rule would amend the Related Controls paragraph in ECCN 1C111 to indicate that ECCN 1C608 controls oxidizers that are composed of fluorine (and also other halogens, oxygen, or nitrogen), except for chlorine trifluoride, which would be controlled under ECCN 1C111.a.3.f.

Chlorine trifluoride currently is controlled under both ECCNs 1C018.m and 1C238—ECCN 1C018.m controls chlorine trifluoride for missile technology (MT Column 1), regional stability (RS Column 1), and anti-terrorism (AT Column 1) reasons, while ECCN 1C238 controls chlorine trifluoride for nuclear nonproliferation (NP Column 1) and anti-terrorism (AT Column 1) reasons. This proposed rule would remove chlorine trifluoride from ECCNs 1C018.m and 1C238 and control it under ECCN 1C111.a.3.f only, rather than also controlling it under ECCN 1C608.m, because chlorine trifluoride is not on the WAML and, consequently, is not subject to national security (NS) controls. Accordingly, this proposed rule would amend ECCN 1C111 to control chlorine trifluoride under ECCN 1C111.a.3.f for nuclear nonproliferation (NP Column 1) reasons, in addition to the MT and AT reasons for control that currently apply under this ECCN. Regional stability (RS Column 1) controls would no longer apply to chlorine trifluoride, because such controls would be redundant in view of the fact that they apply to the same group of destinations as missile technology controls (i.e., both RS Column 1 and MT Column 1 apply to all destinations, except for Canada). Because ECCN 1C238 currently controls chlorine trifluoride only, this ECCN would be removed from the CCL.

ECCN 1E001 Amended

This proposed rule would amend ECCN 1E001 by revising the ECCN heading to exclude ''technology'' for items that, with this proposed rule, would be controlled under proposed new ECCN 1B608 or 1C608 and by amending the Related Controls paragraph in the List of Items Controlled to include a reference to proposed new ECCN 1E608. In addition, this rule proposes to amend the nuclear nonproliferation (NP) controls paragraph in the License Requirements section of ECCN 1E001 to include ''technology'' for ECCN 1C111 items controlled for NP reasons (i.e., chlorine trifluoride in ECCN 1C111.a.3.f). As a result of this change and the addition of chlorine trifluoride to ECCN 1C111, as described above, ''technology'' for the ''development'' or ''production'' of chlorine trifluoride (ClF_3) would be controlled under ECCN 1E001 for missile technology (MT Column 1), nuclear nonproliferation (NP Column 1), and anti-terrorism (AT Column 1) reasons.

In addition, this proposed rule would amend the reference to ECCN 1E002.g, in the Related Controls paragraph of ECCN 1E001, to address control libraries (parametric technical databases) specially designed or modified to enable equipment to perform the functions of equipment controlled under either 1A004.c (Nuclear, biological and chemical (NBC) detection systems) or 1A004.d (Equipment for detecting or identifying explosives residues)—currently, only 1A004.c equipment is referenced. Adding 1A004.d as a cross reference corrects an inadvertent but non-substantive omission in the EAR as ECCN 1E002.g refers to both 1A004.c and 1A004.d.

ECCN 1E101 Amended

This proposed rule would amend the License Requirements section of ECCN 1E101, consistent with the ''technology'' controls of the Nuclear Suppliers Group (NSG), to apply nuclear nonproliferation (NP Column 1) controls to ''use'' ''technology'' for ECCN 1C111 items controlled for NP reasons (i.e., chlorine trifluoride in ECCN 1C111.a.3.f). As a result of this change, ''use'' ''technology'' for chlorine trifluoride would be controlled for nuclear nonproliferation (NP Column 1), missile technology (MT Column 1), and anti-terrorism (AT Column 1) reasons under ECCN 1E101. This change is consistent with the proposal in this rule to remove chlorine trifluoride from ECCNs 1C018.m and 1C238 and control chlorine trifluoride exclusively under ECCN 1C111.a.3.f. Currently, ''use'' ''technology'' for chlorine trifluoride is controlled under ECCN 1E201 for nuclear nonproliferation (NP Column 1) and anti-terrorism (AT Column 1) reasons, only. As described below, this rule would amend ECCN 1E201 to remove ''use'' ''technology'' for chlorine trifluoride.

ECCN 1E201 Amended

ECCN 1E201 currently controls ''use'' ''technology'' for chlorine trifluoride for nuclear nonproliferation (NP Column 1) and anti-terrorism (AT Column 1) reasons. This proposed rule would amend ECCN 1E201 by revising the ECCN heading to remove ''technology'' for ECCN 1C238 items (i.e., chlorine trifluoride), consistent with the ECCN 1C111 and 1E101 changes described above, whereby chlorine trifluoride would be controlled under ECCN 1C111.a.3.f, only, and ECCN 1E101 would be amended to control ''use'' ''technology'' for chlorine trifluoride.

Corresponding Amendments

To implement the regional stability controls that apply to the four new 600 series ECCNs noted above, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities

classified under ECCN 1B608 (except 1B608.y) and 1C608 and to related ''software'' and ''technology'' classified under ECCNs 1D608 and 1E608 (except 1D608.y and 1E608.y), respectively.

Relationship to the July 15 and November 7 Proposed Rules

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items that the President determines no longer warrant control on the USML from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in either of those proposed rules or any provision in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 proposed rule and the November 7 proposed rule are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule, when considered in the context of the other similar proposed rules being published as part of the Export Control Reform Initiative, will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the USML. This greater flexibility would be in the form of: application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions ''Servicing and Replacement of Parts and Equipment'' (RPL) and ''Strategic Trade Authorization'' (STA); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De Minimis

The July 15 proposed rule would impose certain unique *de minimis* requirements on items controlled under the new 600 series ECCNs. Section 734.3 of the EAR provides, *inter alia,* that, under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a ''*de minimis''* percentage of controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 1B608, 1C608, 1D608, and 1E608 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (i.e., a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (i.e., USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors). In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN (e.g., ECCNs 1B018.a, 1C018, and 1D018) and that are moved to a new 600 series ECCN (e.g., ECCNs 1B608, 1C608, and 1D608, respectively) would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

Use of License Exceptions

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new 600 series ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make 600 series items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 1B608 or 1C608. BIS also believes that, in practice, the movement of items from a 018 ECCN to a new 600 series ECCN (e.g., ''equipment'' for the ''production'' of military explosives and solid propellants from ECCN 1B018.a to new ECCN 1B608 and commercial charges and devices containing energetic materials from ECCN 1C018.b through .m to new ECCN 1C608.b through .m, respectively) would have little effect on license exception availability for those items. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which movement of items from a 018 ECCN to a new 600 series ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). Currently, ''production'' and test ''equipment'' not subject to MT controls under ECCN 1B018.a and commercial charges and devices containing energetic materials classified under ECCN 1C018.b through .l may be exported under any provision of License Exception GOV to any

destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would: (i) limit the use of License Exception STA for ''end items'' in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved; and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither the end-item restriction nor the restriction applicable to parts, components, accessories, and attachments currently applies to the use of License Exception STA for ''production'' and test ''equipment'' not subject to MT controls under ECCN 1B018.a and for commodities classified under ECCN 1C018.b through .l, but the latter restriction would apply to these items under new ECCNs 1B608 and 1C608, respectively. In addition, the July 15 proposed rule would limit the shipment of 600 series items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, ECCN 1B018.a ''production'' and test ''equipment'' (which would be moved to ECCN 1B608 by this proposed rule) that is not MT-controlled and commodities classified under ECCN 1C018.b through .l (which would be moved to ECCN 1C608.b through .l, respectively, by this proposed rule) may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

In addition, this proposed rule provides that a license exception eligibility request would not have to be submitted for STA-eligible items controlled under new ECCN 1B608 or 1C608. As proposed in the July 15 rule, the use of License Exception STA for ''end items'' in 600 series ECCNs would be prohibited, unless a specific request for License Exception STA eligibility has been submitted to, and approved by, BIS.

Items controlled under new ECCN 1B608 or 1C608 (except those controlled for MT reasons) would be eligible for License Exception LVS (limited value shipments) up to a value of $1,500. Note that for items previously classified under ECCN 1B018 that would, under this proposal, be classified under ECCN 1B608, the threshold for LVS availability would drop from $3,000 to $1,500 with this proposed change (and increase from $0 to $1,500 for Rwanda). For items previously classified under ECCN 1C018 that would, under this proposal, be classified under ECCN 1C608, the threshold for LVS availability would drop from $3,000 to $1,500 (and LVS would become available for Rwanda). Items controlled under new ECCN 1B608 (except those controlled for MT reasons) also would be eligible for License Exceptions TMP (temporary exports), and RPL (servicing and replacement parts).

Making U.S. Export Controls More Consistent With the Wassenaar Arrangement Munitions List Controls

Since the beginning of the Export Control Reform Initiative, the Administration has stated that the reforms will be consistent with the United States' obligations to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, proposed ECCNs 1B608, 1D608, and 1E608 implement, to the extent possible, the controls in WAML Category 18 for production equipment, the controls in WAML Category 21 for software, and the controls in WAML Category 22 for technology, while proposed ECCN 1C608 implements, to the extent possible and to the extent that such items would not be controlled on the USML, the controls in WAML Category 8.

Other Effects: National Security and Regional Stability Controls

Pursuant to the framework identified in the July 15 proposed rule, energetic materials and related commodities classified under ECCN 1C608 and related test, inspection and production equipment, software and technology classified under ECCN 1B608, 1D608 or 1E608, respectively (except items classified under the .y paragraphs of these ECCNs), would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. In addition, all commodities in ECCN 1C608, along with related test, inspection and production equipment, software and technology classified under ECCN 1B608, 1D608 or 1E608, respectively (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1. Consistent with this policy, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 1B608 (except 1B608.y) and 1C608 and to related ''software'' and ''technology'' classified under ECCNs 1D608 and 1E608 (except 1D608.y and 1E608.y).

The July 15 proposed rule would amend § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

Section-by-Section Description of the Proposed Changes

- Section 742.6—ECCNs 1B608, 1C608, 1D608, and 1E608 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport ''600 series'' items to destinations that are subject to a United States arms embargo.
- Supplement No. 1 to part 774—ECCNs 1B608, 1C608, 1D608, and 1E608 are added to Supplement No. 1 to part 774. ECCN 1B018 is amended to remove and reserve 1B018.a and to cross reference ''production'' and test ''equipment'' that would be moved from 1B018.a to proposed new ECCN 1B608. ECCN 1C018 is amended to remove all language except cross references to commercial charges and devices containing energetic materials that would be moved from ECCN 1C018 to proposed new ECCN 1C608 under paragraphs .b through .m, respectively. ECCN 1C111 is amended to add certain aluminum powder and hydrazine and derivatives thereof. ECCN 1D018 is amended to remove ''software'' for ECCN 1B018.a ''production'' and test ''equipment'' and to cross reference such equipment in proposed new ECCN 1D608. ECCN 1E001 is amended to remove ''technology'' for 1B018.a items that would be moved to proposed new

ECCN 1B608 and to cross reference such ''technology'' in proposed new ECCN 1E608.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before June 18, 2012. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the July 15, 2011, proposed rule (76 FR 41958), BIS believes that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. As specified in the STA eligibility paragraphs for 1B608 and 1C608, such items would not need a determination of eligibility per § 740.20(g) of the EAR. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on energetic materials and related parts, components, production equipment, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign energetic materials and associated equipment would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S Government equipment and most exports of routine maintenance parts and components for NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low-level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 1E608 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, i.e., Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce,

certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) will be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML will become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the ''600 series'' ECCNs. In addition, some items currently on the CCL will move from existing ECCNs to the new 600 series ECCNs.

This rule addresses certain energetic materials and related articles currently enumerated in USML Category V (Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents) and items currently controlled under ECCN 1B018.a (Equipment for the Production of Military Explosives and Solid Propellants), ECCN 1C018 (Commercial Charges and Devices Containing Energetic Materials on the Wassenaar Arrangement Munitions List), ECCN 1D018 (''Software'' for Equipment Controlled by ECCN 1B018.a), and ECCN 1E001 (''Technology'' for the ''Development'' or ''Production'' of Items Controlled by ECCN 1B018.a). Most energetic materials and associated equipment would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are energetic materials and related production equipment, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category V items would reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements; (ii) greater availability of license exceptions; (iii) simpler license application procedures; and (iv) reduced or eliminated registration fees.

In addition, parts and components that are controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin parts and components.

Many exports and reexports of the Category V articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to U.S. Government agencies, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category V article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible that the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way to determine whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,500 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category V items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number

of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated.

De minimis treatment under the EAR would become available for all items that this rule proposes to transfer from the USML to the CCL. Items subject to the ITAR will remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S content in that foreign-made product. However, foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that any increased burden imposed by those actions would be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs. These changes also would reduce the burden on small entities by resolving actual and potential jurisdictional uncertainty with respect to items that are related to articles enumerated in USML Category V.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees, and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required, and none has been prepared.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

15 CFR PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A601 (except 0A601.y); 0A602 (except 0A602.y); 0A606 (except 0A606.b and .y); 0B521; 0B601; 0B602; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D602; 0D606 (except 0D606.y); 0E521; 0E601; 0E602; 0E606 (except 0E606.y); 1A607 (except 1A607.y); 1B607 (except 1B607.y); 1B608 (except 1B608.y); 1C607; 1C608; 1D607 (except 1D607.y); 1D608 (except 1D608.y); 1E607 (except 1E607.y); 1E608 (except 1E608.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8A620 (except 8A620.y); 8B609 (except 8B609.y); 8B620 (except 8B620.y); 8C609 (except 8C609.y); 8D609 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8D620 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A620.y or 8B620.y); 8E609 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E620 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A620.y or 8B620.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y);

9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

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PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1B018 is amended in the List of Items Controlled by revising the ''Related Controls'' paragraph and by removing and reserving paragraph .a to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1B018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See ECCN 1B608.a, .b, and .x for items that, immediately prior to [effective date of final rule], were classified under 1B018.a.

Related Definitions: * * *

Items:

a. [RESERVED]

b. * * *

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1B608 between ECCNs 1B233 and 1B999 to read as follows:

1B608 Test, Inspection, and Production ''Equipment'' and Related Commodities ''Specially Designed'' for the ''Development'' or ''Production'' of Commodities Enumerated in ECCN 1C608 or USML Category V.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry, except 1B608.y.	NS Column 1
RS applies to entire entry, except 1B608.y.	RS Column 1
MT applies to equipment ''specially designed'' for the ''production'' of rocket propellants.	MT Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: (1) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1B608. (2) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1B608 without the need for a determination described in § 740.20(g). (3) STA is not available for ''equipment'' for the ''production'' of MT-controlled rocket propellants.

List of Items Controlled

Unit: End items in number; parts, component, accessories and attachments in $ value.

Related Controls: Defense articles that are enumerated in USML Category V, and technical data (including software) directly related thereto, are subject to the ITAR.

Related Definitions: N/A

Items:

a. ''Equipment'' not elsewhere specified in the CCL or the USML ''specially designed'' for the ''production'' of items controlled by ECCN 1C608 or USML Category V.

Note: ECCN 1C608.a. includes: (1) Continuous nitrators; (2) dehydration presses; (3) cutting machines for the sizing of extruded propellants; (4) sweetie barrels (tumblers) 6 feet or more in diameter and having over 500 pounds product capacity; (5) convection current converters for the conversion of materials listed in USML Category V(c)(2); and (6) extrusion presses for the extrusion of small arms, cannon and rocket propellants.

b. Complete installations not elsewhere specified in the CCL or the USML ''specially designed'' for the ''production'' of items controlled by ECCN 1C608 or USML Category V.

c. Environmental test facilities ''specially designed'' for the certification, qualification, or testing of items controlled by ECCN 1C608 or USML Category V.

d. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category V and not elsewhere specified on the USML or the CCL.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 1B608.x are controlled by ECCN 1B608.x.

y. Specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities controlled by this ECCN 1B608 or a defense article in USML Category V, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1 through y. 98. [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 1B608.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1C018 is amended to read as follows:

1C018 Commercial Charges and Devices Containing Energetic Materials on the Wassenaar Arrangement Munitions List and Certain Chemicals.

No items currently are in this ECCN. (1) See ECCN 1C608.b. through .m for items that, immediately prior to [effective date of final rule], were classified under 1C018.b through .m. (2) See ECCNs 1C011, 1C111, and 1C239 for additional controlled energetic materials, including chlorine trifluoride (ClF_3), which is controlled under ECCN 1C111.a.3.f. (3) See ECCN 1A008 for shaped charges, detonating cord, and cutters and severing tools.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' revise ECCN 1C111 to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, NP, AT

Control(s)	*Country chart*
MT applies to entire entry.	MT Column 1
NP applies to 1C111.a.3.f only.	NP Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Kilograms
Related Controls: (1) See USML Category V(e)(7) for controls on HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 °C of less than 47 poise (CAS # 69102–90–5). (2) See USML Category V(f)(3) for controls on ferrocene derivatives, including butacene. (3) See ECCN 1C608 for controls on oxidizers that are composed of fluorine and also other halogens, oxygen, or nitrogen, except for chlorine trifluoride, which is controlled under this ECCN 1C111.a.3.f. (4) See ECCN 1C011.b for controls on boron and boron alloys.
Related Definitions: Particle size is the mean particle diameter on a weight basis. Particle size must be determined through the use of best industrial practices and the controls may not be undermined by the addition of larger or smaller sized material to shift the mean diameter.
Items:
a. Propulsive substances:
a.1. Aluminum powder as follows:
a.1.a. Spherical aluminium powder not controlled by 1C111.a.1.b. with particles of uniform diameter of less than 200 micrometer and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63 micrometer, according to ISO 2591:1988 or national equivalents such as JIS Z8820.
a.1.b. Aluminum powder with all of the following:
a.1.b.1. Greater than 99% purity;
a.1.b.2. Greater than 50% of the particles being spheroidal, or produced by a gas atomization process using an inert gas such as nitrogen; and
a.1.b.3. Particle size less than 60 microns.

Technical Note: A particle size of 63 micrometer (ISO R–565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E–11).

a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than 60×10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, as follows:
a.2.a. Consisting of 97% by weight or more of any of the following:
a.2.a.1. Zirconium;
a.2.a.2. Beryllium;
a.2.a.3. Magnesium; or
a.2.a.4. Alloys of the metals specified by a.2.a.1 to a.2.a.3 above.
a.2.b. [RESERVED]

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

a.3. Oxidizer substances usable in liquid propellant rocket engines, as follows:
a.3.a. Dinitrogen trioxide;
a.3.b. Nitrogendioxide/dinitrogen tetroxide;
a.3.c. Dinitrogen pentoxide;
a.3.d. Mixed oxides of nitrogen (MON);
a.3.e. Inhibited red fuming nitric acid (IRFNA);
a.3.f. Chlorine trifluoride (ClF_3).

Technical Note: Mixed oxides of nitrogen (MON) are solutions of nitric oxide (NO) in dinitrogen tetroxide/nitrogen dioxide (N_2O_4/NO_2) that can be used in missile systems. There are a range of compositions that can be denoted as MONi or MONij, where i and j are integers representing the percentage of nitric oxide in the mixture (e.g., MON3 contains 3% nitric oxide, MON25 25% nitric oxide. An upper limit is MON40, 40% by weight).

b. Polymeric substances:
b.1. Carboxy—terminated polybutadiene (including carboxyl—terminated polybutadiene) (CTPB);
b.2. Hydroxy—terminated polybutadiene (including hydroxyl—terminated polybutadiene) (HTPB);
b.3. Polybutadiene acrylic acid (PBAA);
b.4. Polybutadiene acrylic acid acrylonitrile (PBAN);
b.5. Polytetrahydrofuran polyethylene glycol (TPEG).

Technical Note: Polytetrahydrofuran polyethylene glycol (TPEG) is a block copolymer of poly 1,4 Butanediol and polyethylene glycol (PEG).

c. Other propellant energetic materials, additives, or agents:
c.1. [RESERVED]
c.2. Triethylene glycol dinitrate (TEGDN);
c.3. 2 Nitrodiphenylamine (2–NDPA);
c.4. Trimethylolethane trinitrate (TMETN);
c.5. Diethylene glycol dinitrate (DEGDN).
d. Hydrazine and derivatives as follows:
d.1. Hydrazine (C.A.S. # 302–01–2) in concentrations of 70% or more;
d.2. Monomethyl hydrazine (MMH) (C.A.S. # 60–34–4);
d.3. Symmetrical dimethyl hydrazine (SDMH) (C.A.S. # 540–73–8);
d.4. Unsymmetrical dimethyl hydrazine (UDMH) (C.A.S. # 57–14–7);
d.5. Trimethylhydrazine (C.A.S. # 1741–01–1);
d.6. Tetramethylhydrazine (C.A.S. # 6415–12–9);
d.7. N,N diallylhydrazine;
d.8. Allylhydrazine (C.A.S. # 7422–78–8);
d.9. Ethylene dihydrazine;
d.10. Monomethylhydrazine dinitrate;
d.11. Unsymmetrical dimethylhydrazine nitrate;
d.12. Dimethylhydrazinium azide;
d.13. Hydrazinium azide (C.A.S. # 14546–44–2);
d.14. Hydrazinium dinitrate;
d.15. Diimido oxalic acid dihydrazine (C.A.S. # 3457–37–2);
d.16. 2-hydroxyethylhydrazine nitrate (HEHN);
d.17. Hydrazinium diperchlorate (C.A.S. #13812–39–0);
d.18. Methylhydrazine nitrate (MHN);
d.19. Diethylhydrazine nitrate (DEHN);
d.20. 3,6-dihydrazino tetrazine nitrate (DHTN), also referred to as 1,4-dihydrazine nitrate.

Supplement No. 1 to part 774 [Amended]

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1C238 is removed.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1C608 between ECCNs 1C395 and 1C980 to read as follows:

1C608 Energetic materials and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
MT applies to 1C608.m.	MT Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: (1) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C608. (2) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1C608 without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: End items in number; parts, component, accessories and attachments in $ value.
Related Controls: (1) The EAR does not control devices or charges containing materials controlled by USML subparagraphs V(c)(6), V(h), or V(i). The USML controls devices containing such materials. (2) The USML in Categories III, IV, or V controls devices and charges in this entry if they contain materials controlled by Category V (other than slurries) and such materials can be easily extracted without destroying the device or charge. (3) See also explosives and other items enumerated in ECCNs 1A006, 1A007, 1A008, 1C011, 1C111, 1C239, and 1C992.
Related Definitions: For purposes of this entry, the term ''controlled materials'' means controlled energetic materials enumerated in ECCNs 1C011, 1C111, 1C239, 1C608, or USML Category V.

Items:

a. Single base, double base, and triple base propellants having nitrocellulose with nitrogen content greater than 12.6% in the form of either:

a.1. Sheetstock or carpet rolls; or

a.2. Grains with diameter greater than 0.10 inches.

Note: This entry does not control propellant grains used in shotgun shells, small arms cartridges, or rifle cartridges.

Note: Sheetstock is propellant that has been manufactured in the form of a sheet suitable for further processing. A carpet roll is propellant that has been manufactured as a sheet, often cut to a desired width, and subsequently rolled up (like a carpet).

Note: Single base is propellant which consists mostly of nitrocellulose. Double base propellants consist mostly of nitrocellulose and nitroglycerine. Triple base consists mostly of nitrocellulose, nitroglycerine, and nitroguanidine. Such propellants contain other materials, such as resins or stabilizers, that could include carbon, salts, burn rate modifiers, nitrodiphenylamine, wax, polyethylene glycol (PEG), polyglycol adipate (PGA).

b. Shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of controlled materials.

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of controlled materials.

d. Detonators (electric or nonelectric) and ''specially designed'' assemblies therefor containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials.

e. Igniters not controlled by USML Categories III or IV that contain greater than 0.01 kg, but not more than 0.1 kg of controlled materials.

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of controlled materials.

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of controlled materials.

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML controlled materials.

i. [RESERVED]

j. Pyrotechnic devices ''specially designed'' for commercial purposes (e.g., theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of controlled materials.

k. Other commercial explosive devices or charges ''specially designed'' for commercial applications, not controlled by 1C608.c through .g above, containing greater than 1.0 kg, but not more than 5.0 kg of controlled materials.

l. Propyleneimine (2 methylaziridine) (C.A.S. # 75–55–8).

m. Any oxidizer or mixture thereof that is a compound composed of fluorine and one or more of the following: Other halogens, oxygen, or nitrogen.

Note 1 to 1C111.m: Nitrogen trifluoride (NF_3) in a gaseous state is controlled by ECCN 1C992 and not by 1C608.

Note 2 to 1C111.m: Chlorine trifluoride (ClF_3) is controlled under ECCN 1C111.a.3.f and not under ECCN 1C608.

Note 3 to 1C111.m: Oxygen difluoride (OF_2) is controlled under USML Category V.d.10 (see 22 CFR 121.1) and not under ECCN 1C608.

Note to 1C111.l and .m: If a chemical in paragraphs .l or .m of 1C608 is incorporated into a commercial charge or device described in paragraphs .c through .k of ECCN 1C608 or in 1C992, the classification of the commercial charge or device applies to the item.

n. Any explosive, propellants, oxidizers, pyrotechnics, fuels, binders, or additives, ''specially designed'' for military application not listed elsewhere in USML Category V or the CCL.

o. through y. [RESERVED]

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1D018 is amended by revising the ECCN heading and by revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1D018 ''Software'' specially designed or modified for the ''development,'' ''production,'' or ''use'' of items controlled by 1B018.b.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See § 746.8(b)(1) for additional BIS licensing requirements for Rwanda concerning this entry. (2) See ECCN 1D608 for ''software'' for items classified under ECCN 1B608 that, immediately prior to [Insert effective date of final rule], were classified under 1B018.a.

Related Definitions: * * *

Items: * * *

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1D608 between ECCNs 1D390 and 1D993 to read as follows:

1D608 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 1B608 or 1C608.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry, except 1D608.y.	NS Column 1
RS applies to entire entry, except 1D608.y.	RS Column 1
MT applies to software ''specially designed'' for 1C608.m.	MT Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1D608.

List of Items Controlled

Unit: N/A

Related Controls: (1) Software directly related to articles enumerated in USML Categories III, IV or V are subject to the controls of those USML Categories, respectively. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 1B608 or 1C608.

b. through x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 1B608.y, as follows:

y.1 through y.98. [RESERVED]

y.99. ''Software'' not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 1D608.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1E001 is amended by revising the ECCN heading, by revising the NP controls paragraph in the License Requirements section, and by revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Items Controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008, 1A101, 1B (except 1B608 or 1B999), or 1C (except 1C355, 1C608, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*

Control(s)	*Country chart*
* * * * *	
NP applies to ''technology'' for items controlled by 1A002, 1A007, 1B001, 1B101, 1B201, 1B225 to 1B233, 1C002, 1C010, 1C111, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C237, 1C239, or 1C240 for NP reasons.	NP Column 1
* * * * *	

License Requirements Note: * * *

License Exceptions

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Also see ECCNs 1E101, 1E201, and 1E202. (2) See ECCN 1E608 for ''technology'' for items classified under ECCN 1B608 or 1C608 that, immediately prior to [effective date of final rule], were classified under 1B018.a or 1C018.b through .m (note that ECCN 1E001 controls ''development'' and ''production'' ''technology'' for chlorine trifluoride controlled by ECCN 1C111.a.3.f—see ECCN 1E101 for controls on ''use'' ''technology'' for chlorine trifluoride). (3) See ECCN 1E002.g for control libraries (parametric technical databases) specially designed or modified to enable equipment to perform the functions of equipment controlled under 1A004.c (Nuclear, biological and chemical (NBC) detection systems) or 1A004.d (Equipment for detecting or identifying explosives residues). (4) ''Technology'' for lithium isotope separation (see related ECCN 1B233) and ''technology'' for items described in ECCN 1C012 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (5) ''Technology'' for items described in ECCN 1A102 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1E101 is amended by revising the ECCN heading and by revising the License Requirements section to read as follows:

1E101 ''Technology'', in accordance with the General Technology Note, for the ''use'' of commodities and software controlled by 1A101, 1A102, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1D001, 1D101, or 1D103.

License Requirements

Reason for Control: MT, NP, AT

Control(s)	*Country chart*
MT applies to entire entry.	MT Column 1
NP applies to ''technology'' for items controlled by 1B001, 1B101, 1C111, 1C116, 1D001, or 1D101 for NP reasons.	NP Column 1
AT applies to entire entry.	AT Column 1

* * * * *

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' ECCN 1E201 is amended by revising the ECCN heading to read as follows:

1E201 ''Technology'' according to the General Technology Note for the ''use'' of items controlled by 1A002, 1A007, 1A202, 1A225 to 1A227, 1B201, 1B225 to 1B232, 1B233.b, 1C002.b.3 and b.4, 1C010.a, 1C010.b, 1C010.e.1, 1C202, 1C210, 1C216, 1C225 to 1C237, 1C239, 1C240 or 1D201.

* * * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1E608 between ECCNs 1E355 and 1E994 to read as follows:

1E608 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of equipment controlled in 1B608 or materials controlled by 1C608.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry, except 1E608.y.	NS Column 1
RS applies to entire entry, except 1E608.y.	RS Column 1
MT applies to technology ''required'' for 1C608.m.	MT Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 1E608.

List of Items Controlled

Unit: $ value

Related Controls: (1) Technical data directly related to articles enumerated in USML Categories III, IV, or V are subject to the controls of those USML Categories, respectively. (2) ''Technology'' for chlorine trifluoride is controlled under ECCNs 1E001 (''development'' and ''production'') and 1E101 (''use'').

Related Definitions: N/A

Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of material controlled by ECCN 1B608 or 1C608.

b. ''Technology'' for the ''development'' or ''production'' of nitrocellulose with nitrogen content over 12.6% and at rates greater than 2000 pounds per hour.

c. ''Technology'' for the ''development'' or ''production'' of nitrate esters (e.g., nitroglycerine) at rates greater than 2000 pounds per hour.

d. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 1B608.y or ''software'' controlled by ECCN 1D608.y, as follows:

y.1 through y.98. [RESERVED]

y.99. ''Technology'' not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 1E608.

Dated: April 13, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–10456 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400–AD02

[Public Notice 7861]

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category V.

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category V (explosives and energetic materials, propellants, incendiary agents, and their constituents) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until June 18, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email:* *DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—Category V.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD02).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, USML Category V.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (*see* ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revision to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end-uses, and end-users of greater concern than NATO allies and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category V

This proposed rule revises USML Category V, covering explosives and energetic materials, propellants, incendiary agents, and their constituents, to establish a clear ''bright line'' between the USML and the CCL for the control of these articles.

One major change proposed to this category involves removal of broad catchalls with the listing of specific materials that warrant ITAR control caught by current catchalls. For example, paragraph (a)(35) as currently written broadly controls, ''Any other explosive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.,* formulated) for military application.'' This catchall is being removed. Examples of materials added because of deletion of catchalls are as follows: tetrazines (BTAT (Bis(2,2,2-trinitroethyl)-3,6-diaminotetrazine); LAX–112 (3,6-diamino- 1,2,4,5-tetrazine- 1,4dioxide); PNO (Poly(3-nitrato oxetane); 4,5 diazidomethyl-2-methyl-1,2,3-triazole (iso- DAMTR)); TEPB (Tris (ethoxyphenyl) bismuth) (CAS 90591–48–3); and TEX (4,10-Dinitro-2,6,8,12-tetraoxa-4,10-diazaisowurtzitane). Those materials currently captured in the catchalls that do not warrant control on the USML are to be controlled on the CCL. Examples of such materials to be removed from various catchalls and controlled on the CCL are spherical aluminum powder and hydrazine and its derivatives.

Another major change proposed to this category involves addressing U.S. obligations to multinational regimes. There is a limited catchall (a)(32) that is being changed from 8700 meters per second to 8000 meters per second to match the criteria from the Nuclear Suppliers Group. The proposed revision would read as follows (*see* paragraph (a)(38)): ''Explosives, not otherwise enumerated in this paragraph or on the CCL in ECCN 1C608, with a detonation velocity exceeding 8,000m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).'' Additional hydrazine materials are specified by the Missile Technology Control Regime (MTCR) and these entries were added.

Additionally, some materials are to be added that are significant to the military but have little commercial application. For example, DNAN (2,4 Dinitroanisole), a military explosive currently covered by the catchall in

(a)(35), will be controlled in paragraph (a)(11).

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Category 8 (WA–ML8). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category V contained in this notice and the new Category 1 ECCNs published separately by the Department of Commerce when reviewed together.

(2) The key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of explosives and energetic materials whose jurisdiction would be in doubt based on this revision.

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. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

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 12988

The Department of State has reviewed the proposed 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 13175

The Department of State 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 proposed amendment 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 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category V to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents

*(a) Explosives, and mixtures thereof, as follows:

(1) ADNBF (aminodinitrobenzofuroxan or 7-Amino 4,6-dinitrobenzofurazane-1-oxide) (CAS 97096–78–1);

(2) BNCP (cis-bis(5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate) (CAS 117412–28–9);

(3) CL–14 (diaminodinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907–74–1);

(4) CL–20 (HNIW or Hexanitrohexaazaisowurtzitane) (CAS 135285–90–4); clathrates of CL–20;

(5) CP (2-(5-cyanotetrazolato) penta aminecobalt (III) perchlorate) (CAS 70247–32–4);

(6) DADE (1,1-diamino-2,2-dinitroethylene, FOX-7);
(7) DATB (Diaminotrinitrobenzene) (CAS 1630–08–6);
(8) DDFP (1,4-dinitrodifurazanopiperazine);
(9) DDPO (2,6-diamino-3,5-dinitropyrazine-1-oxide, PZO) (CAS 194486–77–6);
(10) DIPAM (3,3′-Diamino-2,2′,4,4′,6,6′-hexanitrobiphenyl or dipicramide) (CAS 17215–44–0);
(11) DNAN (2,4-Dinitroanisole) (CAS 119–27–7);
(12) DNGU (DINGU or dinitroglycoluril) (CAS 55510–04–8);
(13) Furazans, as follows:
(i) DAAOF (DAAF, DAAFox, or diaminoazoxyfurazan);
(ii) DAAzF (diaminoazofurazan) (CAS 78644–90–3);
(iii) ANF (Furazanamine, 4-nitro- or 3-Amino-4-nitrofurazan; or 4-Nitro-1,2,5-oxadiazol-3-amine; or 4-Nitro-3-furazanamine; CAS 66328–69–6); or
(iv) ANAzF (Aminonitroazofurazan or 1,2,5-Oxadiazol-3-amine, 4-[2-(4-nitro-1,2,5-oxadiazol-3-yl) diazenyl]; or 1,2,5-Oxadiazol-3-amine, 4-[(4-nitro-1,2,5-oxadiazol-3-yl)azo]-(9CI); or Furazanamine, 4-[(nitrofurananyl)azo]-; or 4-[(4-Nitro-1,2,5-oxadiazol-3-yl)azo]-1,2,5-oxadiazol-3-amine) (CAS 155438–11–2);
(14) GUDN (Guanylurea dinitramide) FOX-12 (CAS 217464–38–5);
(15) HMX and derivatives, as follows:
(i) HMX (Cyclotetramethylenetetranitramine; octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; octogen, octogene) (CAS 2691–41–0);
(ii) Difluoroaminated analogs of HMX; or
(iii) K–55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril, or keto-bicyclic HMX) (CAS 130256–72–3);
(16) HNAD (hexanitroadamantane) (CAS 143850–71–9);
(17) HNS (hexanitrostilbene) (CAS 20062–22–0);
(18) Imidazoles, as follows:
(i) BNNII (Octohydro-2,5-bis(nitroimino) imidazo [4,5-d]imidazole);
(ii) DNI (2,4-dinitroimidazole) (CAS 5213–49–0);
(iii) FDIA (1-fluoro-2,4-dinitroimidazole);
(iv) NTDNIA (N-(2-nitrotriazolo)-2,4-dinitro-imidazole); or
(v) PTIA (1-picryl-2,4,5-trinitroimidazole);
(19) NTNMH (1-(2-nitrotriazolo)-2-dinitromethylene hydrazine);
(20) NTO (ONTA or 3-nitro-1,2,4-triazol-5-one) (CAS 932–64–9);
(21) Polynitrocubanes with more than four nitro groups;
(22) PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082–89–2);
(23) RDX and derivatives, as follows:
(i) RDX (cyclotrimethylenetrinitramine), cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triaza-cyclohexane, hexogen, or hexogene) (CAS 121–82–4);
(ii) Keto-RDX (K–6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone) (CAS 115029–35–1); or
(iii) Difluoraminated derivative of RDX; 1,3-Dinitro-5,5-bis(difluoramino)1,3-diazahexane (CAS No. 193021–34–0);
(24) TAGN (Triaminoguanidinenitrate) (CAS 4000–16–2);
(25) TATB (Triaminotrinitrobenzene) (CAS 3058–38–6);
(26) TEDDZ (3,3,7,7-tetrakis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine;
(27) Tetrazines, as follows:
(i) BTAT (Bis(2,2,2-trinitroethyl)-3,6-diaminotetrazine); or
(ii) LAX-112 (3,6-diamino-1,2,4,5-tetrazine-1,4-dioxide);
(28) Tetrazoles, as follows:
(i) NTAT (nitrotriazolaminotetrazole); or
(ii) NTNT (1-N-(2-nitrotriazolo)-4-nitrotetrazole);
(29) Tetryl (trinitrophenylmethyl nitramine) (CAS 479–45–8);
(30) TEX (4,10-Dinitro-2,6,8,12-tetraoxa-4,10-diazaisowurtzitane)
(31) TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877–16–6);
(32) TNAZ (1,3,3-trinitroazetidine) (CAS 97645–24–4);
(33) TNGU (SORGUYL or tetranitro glycoluril) (CAS 55510–03–7);
(34) TNP (1,4,5,8-tetranitro-pyridazino [4,5-d] pyridazine) (CAS 229176–04–9);
(35) Triazines, as follows:
(i) DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899–80–0); or
(ii) NNHT (2-nitroimino-5-nitro-hexahydro-1,3,5 triazine) (CAS 130400–13–4);
(36) Triazoles, as follows:
(i) 5-azido-2-nitrotriazole;
(ii) ADHTDN (4-amino-3,5-dihydrazino-1,2,4-triazole dinitramide) (CAS 1614–08–0);
(iii) ADNT (1-amino-3,5-dinitro-1,2,4-triazole);
(iv) BDNTA (Bis(dinitrotriazole)amine);
(v) DBT (3,3′-dinitro-5,5-bi-1,2,4-triazole) (CAS 30003–46–4);
(vi) DNBT (dinitrobistriazole) (CAS 70890–46–9);
(vii) NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitro-triazole);
(viii) PDNT (1-picryl-3,5-dinitrotriazole); or
(ix) TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243–36–1);
(37) Energetic ionic materials melting between 70 and 100 degrees C and with detonation velocity exceeding 6800 m/s or detonation pressure exceeding 18 GPa (180 kbar); or
(38) Explosives, not otherwise enumerated in this paragraph or on the CCL in ECCN 1C608, with a detonation velocity exceeding 8,000m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).
*(b) Propellants, as follows:
(1) Any solid propellant with a theoretical specific impulse (*see* paragraph (k)(4) of this category) greater than:
(i) 240 seconds for non-metallized, non-halogenated propellant;
(ii) 250 seconds for non-metallized, halogenated propellant; or
(iii) 260 seconds for metallized propellant;
(2) Propellants having a force constant of more than 1,200 kJ/Kg;
(3) Propellants that can sustain a steady-state burning rate more than 38mm/s under standard conditions (as measured in the form of an inhibited single strand) of 6.89 Mpa (68.9 bar) pressure and 294K (21 °C); or
(4) Elastomer-modified cast double-based propellants with extensibility at maximum stress greater than 5% at 233 K (−40 °C).
(c) Pyrotechnics, fuels and related substances, and mixtures thereof, as follows:
(1) Alane (aluminum hydride) (CAS 7784–21–6);
(2) Carboranes; decaborane (CAS 17702–41–9); pentaborane and derivatives thereof;
(3) Liquid high energy density fuels, as follows:
(i) Mixed fuels that incorporate both solid and liquid fuels, such as boron slurry, having a mass-based energy density of 40 MJ/kg or greater; or
(ii) Other high energy density fuels and fuel additives (*e.g.,* cubane, ionic solutions, JP–7, JP–10) having a volume-based energy density of 37.5 GJ per cubic meter or greater, measured at 20 °C and one atmosphere (101.325 kPa) pressure;

Note to paragraph (c)(3)(ii): JP–4, JP–8, fossil refined fuels or biofuels, or fuels for engines certified for use in civil aviation are not included.

(4) Metal fuels, and fuel or pyrotechnic mixtures in particle form whether spherical, atomized, spheroidal, flaked, or ground,

manufactured from material consisting of 99% or more of any of the following:

(i) Metals, and mixtures thereof, as follows:

(A) Beryllium (CAS 7440–41–7) in particle sizes of less than 60 micrometers; or

(B) Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;

(ii) Fuel mixtures or pyrotechnic mixtures, which contain any of the following:

(A) Boron (CAS 7440–42–8) or boron carbide (CAS 12069–32–8) fuels of 85% purity or higher and particle sizes of less than 60 micrometers; or

(B) Zirconium (CAS 7440–67–7), magnesium (CAS 7439–95–4), or alloys of these in particle sizes of less than 60 micrometers;

(iii) Explosives and fuels containing the metals or alloys listed in paragraphs (c)(4)(i) and (c)(4)(ii) of this category whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium;

(5) Fuel, pyrotechnic, or energetic mixtures having any nanosized aluminum, beryllium, boron, zirconium, magnesium, or titanium as follows:

(i) Having particle size less than 200 nm in any direction; and

(ii) Having 60% or higher purity;

(6) Pyrotechnic and pyrophoric materials, as follows:

(i) Pyrotechnic or pyrophoric materials specifically formulated to enhance or control the production of radiated energy in any part of the IR spectrum; or

(ii) Mixtures of magnesium, polytetrafluoroethylene and the copolymer vinylidene difluoride and hexafluoropropylene (MTV);

(7) Titanium subhydride (TiHn) of stoichiometry equivalent to n = 0.65–1.68; or

(8) Hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions containing metal stearates (*e.g.,* octal) or palmitates, and M1, M2, and M3 thickeners.

(d) Oxidizers, as follows:

(1) ADN (ammonium dinitramide or SR–12) (CAS 140456–78–6);

(2) AP (ammonium perchlorate) (CAS 7790–98–9);

(3) BDNPN (bis(2,2-dinitropropyl)nitrate) (CAS 28464–24–6);

(4) DNAD (1,3-dinitro-1,3-diazetidine) (CAS 78246–06–7);

(5) HAN (Hydroxylammonium nitrate) (CAS 13465–08–2);

(6) HAP (hydroxylammonium perchlorate) (CAS 15588–62–2);

(7) HNF (Hydrazinium nitroformate) (CAS 20773–28–8);

(8) Hydrazine nitrate (CAS 37836–27–4);

(9) Hydrazine perchlorate (CAS 27978–54–7);

(10) Liquid oxidizers comprised of or containing inhibited red fuming nitric acid (IRFNA) (CAS 8007–58–7) or oxygen difluoride; or

(11) Perchlorates, chlorates, and chromates composited with powdered metal or other high energy fuel components controlled by this category.

*(e) Binders, and mixtures thereof, as follows:

(1) AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683–29–7);

(2) BAMO (bis(azidomethyl)oxetane and its polymers) (CAS 17607–20–4);

(3) BTTN (butanetriol trinitrate) (CAS 6659–60–5);

(4) FAMAO (3-difluoroaminomethyl-3-azidomethyloxetane) and its polymers;

(5) FEFO (bis(2-fluoro-2,2-dinitroethyl)formal) (CAS 17003–79–1);

(6) GAP (glycidyl azide polymer) (CAS 143178–24–9) and its derivatives;

(7) HTPB (hydroxyl-terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 °C of less than 47 poise (CAS 69102–90–5);

(8) 4,5 diazidomethyl-2-methyl-1,2,3-triazole (iso- DAMTR);

(9) NENAS (nitratoethylnitramine compounds) as follows:

(i) N-Methyl 2-nitratoethylnitramine (Methyl-NENA) (CAS 17096–47–8);

(ii) N-Ethyl 2-nitratoethylnitramine (Ethyl-NENA) (CAS 85068–73–1);

(iii) N-Propyl 2-nitratoethylnitramine (CAS 82486–83–7);

(iv) N-Butyl-2-nitratoethylnitramine (BuNENA) (CAS 82486–82–6); or

(v) N-Pentyl 2-nitratoethylnitramine (CAS 85954–06–9);

(10) Poly-NIMMO (poly nitratomethylmethyoxetane, poly-NMMO, (poly[3-nitratomethyl-3-methyl oxetane]) (CAS 84051–81–0);

(11) PNO (Poly(3-nitratooxetane));

(12) TVOPA 1,2,3-Tris [1,2-bis(difluoroamino)ethoxy]propane; tris vinoxy propane adduct (CAS 53159–39–0);

(13) Polynitrorthocarbonates;

(14) FPF-1 (poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal) (CAS 376–90–9);

(15) FPF-3 (poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diolformal);

(16) PGN (Polyglycidyl nitrate or poly(nitratomethyloxirane); poly-GLYN); (CAS 27814–48–8);

(17) N-methyl-p-nitroaniline;

(18) Low (less than 10,000) molecular weight, alcohol-functionalized, poly(epichlorohydrin); poly(epichlorohydrindiol); and triol;

(19) Dinitropropyl based plasticizers, as follows:

(i) BDNPA (bis (2,2-dinitropropyl) acetal) (CAS 5108–69–0); or

(ii) BDNPF (bis (2,2-dinitropropyl) formal) (CAS 5917–61–3).

(f) Additives, as follows:

(1) Basic copper salicylate (CAS 62320–94–9);

(2) BHEGA (Bis-(2-hydroxyethyl)glycolamide) (CAS 17409–41–5);

(3) BNO (Butadienenitrile oxide);

(4) Ferrocene derivatives, as follows:

(i) Butacene (CAS 125856–62–4);

(ii) Catocene (2,2–Bis-ethylferrocenylpropane) (CAS 37206–42–1);

(iii) Ferrocene carboxylic acids and ferrocene carboxylic acid esters;

(iv) n-butylferrocene (CAS 31904–29–7);

(v) Ethylferrocene (CAS 1273–89–8);

(vi) Propylferrocene;

(vii) Pentylferrocene (CAS 1274–00–6);

(viii) Dicyclopentylferrocene;

(ix) Dicyclohexylferrocene;

(x) Diethylferrocene (CAS 173–97–8);

(xi) Dipropylferrocene;

(xii) Dibutylferrocene (CAS 1274–08–4);

(xiii) Dihexylferrocene (CAS 93894–59–8);

(xiv) Acetylferrocene (CAS 1271–55–2)/1,1′-diacetyl ferrocene (CAS 1273–94–5); or

(xv) Other ferrocene derivatives that do not contain a six carbon aromatic functional group attached to the ferrocene molecule;

(5) Lead beta-resorcylate (CAS 20936–32–7);

(6) Lead citrate (CAS 14450–60–3);

(7) Lead-copper chelates of beta-resorcylate or salicylates (CAS 68411–07–4);

(8) Lead maleate (CAS 19136–34–6);

(9) Lead salicylate (CAS 15748–73–9);

(10) Lead stannate (CAS 12036–31–6);

(11) MAPO (tris-1-(2-methyl) aziridinylphosphine oxide) (CAS 57–39–6); BOBBA–8 (bis(2-methyl aziridinyl)-2-(2-hydroxypropanoxy) propylamino phosphine oxide); and other MAPO derivatives;

(12) Methyl BAPO (Bis(2-methyl aziridinyl)methylaminophosphine oxide) (CAS 85068–72–0);

(13) 3–Nitraza-1,5-pentane diisocyanate (CAS 7406–61–9);

(14) Organo-metallic coupling agents, as follows:

(i) Neopentyl[diallyl]oxy, tri [dioctyl] phosphatotitanate (CAS 103850–22–2);

also known as titanium IV, 2,2[bis 2-propenolato-methyl, butanolato, tris (dioctyl) phosphato] (CAS 110438–25–0), or LICA 12 (CAS 103850–22–2);

(ii) Titanium IV, [(2-propenolato-1) methyl, n-propanolatomethyl] butanolato-1, tris(dioctyl)pyrophosphate, or KR3538; or

(iii) Titanium IV, [(2-propenolato-1)methyl, propanolatomethyl] butanolato-1, tris(dioctyl) phosphate;

(15) PCDE (Polycyanodifluoroaminoethylene oxide);

(16) Certain bonding agents, as follows:

(i) 1,1R,1S-trimesoyl-tris(2-ethylaziridine) (HX–868, BITA) (CAS 7722–73–8); or

(ii) Polyfunctional aziridine amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2-methyl or 2-ethyl aziridine group;

Note to paragraph (f)(16)(ii): Included are 1) 1,1H-Isophthaloyl-bis(2-methylaziridine) (HX–752) (CAS 7652–64–4); 2) 2,4,6-tris(2-ethyl-1-aziridinyl)-1,3,5-triazine (HX–874) (CAS 18924–91–9); and 3) 1,1′-trimethyladipoylbis(2-ethylaziridine) (HX–877) (CAS 71463–62–2).

(17) Superfine iron oxide (Fe_2O_3, hematite) with a specific surface area more than 250 m^2/g and an average particle size of 0.003 micrometers or less (CAS 1309–37–1);

(18) TEPAN (HX–879) (tetraethylenepentaamineacrylonitrile) (CAS 68412–45–3); cyanoethylated polyamines and their salts;

(19) TEPANOL (HX–878) (tetraethy lenepentaamineacrylonitrileglycidol) (CAS 110445–33–5); cyanoethylated polyamines adducted with glycidol and their salts;

(20) TPB (triphenyl bismuth) (CAS 603–33–8); or

(21) Tris (ethoxyphenyl) bismuth (TEPB) (CAS 90591–48–3).

(g) Precursors, as follows:

(1) BCMO (bischloromethyloxetane) (CAS 142173–26–0);

(2) DADN (1,5-diacetyl-3,7-dinitro-1, 3, 5, 7-tetraazacyclooctane;

(3) Dinitroazetidine-t-butyl salt (CAS 125735–38–8);

(4) CL–20 precursors (any molecule containing hexaazaisowurtzitane) (*e.g.,* HBIW (hexabenzylhexaazaisowurtzitane), TAIW (tetraacetyldibenzylhexa-azaisowurtzitane));

(5) TAT (1, 3, 5, 7-tetraacetyl-1, 3, 5, 7-tetraazacyclooctane) (CAS 41378–98–7);

(6) Tetraazadecalin (CAS 5409–42–7);

(7) 1,3,5-trichlorobenzene (CAS 108–70–3); or

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068–00–6).

(h) Any explosive, propellant, pyrotechnic, fuel, oxidizer, binder, additive, or precursor that:

(1) is classified;

(2) is manufactured using classified production data; or

(3) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(i) Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor developed under a contract with the U.S. Government not otherwise controlled under this category.

(j) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles numerated in paragraphs (a) through (i) of this category (*see* also § 123.20 of this subchapter).

(k) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter:

(1) Category V contains explosives, energetic materials, propellants, and pyrotechnics and specially formulated fuels for aircraft, missile, and naval applications. Explosives are solid, liquid, or gaseous substances or mixtures of substances, which, in their primary, booster, or main charges in warheads, demolition, or other military applications, are required to detonate.

(2) The resulting product of the combination or conversion of any substance controlled by this category into an item not controlled will no longer be controlled by this category provided the controlled item cannot easily be recovered through dissolution, melting, sieving, etc. As an example, beryllium converted to a near net shape using hot isostatic processes will result in an uncontrolled part. A cured thermoset containing beryllium powder is not controlled unless meeting an explosive or propellant control. The mixture of beryllium powder in a cured thermoset shape is not controlled by this category. The mixture of controlled beryllium powder mixed with a typical propellant binder will remain controlled by this category. The addition of dry silica powder to dry beryllium powder will remain controlled.

(3) Paragraph (c)(4)(ii)(A) of this category does not control boron and boron carbide enriched with boron-10 (20% or more of total boron-10 content).

(4) Theoretical specific impulse (Isp) is calculated using standard conditions (1000 psi chamber pressure expanded to 14.7 psi) and measured in units of pound-force-seconds per pound-mass (lbf-s/lbm) or simplified to seconds (s). Calculations will be based on shifting equilibrium.

(5) Particle size is the mean particle diameter on a weight basis. Best industrial practices will be used in determining particle size and the controls may not be undermined by addition of larger or smaller sized material to shift the mean diameter.

Note 1: To assist the exporter, an item has been categorized by the most common use. Also, where appropriate, references have been provided to the related controlled precursors.

Note 2: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist government agencies in the license review process and exporters when completing their license application and export documentation.

* * * * *

Dated: April 24, 2012.

Rose E. Gottemoeller,

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

[FR Doc. 2012–10455 Filed 5–1–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–060–FOR; Docket ID: OSM–2012–0007]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding: definitions; review of permit applications; criteria

for permit approval or denial; commission review of outstanding permits; challenge of ownership or control and applicant/violator system procedures; identification of interests and compliance information; mining in previously mined areas; conditions of permits; revegetation standards; cessation orders; alternative enforcement; application approval and notice; permit revisions; permit renewals; transfer, assignment or sale of permit rights; and requirements for new permits for persons succeeding to rights granted under a permit. Texas intends to revise its program to be no less effective than the Federal regulations and improve operational efficiency.

This document gives the times and locations that the Texas program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., June 1, 2012. If requested, we will hold a public hearing on the amendment on May 29, 2012. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on May 17, 2012.

ADDRESSES: You may submit comments, identified by SATS No. TX–060–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office or going to *www.regulations.gov.*

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, Email: *aclayborne@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By email dated February 14, 2012 (Administrative Record No. TX–701), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. TX–665) from OSM in accordance with 30 CFR 732.17(c) and with additional changes submitted on its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) at the following sections:

A. Section 12.3 Definitions

Texas proposes to modify this section by revising, adding, or deleting language for the definitions of Applicant/Violator System; Control or controller; Knowing or knowingly; Lands eligible for remining; Own, owner, or ownership; Owned or controlled and owns and controls; Remining; Violation; Violation, failure, or refusal; Violation notice; and Willful or willfully.

B. Section 12.100 Responsibilities

Texas proposes to remove the word ''renewal'' from the provision that places the burden on the applicant to establish that an application is in compliance with all the Commission's requirements.

C. Section 12.116 Identification of Interests and Compliance Information (Surface Mining)

Texas proposes to delete language in this section regarding identification of interests and compliance information and replace it with new language regarding certifying and updating existing permit information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

D. Section 12.155 Identification of Interests

Texas proposes to delete this section and incorporate the language into § 12.156 for efficiency.

E. Section 12.156 Identification of Interest and Compliance Information (Underground Mining)

Texas proposes to add language to this section regarding identification of interests; specifically, certifying and updating permit application information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

F. Section 12.206 Mining in Previously Mined Areas

Texas proposes to add new language regarding application requirements for operations on lands eligible for remining.

G. Section 12.215 Review of Permit Applications

Texas proposes to add language requiring the entry and updating of data into the Applicant Violator System. Additionally, language is being added regarding the review of permit history, review of compliance history, and making a permit eligibility determination based on this information.

H. Section 12.216 Criteria for Permit Approval or Denial

Texas proposes to add language stating that permits related to remining must contain lands eligible for remining, an identification of potential environmental and safety problems, and mitigation plans that address any potential environmental or safety problems.

I. Section 12.225 Commission Review of Outstanding Permits

Texas proposes to add language regarding written findings and preliminary findings for improvidently issued permits. Additionally, changes are proposed regarding permit suspension and rescission timeframes and appeal rights.

J. Section 12.234 Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures

Texas proposes to renumber its § 12.234 as § 12.235 and add new language to create a new § 12.234 regarding ownership and control challenges—specifically—the applicability, procedures, burden of proof, written agency decisions, and post-permit issuance information requirements.

K. Section 12.395 Revegetation: Standards for Success (Surface Mining) and § 12.560 Revegetation: Standards for Success (Underground Mining)

Texas proposes to delete language in this section regarding liability periods and replace it with new language that better matches the Federal regulations.

L. Section 12.676 Alternative Enforcement

Texas proposes to add new language regarding alternative enforcement; specifically for general provisions, criminal penalties, and civil actions for relief.

M. Section 12.677 Cessation Orders

Texas proposes to add new language requiring written notification to the permittee, the operator, and anyone listed or identified as an owner or controller of an operation, within 60 days of issuing a cessation order.

N. Section 12.221 Conditions of Permits: Environment, Public Health, and Safety; § 12.239 Application Approval and Notice; § 12.226 Permit Revisions; § 12.228 Permit Renewals: Completed Applications; § 12.232 Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; and § 12.233 Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit

Texas proposes to make minor, nonsubstantial reference changes in these sections.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent state or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.D.T. on May 17, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the

rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

[FR Doc. 2012–10572 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Oregon Army National Guard, Camp Rilea, Clatsop County, OR; Danger Zone

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

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to establish a new danger zone in the waters adjacent to Camp Rilea located in Clatsop County, Oregon. The regulation would prohibit any activity by the public within the danger zone during use of weapons training ranges. The new danger zone is necessary to ensure public safety and satisfy the Oregon National Guard operations requirements for small arms training.

DATES: Written comments must be submitted by June 1, 2012.

ADDRESSES: You may submit comments, identified by docket number COE–2011–0036, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2011–0036, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2011–0036. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Steve Gagnon, U.S. Army Corps of Engineers, Portland District, Regulatory Branch, at 503–808–4379.

SUPPLEMENTARY INFORMATION: In response to a request from the Oregon Army National Guard, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations at 33 CFR part 334 to establish a new danger zone. The proposed danger zone will prohibit access to waters adjacent to Camp Rilea during use of weapons training ranges, thereby ensuring that no threat is posed to passing water traffic due to ricochet rounds.

Procedural Requirements

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

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that this danger zone would have practically no economic impact on the public, and minimal anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because the proposed site for the danger zone is located in the Pacific Ocean and vessels may navigate around the prohibited area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

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

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

2. Add § 334.1175 to read as follows:

§ 334.1175 Pacific Ocean, at Camp Rilea, Clatsop County, Oregon; Danger Zone.

(a) *The area.* The danger zone shall encompass all navigable waters of the United States as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Beginning at latitude 46°09′00.32″ N, longitude 123°57′52.57″ W; thence to latitude 46°09′00.32″ N, longitude 124°01′03.92″ W; thence to latitude 46°05′25.38″ N, longitude 124°01′03.92″ W; thence to latitude 46°05′25.38″ N, longitude 123°56′23.19″ W.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone when restrictions are in force during weapons range training activities. At all other times, nothing in this regulation prohibits any lawful uses of this area.

(2) A schedule for proposed closures of the danger zone will be furnished to the U.S. Coast Guard, Astoria Command Center one week in advance of range training activities to provide local notice to mariners. Changes to the schedule made less than one week in advance of the event will be transmitted to the Astoria Command Center on the day the change is made.

(3) At least 30 minutes prior to restricting navigation in the danger zone, red flags will be raised on wooden poles immediately next to the beach at the north and south boundaries of Camp Rilea. The red flags will remain flying while the ranges are in use. During night weapons training activities, red lights will be substituted for the flags. Closure announcements will be broadcast over marine VHF Channel 16/19. When range training activities are completed, the red flags will be removed and an announcement made over marine VHF Channel 16/19 that restrictions are lifted.

(4) When restrictions are in force, Camp Rilea will visually monitor the danger zone using radar and guards, equipped with binoculars and two-way radios, posted on the beach near the north and south boundaries of the Camp. If a vessel is detected in the danger zone, a cease fire will be called on all active weapons ranges and Camp Rilea will attempt to contact the vessel using marine VHF radio. Cease fire will be maintained until the vessel leaves the danger zone.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Camp Rilea, Oregon and such agencies as he/she may designate.

Dated: April 23, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–10608 Filed 5–1–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0271; FRL–9664–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of the 1980 Consent Order for the Maryland Slag Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Maryland Department of Environment to revise the Maryland State Implementation Plan (SIP). The revision removes a 1980 Consent Order issued to the Maryland Slag Company (now known as MultServ). The 1980 Consent Order is no longer required to satisfy applicable Federal regulations and the Clean Air Act (CAA). In the Final Rules section of this **Federal Register**, EPA is approving the State'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 no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0271 by one of the following methods:

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

B. *Email: spink.marcia@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0271, Marcia L. Spink, Associate Director for Policy and Science, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0271. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215) 814–2104, or by email at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 12, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2012–10340 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0001; FRL–9346–1]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 1, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 1E7853.* (EPA–HQ–OPP–2011–0395). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on acerola at 5.0 parts per million (ppm); atemoya at 20 ppm; biriba at 20 ppm; cherimoya at 20 ppm; custard apple at 20 ppm; feijoa at 5.0 ppm; guava at 5.0 ppm; ilama at 20 ppm; jaboticaba at 5.0 ppm; passionfruit at 5.0 ppm; soursop at 20 ppm; starfruit at 5.0 ppm; sugar apple at 20 ppm; wax jambu at 5.0 ppm; ginseng at 3.0 ppm; onion, bulb subgroup 3–07A at 0.2 ppm; onion, green subgroup 3–07B at 7.0 ppm; caneberry subgroup 13–07A at 5.0 ppm; bushberry subgroup 13–07B at 2.0 ppm; fruit, small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm; berry, low growing, subgroup 13–07G, except cranberry at 2.0 ppm; vegetable, fruiting, group 8–10, except tomato at 0.7 ppm; fruit, citrus, group 10–10 at 10 ppm; fruit, pome, group 11–10 at 5.0 ppm; leafy green subgroup 4A at 30 ppm; pineapple at 8.0 ppm; dragon fruit at 1.0 ppm; and vegetable, tuberous and corm, subgroup 1C at 6.0 ppm. Syngenta, has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

2. *PP 1E7972.* (EPA–HQ–OPP–2012–0164). E.I. du Pont de Nemours and Company, P.O. Box 80402, Wilmington, DE 19880, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide proquinazid, in or on grapes at 0.5 ppm and raisins at 1.0 ppm. The proposed enforcement analytical methodology for proquinazid in plant-based matrices is the DFG–S19 multi-residue method which uses gas chromatography with electron capture detection (GC/ECD) or GC with mass spectromatic detection (GC/MSD). The analytical method AMR 4089–96 (Analytical method for the determination of proquinazid (DPX–KQ926) and metabolite (IN–MM671) in grapes using GC/MSD successfully determines residues in grapes and processed grape commodities. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov.*

3. *PP 2E7979.* (EPA–HQ–OPP–2012–0132). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide glyphosate *N*-(phosphonomethyl) glycine in or on the raw agricultural commodity teff, forage and teff, hay at 100 ppm; and oilseed crops, group 20 at 40 ppm. Adequate enforcement methods are available for analysis of residues of glyphosate and its metabolite, AMPA, in or on plant and livestock commodities. These methods include: Gas-Liquid Chromatography ((GLC)—Method I in PAM II); HPLC with fluorometric detection; and GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

4. *PP 2E7991.* (EPA–HQ–OPP–2012–0203). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the plant growth regulator 1-naphthaleneacetic acid (NAA) and its conjugates, in or on rambutan at 3 ppm; avocado, mamey sapote and mango at 0.05 ppm; and fruit, pome, group 11–10 at 0.15 ppm. The nature of the residues of NAA is adequately understood and an acceptable analytical method is available for enforcement purposes. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

5. *PP 2E7982.* (EPA–HQ–OPP–2012–0139). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540 in cooperation with Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on artichoke at 0.02 ppm; cabbage and Chinese cabbage (tight-headed varieties only) at 0.02 ppm; olives, and olive oil at 0.02 ppm; pomegranate at 0.02 ppm; cactus fruit at 0.1 ppm, and cactus pads at 0.05 ppm. Practical analytical methods for detecting and measuring levels of flumioxazin have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The level of quantitation (LOQ) of flumioxazin in the methods is 0.02 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

6. *PP 0F7791.* (EPA–HQ–OPP–2008–0743). Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide tolfenpyrad (4-chloro-3-ethyl-1-methyl-*N*-[4-(*p*-tolyloxy) benzyl] pyrazole-5-carboxamide, in or on head lettuce at 5 ppm; leaf lettuce at 30 ppm; leaf petioles, subgroup 4B at 12.5 ppm; spinach at 24 ppm; *Brassica,* head and stem, subgroup 5A at 3.6 ppm; *Brassica,* leafy, subgroup 5B at 44 ppm; vegetable, fruiting group 8 at 0.6 ppm; potatoes at 0.04 ppm; nut, tree group 14 (including pistachio) at 0.04 ppm; almond, hulls at 5.0 ppm; fruit, pome, group 11 at 0.6 ppm; apple, wet pomace at 5.0 ppm; vegetable, cucurbit, group 9 at 0.8 ppm; fruit, stone, group 12 at 3.0 ppm; pomegranates at 3.0 ppm; persimmons at 3.0 ppm; citrus, group 10 at 1.0 ppm; citrus, pulp, dried at 2.0 ppm; citrus, oil at 16.0 ppm; grapes at 2.0 ppm; raisins at 5 ppm; cotton, seed at 0.6 ppm; cotton, gin byproducts at 9.0 ppm; tea at 20 ppm; milk at 0.03 ppm; cattle, meat at 0.2 ppm; cattle, meat byproducts at 0.2 ppm; cattle, fat at 0.01 ppm; cattle, kidney at 0.3 ppm; cattle, liver at 0.7 ppm; sheep, meat at 0.02 ppm; sheep, meat byproducts at 0.02 ppm; sheep, fat at 0.01 ppm; sheep, kidney at 0.3 ppm; sheep, liver at 0.7 ppm; goat, meat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; goat, fat at 0.01 ppm; goat, kidney at 0.3 ppm; goat, liver at 0.7 ppm; horse, meat at 0.02 ppm; horse, fat at 0.01 ppm; horse, kidney at 0.3 ppm; horse, liver at 0.7 ppm; and horse, meat byproducts at 0.02 ppm. Residues of tolfenpyrad are quantified using HPLC–MS/MS detection. This method has been successfully validated at an independent facility and therefore is suitable for use as the enforcement method for the determination of residues of tolfenpyrad in crops. Contact: Driss Benmhend, (703) 308–9525, email address: *benmhend.driss@epa.gov.*

7. *PP 1F7935.* (EPA–HQ–OPP–2012–0044). United Phosphorus, Inc., 630 Freedom Business Center, King of Prussia, PA 19406, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide mancozeb, in or on walnuts at 0.75 ppm of carbon disulfide equivalents. Residues of mancozeb are determined by decomposing the residue with a strong acid to release carbon disulfide (CS_2). The CS_2 can be measured by GC or by absorbance of a colored copper dithiocarbamate complex formed by sweeping the CS_2 through a trap and into a reaction tube containing a solution of copper acetate and an amine. Adequate methodology for enforcement is available in the Pesticide Analytical Manual (PAM), Volume II, Methods II and III. Contact: Lisa Jones, (703) 308–9424, email address: *jones.lisa@epa.gov.*

8. *PP 1F7902.* (EPA–HQ–OPP–2007–0556). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide fenpyroximate and its *Z*- isomer, in or on corn, field, grain at 0.02 ppm; corn, field, forage/silage at 2.0 ppm; corn, field, stover at 7.0 ppm; corn, field, aspirated fractions at 2.0 ppm; corn, pop, grain at 0.02 ppm; corn, pop, forage/silage at 2.0 ppm; corn, pop, stover at 7.0 ppm; and corn, pop, aspirated fractions at 2.0 ppm. An enforcement method has been developed which involves extraction of fenpyroximate from crops with ethyl acetate in the presence of anhydrous sodium sulfate, dilution with methanol, and then analysis by HPLC–MS/MS detection. Contact: Driss Benmhend, (703) 308–9525, email address: *benmhend.driss@epa.gov.*

Amended Tolerances

1. *PP 1E7853.* (EPA–HQ–OPP–2011–0395). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.516 by revising the tolerances for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, from 0.45 ppm to 5.0 ppm for the following commodities: Avocado; sapote, black; canistel; sapote, mamey; mango; papaya; sapodilla; and star apple. The petition additionally requests to amend the tolerances for the following commodities from 1.0 ppm to 20 ppm: Longan; lychee; pulasan; rambutan; and Spanish lime. The petition also requests to amend the tolerance in or on tomato from 0.50 ppm to 3.0 ppm. In addition, upon approval of the aforementioned tolerances, it is proposed that 40 CFR 180.516 be amended to remove the established tolerances for the residues of fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on the raw agricultural commodities onion, bulb at 0.2 ppm; onion, green at 7.0 ppm; caneberry subgroup 13A at 5.0 ppm; bushberry subgroup 13B at 2.0 ppm; Juneberry at 2.0 ppm; lingonberry at 2.0 ppm; salal at 2.0 ppm; grape at 1.0 ppm; strawberry at 2.0 ppm; vegetable, fruiting, group 8 at 0.01 ppm; tomatillo at 0.50 ppm; fruit, citrus, group 10 at 10 ppm; fruit, pome, group 11 at 5.0 ppm; leafy greens subgroup 4A, except spinach at 30 ppm; and vegetable, tuberous and corm, subgroup 1D at 3.5 ppm. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

2. *PP 2E7979.* (EPA–HQ–OPP–2012–0132). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.364 for residues of the herbicide glyphosate *N*-(phosphonomethyl) glycine, as follows: Vegetable, root and tuber, group 1, except sugar beet from 0.2 ppm to 6.0 ppm; and convert: Vegetable, bulb, group 3 at 0.2 ppm to vegetable, bulb, group 3–07 at 0.2 ppm; okra at 0.5 ppm and vegetable, fruiting, group 8 at 0.1 ppm to vegetable, fruiting, group 8–10 at 0.1 ppm; fruit, citrus, group 10 at 0.5 ppm to fruit, citrus, group 10–10 at 0.5 ppm; fruit, pome, group 11 at 0.2 ppm to fruit, pome, group 11–10 at 0.2 ppm; cranberry, grape, Juneberry, kiwifruit, lingonberry, salal, strawberry, and berry group 13 at 0.2 ppm to berry and small fruit, group 13–07 at 0.2 ppm. In addition, upon approval of the new

tolerance for ''Oilseed Crops, Group 20 at 40 ppm'' under ''New Tolerances'', delete tolerances for borage, seed, crambe, seed, jojoba, seed, lesquerella, seed, meadowfoam, seed, mustard, seed and sesame, seed all at 0.1 ppm; flax, seed at 4.0 ppm; flax, meal at 8.0 ppm; canola, seed and rapeseed, seed at 20 ppm; cotton, undelinted seed at 40 ppm and safflower, seed and Sunflower, seed at 85 ppm; which will be included under the ''Oilseed Crops, Group 20 at 40 ppm''. Adequate enforcement methods are available for analysis of residues of glyphosate and its metabolite, AMPA, in or on plant and livestock commodities. These methods include: GLC—Method I in PAM II; HPLC with fluorometric detection; and GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

3. *PP 2E7991.* (EPA–HQ–OPP–2012–0203). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests upon approval of the aforementioned tolerances under ''New Tolerance'', to amend the tolerances in 40 CFR 180.155 for residues of the plant growth regulator, 1-naphthalene- acetic acid (NAA) and its conjugates, by removing the tolerance for fruit, pome, group 11 at 0.15 ppm, as it will be superseded by the tolerance on fruit, pome, group 11–10 at 0.15 ppm. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

New Tolerance Exemptions

1. *PP 1E7900.* (EPA–HQ–OPP–2012–0131). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077, requests to establish an exemption from the requirement of a tolerance for residues of calcium gluconate (CAS No. 299–28–5) under 40 CFR 180.920 when used as a pesticide inert ingredient as a sequestrant, binder and filler in pesticide formulations applied pre-harvest to all raw agricultural. The petitioner believes no analytical method is needed based on the fact that this information is not required for the establishment of a tolerance exemption. Contact: Roger Chesser, (703) 347–8516, email address: *chesser.roger@epa.gov.*

2. *PP 1E7933.* (EPA–HQ–OPP–2012–0207). Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102, requests to establish an exemption from the requirement of a tolerance for residues of aluminum sulfate (CAS No. 10043–01–3) under 40 CFR 180.940(a) for use as an inert ingredient as a defoamer in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at 50 ppm. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: Janet Whitehurst, (703) 305–6129, email address: *whitehurst.janet@epa.gov.*

3. *PP 1E7949.* (EPA–HQ–OPP–2012–0106). DowAgroSciences, LLC., 9330 Zionsville Rd., Indianapolis, IN 46268, requests to establish an exemption from the requirement of a tolerance for residues of *N*-Alkyl (C_8-C_{18}) dimethylamidopropyl-amines (NADMAPA) where the alkyl group is linear and may be saturated and/or unsaturated under 40 CFR 180.920 when used as a pesticide inert ingredient in pesticide formulations with limits of up to 20% of a herbicide formulation. NADMAPA is a group of highly related materials that are all derived from the reaction of dimethylamidopropyl-amine (DMAPA) with linear C_8-C_{18} fatty acids. The following materials are proposed as being covered by the NADMAPA descriptor: Amides, coco, *N*-[3-(dimethylamino) propyl] (CAS No. 68140–01–2); Amides, C_8-C_{18} and C_{18}-unsatd., *N*-[3-(dimethylamino) propyl] (CAS No. 146987–98–6); *N*-[3-(dimethylamino)propyl]-C_{12}-C_{18}(even numbered)-alkylamide (CAS No. 1147459–12–8); dodecanamide, *N*-[3-(dimethylamino) propyl] (CAS No. 3179–80–4); tetradecanamide, *N*-[3-(dimethylamino)propyl] (CAS No. 45267–19–4); hexadecanamide, *N*-[3-(dimethylamino)propyl] (CAS No. 39669–97–1); octadecanamide, *N*-[3-(dimethylamino)propyl] (CAS No. 7651–02–7); 9-octadecenamide, *N*-[3-(dimethylamino)propyl]-, (9*Z*)- (CAS No. 109–28–4); decanamide, *N*-[3-(dimethylamino)propyl] (CAS No. 22890–11–5); and octanamide, *N*-[3-(dimethylamino)propyl] (CAS No. 22890–10–4). This petition is based on coconut fatty acid, dimethylamidopropylamide (Coco APDMA; CAS 68140–01–2; Amides, coco, *N*-[3-(dimethylamino)propyl]) as the representative test material for NADMAPA materials. Coco APDMA is a blend and the chain length of the R group varies based on the natural origin of the coconut oil. The dominant components of the R chain are C_{12} and C_{14} at 52.47 and 15.72%, respectively, but the chain length ranges from C_8 to C_{18}. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: William Cutchin, (703) 305–7990, email address: *cutchin.william@epa.gov.*

4. *PP 1F7941.* (EPA–HQ–OPP–2012–0134). Becker Underwood, Inc., 801 Dayton Avenue, Ames, IA 50010, requests to establish an exemption from the requirement of tolerances for residues of the seed applied biochemical pesticide, methyl jasmonate (CAS No. 1211–29–6), cyclopentaneacetic acid, 3-oxo-2-(2-pentenyl)-, methyl ester, in or on canola, seed; rapeseed, seed; mustard, seed; safflower, seed; sunflower, seed; and camelina, seed. An analytical method for residues of methyl jasmonate is not necessary as this petition requests an exemption from the requirement of a tolerance without numerical limitations. Contact: Chris Pfeifer, (703) 308–0031, email address: *pfeifer.chris@epa.gov.*

5. *PP 2F7974.* (EPA–HQ–OPP–2012–0250). Actagro, LLC, PO Box 309, Biola, CA 93606, requests to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, Organic Acids Derived from Leonardite, when used as a plant growth regulator applied to all growing crops. The petition proposes to establish exemptions from the requirement of a tolerance without numerical limitation and an analytical method is generally not required for establishment of a tolerance exemption. Contact: Menyon Adams, (703) 347–8496, email address: *adams.menyon@epa.gov.*

Amended Tolerance Exemption

PP 1E7946. (EPA–HQ–OPP–2012–0031). Lyondell Chemical Company, 1221 McKinney Street, Houston, TX 77010, requests to expand the exemption from the requirement of a tolerance for uses of the residues of 2-methyl-1,3-propanediol (CAS No. 2163–42–0) in 40 CFR 180.940(a), to include uses in food contact surface sanitizing solutions in addition to existing uses on raw agricultural commodities and animals. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: David Lieu, (703) 305–0079, email address: *lieu.david@epa.gov.*

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10321 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 85

Wednesday, May 2, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 2, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230, or via the Internet at *jjessup@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Christopher Emond, Chief, Special Surveys Branch, Balance of Payments Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via the Internet at *christopher.emond@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–125, Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, obtains quarterly data from U.S. companies whose sales of covered services or intellectual property to foreign persons exceeded $6 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year, or whose purchases of covered services or intellectual property from foreign persons exceeded $4 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. The data collected are cut-off sample data. In addition, estimates are developed based upon previously reported or estimated data for non-respondents, including those U.S. persons who fall below the reporting threshold for the quarterly survey but reported on a previous benchmark survey.

The data are needed to monitor U.S. international trade in these transactions, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on trade in selected services and intellectual property, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Responses will be due within 45 days after the close of each calendar quarter, except for the final quarter of the respondents' fiscal year, when reports are due within 90 days after the close of the quarter. The data from the survey are primarily intended as general purpose statistics. They are needed to answer any number of research and policy questions related to cross-border trade in services and intellectual property.

The title of the form is being changed to Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons from Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons to align with the benchmark survey that the BE–125 updates on a quarterly basis. The remainder of the form is unchanged from the prior version. No changes in the data collected or in exemption levels are proposed.

II. Method of Collection

The surveys are sent to the respondents by U.S. mail; the surveys are also available from the Bureau of Economic Analysis (BEA) Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax, or email.

III. Data

OMB Control Number: 0608–0067.

Form Number: BE–125.

Type of Review: Regular submission (extension of a currently approve information collection).

Affected Public: Business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 2,000 per quarter; 8,000 annually.

Estimated Time per Response: 16 hours for mandatory responses, and 1 hour for other responses.

Estimated Total Annual Burden Hours: 98,000.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 2012.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–10564 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on May 17, 2012, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Remarks from Bureau of Industry and Security senior management.
3. Report on Composite Working Group and other working groups.
4. Report on regime-based activities.
5. Discussion on Department of Commerce Role in export of Avian Influenza Virus and related technology.
6. Public comments and new business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 10, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 16, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: April 27, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–10502 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on May 22, 2012, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals for next Wassenaar Meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 15, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c) (9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a) (1) and 10(a) (3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: April 27, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–10500 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 22, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–007. *Applicant:* Argonne National Laboratory, 9700 South Cass Ave., Lemont, IL 60439. *Instrument:* Klystron. *Manufacturer:* Thales Components Corp., France. *Intended Use:* The instrument will be

used for a wide variety of research purposes, including the investigation of atomic structure, and material behavior under extreme pressures. The instrument is used as a component part of a particle accelerator system that produces and stores a high-energy electron beam in a storage ring. This electron beam is then manipulated by special magnets in order to produce photon flux in the form of x-rays. This x-ray flux is ultimately used for imaging biological and other materials samples. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 1, 2012.

Dated: April 25, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–10593 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee (CINTAC) Public Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the CINTAC.

DATES: The meeting is scheduled for Tuesday, June 5, 2012, at 9:00 a.m. Eastern Daylight Time (EDT). The public session is from 3:00 p.m.–4:00 p.m.

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopp, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–3851; Fax: 202–482–5665; email: *sarah.lopp@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the June 5, 2012 CINTAC meeting is as follows:

Closed Session (9:00 a.m.–3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3).

Public Session (3:00 p.m.–4:00 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update.
2. Civil Nuclear Trade Promotion Activities Discussion.
3. Public comment period.

The open session will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Ms. Sarah Lopp at the contact information below by 5:00 p.m. EDT on Friday, June 1, 2012 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Ms. Lopp and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, June 1, 2012. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, June 1, 2012. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 22, 2012, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. (10)(d)), (1) that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3); and (2) that the portion of the meeting dealing with matters requiring disclosure of trade secrets and commercial or financial information as described in 5 U.S.C. 552b(c)(4) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–10625 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood

lumber products to the United States during the period July 1 through December 31, 2011.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: James Terpstra, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on December 15, 2011. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1 through December 31, 2011. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only one country, Canada, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1 through June 30, 2011, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by email to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: *http://ia.ita.doc.gov*. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster-support@ita.doc.gov*.

For documents filed in the antidumping and countervailing duty proceedings, the Department only accepts electronic filings through the new IA ACCESS system. However, all comments and submissions in response to this Request for Comment should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: April 26, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10594 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coastal and Estuarine Land Conservation Planning, Protection or Restoration

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 2, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Patmarie Nedelka, (301) 713–3155 ext. 127 or *Patmarie.Nedelka@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a

Coastal and Estuarine Land Conservation Program (CELCP) to protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants who choose to participate in the program to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. Guidelines for the CELCP can be found on NOAA's Web site at: *http://coastalmanagement.noaa.gov/land/*or may be obtained upon request via the contact information listed above.

The CELCP was reauthorized under Public Law 111–111, the Omnibus Public Lands Management Act, as a component of the Coastal Zone Management Act. NOAA also has, or is given, additional authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states, localities or other recipients for planning, conservation, acquisition, protection, restoration, or construction projects. The required information enables NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities.

II. Method of Collection

Electronic formats are the preferred method for submitting CELCP plans, project applications, performance reports and other required materials. However, respondents may submit materials in electronic or paper formats. Project applications are normally submitted electronically via Grants.gov, but may be submitted by mail in paper form if electronic submittal is not a viable option. Methods of submittal for plans, performance reports or other required materials may include electronic submittal via email or NOAA Grants Online, mail and facsimile transmission of paper forms, or submittal of electronic files on compact disc.

III. Data

OMB Control Number: 0648–0459.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Response: CELCP Plans, 120 hours to develop or 35 hours to revise or update; project application and checklist, 15 hours; and final grant applications and semi-annual and annual reporting, 5 hours.

Estimated Total Annual Burden Hours: 1,405.

Estimated Total Annual Cost to Public: $273 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–10514 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC010

Marine Mammals; File No. 14325

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (ADF&G), Division of Wildlife Conservation, Juneau, AK, (Principal Investigator: Michael Rehberg), has applied for an amendment to Scientific Research Permit No. 14325–01 for taking Steller sea lions (*Eumetopias jubatus*) in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before June 1, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14325 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14325–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 14325, issued on August 17, 2009 (74 FR 44822), authorizes taking of marine mammals during continuation of a long-term research program investigating various hypotheses for the decline or lack of recovery of Steller sea lions in Alaska. The permit includes takes for: incidental disturbance during aerial

surveys; disturbance of animals on rookeries and haulouts during brand resighting surveys, and incidental to scat collection; capture for instrument attachment, branding, capture method development, physiological research, and sample collection; permanent marking of pups for long-term demographic and distribution studies; capture of older animals for physiological assessment; and attachment of scientific instruments to investigate foraging ecology, diving behavior and habitat use. The permit also authorizes unintentional mortality of Steller sea lions, and incidental harassment of harbor seals (*Phoca vitulina richardsi*), northern fur seals (*Callorhinus ursinus*), and California sea lions (*Zalophus californianus*). The permit was amended (to version no. 14325–01) on November 16, 2011, to change the identity of the Principal Investigator from Dr. Lorrie Rea to Michael Rehberg.

The permit holder is requesting the permit be amended to include changes to the terms and conditions of the permit related to numbers of animals taken and to the location and manner of taking to include: manual restraint of pups in the eastern Distinct Population Segment (eDPS) and western DPS (wDPS); capture of adult Steller sea lions using remotely delivered immobilization agents; adding jugular blood draw/catheter location for sampling and Evans Blue injection; adding the intraperitoneal cavity to allowable deuterium injection sites; modifying time of year and number of takes for the Alsek/Akwe aerial surveys; and adding aerial surveys at Cape Newenham haulout and in the northern Bering Sea.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10629 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB068

Availability of Report: California Eelgrass Mitigation Policy; Extension of Comment Period

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS is announcing an extension in the public comment period for the notice to allow other agencies and the public an opportunity to review and provide comments on the proposed adoption of the California Eelgrass Mitigation Policy (CEMP) by NMFS Southwest Region (SWR) Habitat Conservation Division (HCD). NMFS published the CEMP, which included a request for comment in the **Federal Register** on March 9, 2012. The public comment period was to end on May 8, 2012—60 days after publication in the **Federal Register**. The purpose of this document is to extend the comment period an additional 60 days until July 7, 2012. This extension of the comment period is provided to allow the public additional time to provide comment on the CEMP. The intent of the CEMP is to help ensure consistent and effective mitigation of unavoidable impacts to eelgrass habitat throughout the SWR. The CEMP is a unified policy document for SWR–HCD, based on the highly successful implementation of the Southern California Eelgrass Mitigation Policy, which has improved mitigation effectiveness since its initial adoption in 1991. This policy is needed to ensure effective, statewide eelgrass mitigation and will help ensure that unavoidable impacts to eelgrass habitat are fully and appropriately mitigated. It is anticipated that the adoption and implementation of this policy will provide for enhanced success of eelgrass mitigation in California. Given the success of the Southern California Eelgrass Mitigation Policy, the California Eelgrass Mitigation Policy reflects an expansion of the application of this policy with minor modifications to ensure a high standard of statewide eelgrass management and protection. The CEMP will supersede the Southern California Eelgrass Mitigation Policy for all areas of California upon its adoption.

DATES: Public comments must be received on or before 5 p.m., Pacific standard time July 7, 2012. All comments received before the due date will be considered before finalizing the CEMP.

ADDRESSES: Comments on the CEMP may be submitted by mail to the National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95409, Attn: California Eelgrass Mitigation Policy Comments. Comments may also be sent via facsimile to (707) 578–3435. Comments may also be submitted electronically via email to *SWR.CEMP@noaa.gov.* All comments received will become part of the public record and will be available for review upon request.

The reports are available at *http://swr.nmfs.noaa.gov/hcd/* or by calling the contact person listed below or by sending a request to *Korie.Schaeffer@noaa.gov.* Please include appropriate contact information when requesting the documents.

FOR FURTHER INFORMATION CONTACT: Korie Schaeffer, at 707–575–6087.

SUPPLEMENTARY INFORMATION: Eelgrass species are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze *et al.* 2006, Orth *et al.* 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Throughout California, human activities including, but not limited to, urban development, recreational boating, and commercial shipping continue to degrade, disturb, and/or destroy important eelgrass habitat. For example, dredging and filling; shading and alteration of circulation patterns; and watershed inputs of sediment, nutrients, and unnaturally concentrated or directed freshwater flows can directly and indirectly destroy eelgrass habitats. The importance of eelgrass both ecologically and economically, coupled with ongoing human pressure and potentially increasing degradation and loss from climate change, highlights the need to protect, maintain, and where feasible, enhance eelgrass habitat.

Vegetated shallows that support eelgrass are considered a special aquatic site under the 404(b)(1) guidelines of the Clean Water Act (40 CFR 230.43). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), eelgrass is designated as Essential Fish Habitat (EFH) for various federally-managed fish species within the Pacific Coast Groundfish and Pacific Coast Salmon Fisheries Management Plans (FMP) (PFMC 2008). Eelgrass is also considered a habitat area of particular concern (HAPC) for various species within the Pacific Coast Groundfish FMP. An HAPC is a subset of EFH; these areas are rare, particularly susceptible to human-induced degradation, especially ecologically important, and/or located in an environmentally stressed area.

The mission of NMFS SWR–HCD is to conserve, protect, and manage living marine resources and the habitats that sustain them. Eelgrass is a habitat of particular concern relative to accomplishing this mission. Pursuant to the EFH provisions of the MSA, the Fish and Wildlife Coordination Act (FWCA), and obligations under the National Environmental Policy Act (NEPA) as a responsible agency, NMFS Southwest Region annually reviews and provides recommendations on numerous actions that may affect eelgrass resources throughout California, the only state within NMFS SWR that supports eelgrass resources. Section 305(b)(1)(D) of the MSA requires NMFS to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the NMFS on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Under section 305(b)(4) of the MSA, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH (50 CFR 600.925). NMFS makes its recommendations with the goal of avoiding, minimizing, or otherwise compensating for adverse effects to EFH. When impacts to NMFS trust resources are unavoidable, NMFS may recommend compensatory mitigation to offset those impacts. In order to fulfill its consultative role, NMFS may also recommend, *inter alia,* the development of mitigation plans, habitat distribution maps, surveys and survey reports, progress milestones, monitoring programs, and reports verifying the completion of mitigation activities.

Eelgrass warrants a strong protection strategy because of the important biological, physical, and economic values it provides, as well as its importance to managed species under the MSA. NMFS developed this policy to establish and support a goal of protecting this resource and its functions, including spatial coverage and density of eelgrass beds. Further, it is the intent of this policy to ensure that there is no net loss of habitat functions associated with delays in establishing compensatory mitigation. This is to be accomplished by creating a greater amount of eelgrass than is lost, if the mitigation is performed contemporaneously or after the impacts occur.

This policy will serve as the guidance for staff and managers within NMFS SWR for developing recommendations concerning eelgrass issues through EFH and FWCA consultations and NEPA reviews throughout California. It is also contemplated that this policy inform SWR's position on eelgrass issues in other roles as a responsible, advisory, or funding agency or trustee. In addition, this document provides guidance on the procedures developed to assist NMFS SWR in performing its consultative role under the statutes described above. Finally, pursuant to NMFS obligation to provide information to federal agencies under section 305(b)(1)(D) of the MSA, this policy serves that role by providing information intended to further the conservation and enhancement of EFH. Should this policy be inconsistent with any formally-promulgated NMFS regulations, those formally-promulgated regulations will supplant any inconsistent provisions of this policy.

While many of the activities impacting eelgrass are similar across California, eelgrass stressors and growth characteristics differ between southern California (U.S./Mexico border to Pt. Conception), central California (Point Conception to San Francisco Bay entrance), San Francisco Bay, and northern California (San Francisco Bay to the California/Oregon border). The amount of scientific information available to base management decisions on also differs among areas within California, with considerably more information and history with eelgrass habitat management in southern California than the other regions. Gaps in region-specific scientific information do not override the need to be protective of all eelgrass while relying on the best information currently available from areas within and outside of California. Although the primary orientation of this policy is toward statewide use, specific elements of this policy may differ between southern California, central California, northern California and San Francisco Bay.

This policy is consistent with NMFS support for developing comprehensive resource protection strategies that are protective of eelgrass resources within the context of broader ecosystem needs and management objectives. As such, this policy provides for the modified application of policy elements for plans that provide comparable eelgrass resource protection.

For all of California, eelgrass compensatory mitigation should be considered only after avoidance and minimization of effects to eelgrass have been pursued to the fullest extent possible. Mitigation should be recommended for the loss of existing vegetated areas and the loss of unvegetated areas that have been demonstrated capable of supporting eelgrass based on recent history of eelgrass investigations, unless physical manipulation of the environment has permanently altered site suitability for eelgrass or a change in the baseline has occurred.

Under this policy, as is the case with the present Southern California Eelgrass Mitigation Policy, the burden for successful mitigation rests with the action party. As such, the action party should fully consider and evaluate the costs and risks associated with eelgrass mitigation and should take appropriate measures to ensure success in achieving required performance milestones. While NMFS staff can provide technical assistance, action parties are advised that they are ultimately responsible for achieving mitigation success under this policy, irrespective of advice or technical assistance provided by NMFS, other agencies, or technical experts.

Reason for Granting an Extension

NMFS received a request for an extension of the CEMP comment period from an interested party, and has determined that an extension of the comment period for an additional 60 days would give the public adequate time to provide meaningful comment on the CEMP. However, this need must be balanced with our desire to finalize the policy in a timely manner. Accordingly, the public comment period for the CEMP published on March 9, 2012 (77 FR 14349) is extended until July 7, 2012. NMFS does not anticipate any further extension of the comment period at this time.

Authority

The authorities for publication of this policy notification are the Magnuson-Stevens Fishery Conservation and

Management Act (16 U.S.C. 1855), the Fish and Wildlife Coordination Act (16 U.S.C. 661), and the National Environmental Policy Act (42 U.S.C. 4321).

Dated: April 27, 2012.

Brian T. Pawlak,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2012–10626 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB105

Takes of Marine Mammals Incidental to Specified Activities; Three Marine Geophysical Surveys in the Northeast Pacific Ocean, June Through July 2012

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: We have received an application from the Lamont-Doherty Earth Observatory, a part of Columbia University, for an Incidental Harassment Authorization to take marine mammals, by harassment, incidental to conducting three consecutive marine geophysical surveys in the northeast Pacific Ocean, June through July 2012.

DATES: Comments and information must be received no later than May 31, 2012.

ADDRESSES: Comments on the application should be addressed to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All submitted comments are a part of the public record and we will post to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application containing a list of the references used in this document, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The National Science Foundation's (Foundation) draft Environmental Assessment (Assessment) pursuant to the National Environmental Policy Act of 1969 and Executive Order 12114 is also available at the same Internet address. The Assessment incorporates an ''Environmental Assessment of a marine geophysical survey by the R/V *Marcus G. Langseth* in the northeastern Pacific Ocean, June–July 2012,'' prepared by LGL Limited environmental research associates, on behalf of the Foundation. The public can view documents cited in this notice by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody or Howard Goldstein, National Marine Fisheries Service, Office of Protected Resources, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Act establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on January 27, 2012, from the Lamont-Doherty Earth Observatory (Observatory) for the taking by harassment, of small numbers of marine mammals, incidental to conducting three separate marine geophysical surveys in the northeast Pacific Ocean. We determined the application complete and adequate on March 27, 2012.

The Observatory, with research funding from the U.S. National Science Foundation (Foundation), plans to conduct three research studies on the Juan de Fuca Plate, the Cascadia thrust zone, and the Cascadia subduction margin in waters off the Oregon and Washington coasts. The Observatory has proposed to conduct the first survey from June 11 through July 5, 2012, the second survey from July 5 through July 8, 2012, and the third survey from July 12 through July 23, 2012.

The Observatory plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic airgun array, a single hydrophone streamer, and ocean bottom seismometers to conduct the geophysical surveys.

The proposed surveys will provide data necessary to:

- Characterize the evolution and state of hydration of the Juan de Fuca plate at the Cascadia subduction zone;
- Provide information on the buried structures in the region; and
- Assess the location, physical state, fluid budget, and methane systems of the Juan de Fuca plate boundary and overlying crust.

The results of the three studies would provide background information for generating improved earthquake hazards analyses and a better understanding of the processes that control megathrust earthquakes which are produced by a sudden slip along the boundary between a subducting and an overriding plate.

In addition to the operations of the seismic airgun array and hydrophone streamer, and the ocean bottom seismometers (seismometers), the Observatory intends to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the surveys.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun arrays, may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and the Observatory has requested an authorization to take 26 species of marine mammals by Level B harassment. We do not expect that the use of the multibeam echosounder, the sub-bottom profiler, or the ocean bottom seismometer will result in the take of marine mammals and will discuss our reasoning later in this notice. Also, we do not expect take to result from a collision with the *Langseth* because it is a single vessel moving at relatively slow speeds (4.6 knots (kts); 8.5 kilometers per hour (km/h); 5.3 miles per hour (mph)) during seismic acquisition within the survey, for a relatively short period of time. It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activities

Juan de Fuca Plate Survey

The first proposed seismic survey would begin on June 11, 2012, and end on July 5, 2012. The *Langseth* would depart from Astoria, Oregon on June 11, 2012, and transit to the survey area in the northeast Pacific Ocean in international waters and the Exclusive Economic Zones of the United States and Canada. The study area will encompass an area bounded by approximately 43–48 degrees (°) North by approximately 124–130° East (see Figure 1 in the Observatory's Application #1). Water depths in the survey area range from approximately 50 to 3,000 meters (m) (164 feet (ft) to 1.9 miles (mi)). At the conclusion of the first survey, the *Langseth* would begin a second three-day seismic survey on July 5, 2012, in the same area.

Typically, two-dimensional surveys such as this one, acquire data along single track lines with wide intervals; cover large areas; provide a coarse sampled subsurface image; and project less acoustic energy into the environment than other types of seismic surveys. During this survey, the *Langseth* would deploy a 36-airgun array as an energy source, an 8-kilometer (km)-long (4.9 mi-long) hydrophone streamer, and 46 seismometers. The seismometers are portable, self-contained passive receiver systems designed to sit on the seafloor and record seismic signals generated primarily by airguns and earthquakes. As the *Langseth* tows the airgun array along the survey lines, the hydrophone streamer receives the returning acoustic signals and transfers the data to the vessel's on-board processing system. The seismometers also record and store the returning signals for later analysis.

The Observatory plans to discharge the airgun array along three long transect lines and three semi-circular arcs using the seismometers as the receivers and then repeat along the long transect lines in multichannel seismic mode using the 8-km streamer as the receiver (see Figure 1 in the Observatory's Application #1). Also, the Observatory will use one support vessel, the R/V *Oceanus* (*Oceanus*) to deploy 46 seismometers on the northern onshore-offshore line, retrieve the 46 seismometers from the northern line, and then deploy 39 seismometers on the southern onshore-offshore lines and retrieve them at the conclusion of the survey.

The first study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 17 days to complete approximately 3,051 km (1,895.8 mi) of transect lines. The total survey effort including contingency will consist of approximately 2,878 km (1,788.3) of transect lines in depths greater than 1,000 m (621.3 mi), 102 km (63.4 mi) in depths 100 to 1,000 m (328 to 3,280 ft), and 71 km (44.1 mi) in water depths less than 100 m (328 ft). The northern and southern onshore-offshore lines are 70 to 310 km (43.4 to 192.6 mi) and 15 to 450 km (9.3 to 279.6 mi) from shore, respectively.

Data acquisition will include approximately 408 hours of airgun operations (i.e., 17 days over 24 hours). The Observatory, the *Langseth's* operator, will conduct all planned seismic activities, with on-board assistance by the scientists who have proposed the study. The Principal Investigators for the survey are Drs. S. Carbotte and H. Carton (Lamont Doherty Earth Observatory, New York) and P. Canales (Woods Hole Oceanographic Institution, Massachusetts). The vessel is self-contained and the crew will live aboard the vessel for the entire cruise.

Cascadia Thrust Zone Survey

The second proposed survey would begin on July 5, 2012, and end on July 8, 2012. The survey would take place in the U.S. Exclusive Economic Zone in waters off of the Oregon and Washington coasts. The study area will encompass an area bounded by approximately 43.5–47° North by approximately 124–125° East (see Figure 1 in the Observatory's Application #2). Water depths in the survey area range from approximately 50 to 1,000 m (164 ft to 0.62 mi). At the conclusion of this survey, the *Langseth* would return to Astoria, Oregon on July 8, 2012.

The *Langseth* would deploy a 36-airgun array as an energy source, 12 seismometers, and 48 seismometers (33 in Oregon and 15 in Washington) onshore (on land). As stated previously, as the *Langseth* tows the airgun array along the survey lines, the seismometers record the returning acoustic signals for later analysis. The Observatory proposes to use the *Oceanus* to deploy and retrieve the seismometers.

The Observatory plans to discharge the airgun array along a grid of lines off Oregon and along an onshore-offshore line off Washington (see Figure 1 in the Observatory's Application #2).

The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 3 days to complete approximately 793 km (492.7 mi) of transect lines. The total survey effort including contingency will consist of approximately 5 km (3.1 mi) of transect lines in depths greater than 1,000 m (621.3 mi), 501 km (311.3 mi) in depths 100 to 1,000 m (328 to 3,280 ft), and 287 km (178.3 mi) in water depths less than 100 m (328 ft). The northern and southern legs of the onshore-offshore lines are 15 to 70 km (9.3 to 43.5 mi) and 15 to 50 km (9.3 to 31.1 mi) from shore, respectively.

Data acquisition will include approximately 72 hours of airgun operations (i.e., 3 days over 24 hours). The Principal Investigators for the

second survey are Drs. A.M Trehu (Oregon State University) and G. Abers and H. Carton (Lamont Doherty Earth Observatory, New York). The vessel is self-contained and the crew will live aboard the vessel for the entire cruise.

Cascadia Subduction Margin Survey

The last seismic survey would begin on July 12, 2012, and end on July 23, 2012. The *Langseth* would depart from Astoria, Oregon on July 12, 2012, and transit to waters off of the Washington coast. The study area encompasses an area bounded by approximately 46.5–47.5° North by approximately 124.5–126° East (see Figure 1 in the Observatory's Application #3). Water depths in the survey area range from approximately 95 to 2,650 m (311.7 ft to 1.6 mi). At the conclusion of this survey, the *Langseth* would return to Astoria, Oregon on July 23, 2012.

The *Langseth* would deploy a 36-airgun array as an energy source and an 8-km-long (4.9 mi-long) hydrophone streamer. The Observatory plans to discharge the airgun array along nine parallel lines that are spaced eight km apart. If time permits, the Langseth would survey an additional two lines perpendicular to the parallel lines (see Figure 1 in the Observatory's Application #3).

The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 10 days to complete approximately 1,147 km (712.7 mi) of transect lines. The total survey effort including contingency will consist of approximately 785 km (487.8 mi) of transect lines in depths greater than1,000 m (621.3 mi), 350 km (217.5 mi) of transect lines in depths 100 to 1,000 m (328 to 3,280 ft), and 12 km (7.5 mi) of transect lines in water depths less than 100 m (328 ft). The survey area is 32 to 150 km (19.9 to 93.2 mi) from shore.

Data acquisition will include approximately 240 hours of airgun operations (i.e., 10 days over 24 hours). The Principal Investigators for the third survey are Drs. W.S. Holbrook (University of Wyoming), A.M. Trehu (Oregon State University), H.P. Johnson (University of Washington), G.M. Kent (University of Nevada), and K. Keranen (University of Oklahoma). The vessel is self-contained and the crew will live aboard the vessel for the entire cruise.

Vessel Specifications

The *Langseth,* owned by the Foundation, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. It's two 3,550 horsepower (hp) Bergen BRG–6 diesel engines drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operational speed during seismic acquisition will be approximately 4.6 kts (8.5 km/h; 5.3 mph) and the cruising speed of the vessel outside of seismic operations is 18.5 km/h (11.5 mph or 10 kts).

The *Langseth* will tow the 36-airgun array, as well as the hydrophone streamer during the first and last surveys, along predetermined lines. When the *Langseth* is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel also has an observation tower from which protected species visual observers (observer) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the observer's eye level will be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, we propose to issue an authorization to the Observatory that would be effective from June 9, 2012, to August 27, 2012.

Acoustic Source Specifications

Seismic Airguns

The *Langseth* will deploy a 36-airgun array, with a total volume of approximately 6,600 cubic inches (in^3) at a tow depth of 9, 12, or 15 m (29.5, 39.4, or 49.2 ft). The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz). The array configuration consists of four identical linear strings, with 10 airguns on each string. The *Langseth's* crew will space the first and last airguns 16 m (52 ft) apart from one another. Of the 10 airguns, nine will fire simultaneously while the tenth airgun will serve as a spare. The crew will turn on the spare airgun in case one of the other airguns fail. The *Langseth* will distribute the array across an area of approximately 24 by 16 m (78.7 by 52.5 ft) and will tow the array approximately 100 m (328 ft) behind the vessel.

Juan de Fuca Plate Survey: This survey's array tow depth will be 9 m (29.5 ft) for the multichannel seismic survey using the hydrophone streamer and 12 m (39.4 ft) during the survey using the seismometers. During the multichannel seismic survey, each airgun array will emit a pulse at approximately 16-second (s) intervals which corresponds to a shot interval of approximately 37.5 m (123 ft). During the survey using the seismometers, each airgun array will emit a pulse at approximately 200-s intervals which corresponds to a shot interval of approximately 500 m (1,640.4 ft). During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns are silent.

Cascadia Thrust Zone Survey: The survey's array tow depth will be 12 m (39.4 ft). During this survey, each airgun array will emit a pulse at approximately 40-s intervals which corresponds to a shot interval of approximately 100 m (328 ft). During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns are silent.

Cascadia Subduction Margin Survey: The survey's array tow depth will be 15 m (49.2 ft). During this survey, each airgun array will emit a pulse at approximately 20-s intervals which corresponds to a shot interval of approximately 50 m (164 ft). During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns are silent.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. In this document, we express sound pressure level as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 FPa, and the units for sound pressure levels are dB re: 1 μPa.

Sound pressure level (in decibels (dB)) = 20 log (pressure/reference pressure)

Sound pressure level is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square. Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to sound pressure level in this document refer to the root mean square unless otherwise noted. Sound pressure level does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun array used by the Observatory on the *Langseth* is 236 to 265 dB re: 1 $\mu Pa_{(p-p)}$ and the root mean square value for a given airgun pulse is typically 16 dB re: 1 μPa lower than the peak-to-peak value (Greene, 1997; McCauley *et al.*, 1998, 2000a). However, the difference between root mean square and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, the Observatory has predicted the received sound levels in relation to distance and direction from the 36-airgun array and the single Bolt 1900LL 40-in^3 airgun, which will be used during power downs. Appendix A of the Foundation's Environmental Assessment provides a detailed description of the modeling for marine seismic source arrays for species mitigation and Appendix B(3) of the Assessment discusses the characteristics of the airgun pulses. These are the source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation because of the directional nature of the sound from the airgun array. Refer to the authorization application and Assessment for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.*, (2009) reported results for propagation measurements of pulses from the *Langseth's* 36-airgun, 6,600 in^3 array in shallow-water (approximately 50 m (164 ft)) and deep-water depths (approximately 1,600 m (5,249 ft)) in the Gulf of Mexico in 2007 and 2008. Results of the Gulf of Mexico calibration study (Tolstoy *et al.*, 2009) showed that radii around the airguns for various received levels varied with water depth and that sound propagation varied with array tow depth.

The Observatory used the results from the Gulf of Mexico study to determine the algorithm for its model that calculates the exclusion zones for the 36-airgun array and the single airgun. These values designate mitigation zones and the Observatory uses them to estimate take (described in greater detail in Section VII of the application and Section IV of the Foundation's Environmental Assessment) for marine mammals.

Comparison of the Tolstoy *et al.* (2009) calibration study with the Observatory's model for the *Langseth's* 36-airgun array indicated that the model represents the actual received levels, within the first few kilometers and the locations of the predicted exclusions zones. However, the model for deep water (greater than 1,000 m; 3,280 ft) overestimated the received sound levels at a given distance but is still valid for defining exclusion zones at various tow depths. Because the tow depth of the array in the calibration study is less shallow (6 m; 19.7 ft) than the tow depths in the proposed surveys (9, 12, or 15 m; 29.5, 39.4, or 49.2 ft), the Observatory used the following correction factors for estimating the received levels during the proposed surveys (see Table 1). The correction factors are the ratios of the 160-,180-, and 190-dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m (19.7 ft) versus 9, 12, or 15 m (29.5, 39.4, or 49.2 ft) (LGL, 2008).

TABLE 1—CORRECTION FACTORS FOR ESTIMATING THE RECEIVED LEVELS FOR THREE PROPOSED SURVEYS IN THE NORTHEAST PACIFIC OCEAN, DURING JUNE–JULY 2012

Array tow depth	160-dB	180-dB	190-dB
9	1.285	1.338	1.364
12	1.467	1.577	1.545
15	1.647	1.718	1.727

For a single airgun, the tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single airgun; thus, the predicted exclusion zones are essentially the same at different tow depths. The Observatory's model does not allow for bottom interactions, and thus is most directly applicable to deep water.

Table 2 summarizes the predicted distances at which one would expect to receive three sound levels (160-, 180-, and 190-dB) from the 36-airgun array and a single airgun. To avoid the potential for injury or permanent physiological damage (Level A harassment), we (NMFS, 1995, 2000), we have concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa and 190 dB re: 1 μPa, respectively. The 180-dB and 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds, respectively, specified by us (NMFS, 1995, 2000). The Observatory used these levels to establish the exclusion zones. We also assume that marine mammals exposed to levels exceeding 160 dB re: 1 μPa may experience Level B harassment.

TABLE 2—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160, 180, AND 190 dB RE: 1 μPa THAT COULD BE RECEIVED DURING THE THREE PROPOSED SURVEYS IN THE NORTHEAST PACIFIC OCEAN, DURING JUNE–JULY 2012

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances [2] (m)		
			160 dB	180 dB	190 dB
Single Bolt airgun (40 in^3)	[1] 6–15	>1,000	385	40	12
		100 to 1,000	578	60	18
		<100	1,050	296	150
36-Airgun Array (6,600 in^3)	9	>1,000	3,850	940	400
		100 to 1,000	12,200	1,540	550
		<100	20,550	2,140	680

TABLE 2—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160, 180, AND 190 dB RE: 1 μPa THAT COULD BE RECEIVED DURING THE THREE PROPOSED SURVEYS IN THE NORTHEAST PACIFIC OCEAN, DURING JUNE–JULY 2012—Continued

Source and volume (in³)	Tow depth (m)	Water depth (m)	Predicted RMS distances [2] (m)		
			160 dB	180 dB	190 dB
36-Airgun Array (6,600 in³)	12	>1,000	4,400	1,100	460
		100 to 1,000	13,935	1,810	615
		<100	23,470	2,250	770
36-Airgun Array (6,600 in³)	15	>1,000	4,490	1,200	520
		100 to 1,000	15,650	1,975	690
		<100	26,350	2,750	865

[1] For a single airgun, the tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single airgun; thus, the predicted exclusion zones are essentially the same at different tow depths.

[2] The Observatory has based the radii for the array on data in Tolstoy *et al.* (2009) and has corrected for tow depth using modeled results. They have based the predicted radii for a single airgun upon their model (see Figure 3 in application #1).

Ocean Bottom Seismometers

The Observatory proposes to use the Woods Hole Oceanographic Institution ''D2'' seismometer during the cruise. The seismometer is approximately one meter in height and has a maximum diameter of 50 centimeters (cm). The anchor (2.5 x 30.5 x 38.1 cm) is hot-rolled steel and weighs 23 kilograms. The acoustic release transponder, located on the vessel, communicates with the seismometer at a frequency of 9 to 11 kilohertz (kHz). The source level of the release signal is 190 dB re: 1 μPa. The received signal activates the seismometer's burn-wire release assembly which then releases the seismometer from the anchor. The seismometer then floats to the ocean surface for retrieval by the *Oceanus.*

Multibeam Echosounder

The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-Bottom Profiler

The *Langseth* will also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5 kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 μPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

We expect that acoustic stimuli resulting from the proposed operation of the single airgun or the 36-airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. We also expect these disturbances to be temporary and result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment only) of small numbers of certain species of marine mammals.

We do not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 kts; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Marine Mammals in the Area of the Specified Activity

Thirty-one marine mammal species under our jurisdiction may occur in the proposed survey areas, including 19 odontocetes (toothed cetaceans), seven mysticetes (baleen whales), and five species of pinniped during June through July, 2012. Six of these species and two stocks are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), north Pacific right (*Eubalaena japonica*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales; the southern resident stock of killer (*Orcinus orca*) whales; and the eastern U.S. stock of the Steller sea lion (*Eumetopias jubatus*).

The U.S. Fish and Wildlife Service manages the northern sea otter (*Enhydra lutis*) (listed under the Endangered Species Act). Because this species is not under our jurisdiction, we do not consider this species further in this notice.

Based on available data, the Observatory does not expect to encounter five of the 31 species in the proposed survey areas. They include the: the north Pacific right, false killer (*Pseudorca crassidens*), and short-finned pilot (*Globicephala macrorhynchus*) whales; the California sea lion (*Zalophus californianus*); and the bottlenose dolphin (*Tursiops truncatus*) because of these species' rare and/or extralimital occurrence in the survey areas. Accordingly, we did not consider these species in greater detail and the proposed authorization will only address requested take authorizations for 26 species: Six mysticetes, 16 odontocetes, and four species of pinniped.

Of these 26 species, the most common marine mammals in the survey area would be the: harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), northern fur seal (*Callorhinus ursinus*), and northern elephant seal (Mirounga angustirostris).

Table 3 presents information on the abundance, distribution, and conservation status of the marine mammals that may occur in the proposed survey area June through July 2012.

TABLE 3—HABITAT, ABUNDANCE, DENSITY, AND ESA STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREAS IN THE NORTHEAST PACIFIC OCEAN

[See text and Tables 2 and 3 in the Observatory's applications and the Foundation's Environmental Assessment for further details.]

Species	Occurrence in area	Habitat	Abundance in the NW Pacific [1]	ESA [2]	Density [3] #/1,000 km [2]
Mysticetes					
North Pacific right whale	Rare	Coastal, shelf, offshore	[4] 31	EN	0
Gray whale	Common *	Coastal, shallow shelf	[5] 19,126	DL	3.21
Humpback whale	Common *	Mainly nearshore and banks.	[6] 20,800	EN	0.81
Minke whale	Rare	Nearshore, offshore	[7] 9,000	NL	0.46
Sei whale	Rare	Mostly pelagic	[8] 12,620	EN	0.16
Fin whale	Common	Slope, pelagic	[9] 13,620–18,680	EN	1.29
Blue whale	Rare	Pelagic and coastal	2,497	EN	0.18
Odontocetes					
Sperm whale	Common	Pelagic, steep topography.	[10] 24,000	EN	1.02
Pygmy sperm whale	Rare	Deep, off shelf	N.A.	NL	0.71
Dwarf sperm whale	Rare	Deep, shelf, slope	N.A.	NL	0.71
Cuvier's beaked whale	Common	Pelagic	2,143	NL	0.43
Baird's beaked whale	Common	Pelagic	907	NL	1.18
Blainville's beaked whale	Rare	Pelagic	[11] 1,024	NL	1.75
Hubb's beaked whale	Rare	Slope, offshore	[11] 1,024	NL	1.75
Stejneger's beaked whale	Common	Slope, offshore	[11] 1,024	NL	1.75
Common bottlenose dolphin	Rare	Coastal, shelf, deep	[12] 1,006	NL	0
Striped dolphin	Rare	Off continental shelf	10,908	NL	0.04
Short-beaked common dolphin	Common	Shelf, pelagic, mounts	411,211	NL	10.28
Pacific white-sided dolphin	Abundant	Offshore, slope	26,930	NL	34.91
Northern right whale dolphin	Common	Slope, offshore waters	8,334	NL	12.88
Risso's dolphin	Common	Shelf, slope, mounts	6,272	NL	11.19
False killer whale	Rare	Pelagic	N.A.	NL	0
Killer whale	Common	Widely distributed	2,250–2,700	NL/EN [13]	1.66
Short-finned pilot whale	Rare	Pelagic, high-relief	760	NL	0
Harbor porpoise	Abundant	Coastal and inland waters.	[13] 55,255	NL	632.4
Dall's porpoise	Abundant	Shelf, slope, offshore	42,000	NL	83.82
Pinnipeds					
Northern fur seal	Common	Pelagic, offshore	[5] 653,171	NL	83.62
California sea lion	Rare	Coastal, shelf	296,750	NL	0
Steller sea lion	Common *	Coastal, shelf	[5] 58,334–72,223	T	13.12
Harbor seal	Abundant *	Coastal	[14] 24,732	NL	292.3
Northern elephant seal	Common	Coastal, pelagic in migration.	[15] 124,000	NL	45.81

N.A.—Data not available or species status was not assessed.
* In nearshore survey areas, rare elsewhere.
[1] Abundance given for the California/Oregon/Washington or Eastern North Pacific stock (Carretta et al. 2011a,b), unless otherwise stated.
[2] Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] Density estimate as listed in Table 3 of the Observatory's applications. Refer to pg. 48 of application #1, pg. 47 of application #2, and pg. 47 of application #3 for specific references.
[4] Bering Sea (Wade et al. 2010).
[5] Eastern North Pacific (Allen and Angliss 2011).
[6] North Pacific (Barlow et al. 2009).
[7] North Pacific (Wada 1976).
[8] North Pacific (Tillman 1977).
[9] North Pacific (Ohsumi and Wada 1974).
[10] Eastern Temperate North Pacific (Whitehead 2002a).
[11] All mesoplodont whales.
[12] Offshore stock (Carretta et al. 2011a).
[13] The Eastern North Pacific Southern Resident Stock of killer whales is listed as Endangered under the ESA.
[14] Northern Oregon/Washington Coast and Northern California/Southern Oregon stocks.
[15] Oregon/Washington Coastal Stock (Carretta et al. 2011a).

Refer to Sections III and IV of the Observatory's applications for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. The applications also present how the Observatory calculated the estimated densities for the marine mammals in the proposed survey area. We have reviewed these data and determined them to be the best available scientific information for the purposes of the proposed incidental harassment authorization.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift is not an injury (Southall *et al.,* 2007). Although we cannot exclude the possibility entirely, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described in this document, we expect some behavioral disturbance, but we expect the disturbance to be localized.

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (see Appendix B(5) in the Environmental Assessment). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006a; Weir 2008a for sperm whales), (MacLean and Koski, 2005; Bain and Williams, 2006 for Dall's porpoises). The relative responsiveness of baleen and toothed whales are quite variable.

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

We expect that the masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds will be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. We understand that some baleen and toothed whales continue calling in the presence of seismic pulses, and that some researchers have heard these calls between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies have found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Several studies have reported hearing dolphins and porpoises calling while airguns were operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, we expect that the masking effects of seismic pulses will be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B(4) of the Foundation's Assessment for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. There are less detailed data available for some other species of baleen whales, small toothed whales, and sea otters (*Enhydra lutris*), but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to

show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B(5) of the Foundation's Assessment, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away from the area. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.,* 1995). They avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km (2.5 to 9.3 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B(5) of the Foundation's Assessment have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (p-p). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and two km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in Frederick Sound and Stephens Passage, Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). Although, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km (12.4 to 18.6 mi) from a medium-sized airgun source at received sound levels of approximately 120 to 130 dB re: 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; see Appendix B(5) of the Foundation's Assessment). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing-respiration-dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re: 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales to seismic surveys. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Occasionally, observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes

(mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) also observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009. They reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. We do not know whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2011). The western Pacific gray whale population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2011).

Toothed Whales—There is little systematic information available about reactions of toothed whales to noise pulses. There are few studies on toothed whales similar to the more extensive baleen whale/seismic pulse work summarized earlier in Appendix B of the Foundation's Assessment. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008, Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Summer aerial surveys conducted in the southeastern Beaufort Sea reported that sighting rates of beluga whales were significantly lower at distances of 10 to 20 km (6.2 to 12.4 mi) from an operating airgun array compared to distances of 20 to 30 km (12.4 to 18.6 mi). Further, observers on seismic boats in that area have rarely reported sighting beluga whales (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (see Appendix B of the Foundation's Assessment for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales (*Ziphius*

cavirostris) may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are underway within the vicinity of the animals (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the Stranding and Mortality section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (See Appendix B of the Foundation's Assessment).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior, see Appendix B(5)(3) of the Foundation's Assessment. In the Beaufort Sea, some ringed seals avoided an area of 100 m (328 ft) to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (e.g., Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (Southall *et al.,* 2007).

Researchers have studied temporary threshold shift in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of temporary threshold shift let alone permanent hearing damage, i.e., permanent threshold shift, in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—This is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing temporary threshold shift, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, temporary threshold shift can last from minutes or hours to (in cases of strong shifts) days. For sound exposures at or somewhat above the temporary threshold shift threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. There are few data on sound levels and durations necessary to elicit mild temporary threshold shift for marine mammals, and none of the published data focus on temporary threshold shift elicited by exposure to multiple pulses of sound. Southall *et al.* (2007) summarizes available data on temporary threshold shift in marine mammals. Table 2 (introduced earlier in this document) presents the estimated distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be greater than or equal to 180 or 190 dB re: 1 μPa.

Researchers have derived temporary threshold shift information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of temporary threshold shift was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of temporary threshold shift occurs at similar received levels in all odontocetes (cf. Southall *et al.,* 2007). Some cetaceans apparently can incur temporary threshold shift at considerably lower sound exposures than are necessary to elicit temporary threshold shift in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce temporary threshold shift. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing temporary threshold shift onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, the Observatory expects no cases of temporary threshold shift given the low abundance of baleen whales in the planned study area at the time of the survey, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for temporary threshold shift to occur.

In pinnipeds, researchers have not measured temporary threshold shift thresholds associated with exposure to brief pulses (single or multiple) of underwater sound. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur temporary threshold shift at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The indirectly estimated temporary threshold shift threshold for pulsed sounds would be approximately 181 to 186 dB re: 1 μPa

(Southall *et al.,* 2007), or a series of pulses for which the highest sound exposure level values are a few decibels lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When permanent threshold shift occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause permanent threshold shift in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild temporary threshold shift, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur permanent threshold shift (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild temporary threshold shift are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing temporary threshold shift onset might elicit permanent threshold shift.

Relationships between temporary threshold shift and permanent threshold shift thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. Permanent threshold shift might occur at a received sound level at least several decibels above that inducing mild temporary threshold shift if the animal were exposed to strong sound pulses with rapid rise times—see Appendix B(6) of the Foundation's Assessment. Based on data from terrestrial mammals, a precautionary assumption is that the permanent threshold shift threshold for impulse sounds (such as airgun pulses as received close to the source) is at least six decibels higher than the temporary threshold shift threshold on a peak-pressure basis, and probably greater than six decibels (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause permanent threshold shift as compared with temporary threshold shift, it is considerably less likely that permanent threshold shift would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance''.

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b; Romero, 2004; Sih *et al.,* 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys–The association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an Observatory's seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of the Foundation's Assessment provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to the bends), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar,

not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity ''pulsed'' sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, two Cuvier's beaked whales stranded in the Gulf of California, Mexico while the Observatory's R/V *Maurice Ewing* had been operating a 20-airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). We anticipate no injuries of beaked whales during the proposed study because of:

(1) The likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels; and

(2) Differences between the sound sources operated by the Observatory and those involved in the naval exercises associated with strandings.

Non-Auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

The Observatory will operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During the Observatory's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The following section outlines possible effects of an echosounder on marine mammals.

Masking—Marine mammal communications will not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and

no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern Tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those that will be emitted by the Observatory's echosounder, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the echosounder proposed for use by the Observatory is quite different than sonar used for navy operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

Based upon the best available science, we believe that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the echosounder is not likely to result in the harassment of marine mammals.

Sub-Bottom Profiler

The Observatory will also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause temporary threshold shift.

Masking—Marine mammal communications will not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the profiler are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler. Based upon the best available science, we believe that the brief exposure of marine mammals to signals from the profiler is not likely to result in the harassment of marine mammals.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below this section.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to

strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the *Langseth* will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that we would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, we do not expect the *Langseth's* movements to result in Level B harassment.

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 14.9 mph (24.1 km/hr;13 kts).

The Observatory's proposed operation of one vessel for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed survey is unlikely due to the *Langseth's* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of operations, the Langseth's cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the Langseth's bridge offers good visibility to visually monitor for marine mammal presence; observers posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the observers receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e., fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification.

The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. The next section discusses the potential impacts of anthropogenic sound sources

on common marine mammal prey in the proposed survey area (i.e., fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (see Appendix D of the Foundation's Assessment). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix D of the Foundation's Assessment). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as we know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (i.e., the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and

of the sound stimulus (see Appendix D of the Foundation's Assessment).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Fisheries

It is possible that the *Langseth's* streamer may become entangled with various types of fishing gear. The Observatory will employ avoidance tactics as necessary to prevent conflict. It is not expected that the Observatory's operations will have a significant impact on fisheries in the western Pacific Ocean. Nonetheless, the Observatory will minimize the potential to have a negative impact on the fisheries by avoiding areas where fishing is actively underway.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the catchability of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, (e.g., a change in vertical or horizontal distribution), as reported in Slotte *et al.* (2004).

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; see also Appendix E of the Foundation's Assessment).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of the Foundation's Assessment.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 v 5 dB re: 1 μPa, with peak levels at 175 dB re: 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the

biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The Observatory has based the mitigation measures which they will implement during the proposed seismic survey, on the following:

(1) Protocols used during previous seismic research cruises as approved by us;

(2) Previous incidental harassment authorizations applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the Observatory and/or its designees would implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;
(2) Power down procedures;
(3) Shutdown procedures; and
(4) Ramp-up procedures.

Proposed Exclusion Zones—The Observatory uses safety radii to designate exclusion zones and to estimate take for marine mammals. Table 2 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160-, 180-, and 190-dB) from the 36-airgun array and a single airgun. The 180-dB and 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds, respectively, as specified by us (2000). The Observatory used these levels to establish the exclusion zones.

If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew will immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

Power Down Procedures—A power down involves decreasing the number of airguns in use such that the radius of the 180-dB (or 190-dB) zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the Observatory will operate one airgun (40 in^3). The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew will power down the airguns to reduce the size of the 180-dB exclusion zone before the animal enters that zone.

Likewise, if a mammal is already within the zone when first detected, the crew will power-down the airguns immediately. During a power down of the airgun array, the crew will operate a single 40-in^3 airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 2), the crew will shut down the single airgun (see next section).

Shutdown Procedures—The *Langseth* crew will shutdown the operating airgun(s) if a marine mammal is seen within or approaching the exclusion zone for the single airgun. The crew will implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an animal is initially seen within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for north Pacific right whales, the *Langseth* crew will shutdown the airgun(s) immediately in the unlikely event that this species is observed, regardless of the distance from the vessel.

Resuming Airgun Operations After a Power Down

Following a power-down, the Langseth crew will not resume full airgun activity until the marine mammal has cleared the 180-dB exclusion zone (see Table 2). The observers will consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone, or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or
- The vessel has transited outside the original 180-dB exclusion zone after an 8-minute wait period. This period is based on the 180-dB exclusion zone for the 36-airgun array (940 m) towed at a depth of 9 m (29.5 ft) in relation to the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph).

The *Langseth* crew will resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew will resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

Because the vessel has transited 1.13 km (3,707 feet) away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would

not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Resuming Airgun Operations After a Shutdown

Following a shutdown, the *Langseth* crew will initiate a ramp-up with the smallest airgun in the array (40-in^3). The crew will turn on additional airguns in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers will monitor the exclusion zone, and if he/she sights a marine mammal, the *Langseth* crew will implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew will need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew will follow ramp-up procedures for a shutdown described earlier and the observers will monitor the full exclusion zone and will implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew will not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew will not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array will not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on our evaluation of the Observatory's proposed measures, as well as other measures considered by us or recommended by the public, we have preliminarily determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Proposed Monitoring

The Observatory proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. We describe the Observatory's Monitoring Plan below this section. The Observatory understands that this monitoring plan will be subject to review by us, and that we may require refinements to the plan. The Observatory has planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, the Observatory would discuss coordination of its monitoring program with any other related work by other groups working in the same area, if practical.

Vessel-Based Visual Monitoring

The Observatory will position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (i.e., greater than approximately eight minutes for this proposed cruise). When feasible, the observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* will power down or shutdown the airguns when marine mammals are observed within or about to enter a designated exclusion zone which is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations, at least four protected species observers will be aboard the *Langseth.* The Observatory will appoint the observers with our concurrence. They will conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers will increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer will be on watch during bathroom breaks and mealtimes. Observers will be on duty in shifts of no longer than four hours in duration.

Two observers will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer will monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have

scheduled two observers (visual) on duty from the observation tower, and a observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, the Observatory will instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the observers will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When the observers see marine mammals within or about to enter the designated exclusion zone, the *Langseth* will immediately power down or shutdown the airguns if necessary. The observer(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Passive Acoustic Monitoring

Passive acoustic monitoring will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in conjunction with visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer will monitor the system in real time so that he/she can advise the visual observers if they acoustic detect cetaceans. When the acoustic observer determines the bearing (primary and mirror-image) to calling cetacean(s), he/she alert the visual observer to help him/her sight the calling animal(s).

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew will deploy the array from a winch located on the back deck. A deck cable will connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

As described earlier, one acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system will be aboard the *Langseth* in addition to the four visual observers. The acoustic observer will monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data will be on shift for one to six hours at a time. The other observers will rotate as an acoustic observer, although the expert acoustician will be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty will contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer will enter the information regarding the call into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

Observer Data and Documentation

Observers will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They will use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The

observers will verify the accuracy of the data entry by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).
2. Information needed to estimate the number of marine mammals potentially taken by harassment, which the Observatory must report to the Office of Protected Resources.
3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the Observatory will conduct the seismic study.
4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.
5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

The Observatory will submit a report to us and to the Foundation within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and to the Northwest Regional Stranding Coordinator at (206) 526–6550 (*Brent.Norberg@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Observatory shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with the Observatory to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act compliance. The Observatory may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Observatory will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and to the Northwest Regional Stranding Coordinator at (206) 526–6550 (*Brent.Norberg@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with the Observatory to determine whether modifications in the activities are appropriate.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Observatory will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northwest Regional Stranding Coordinator at (206) 526–6550 (*Brent.Norberg@noaa.gov*), within 24 hours of the discovery. The Observatory will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We propose to authorize take by Level B harassment only for the proposed marine geophysical survey in the northwestern Pacific Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB re: 1 μPa or cause temporary, short-term changes in behavior. There is no evidence that the Observatory's planned activities could result in injury, serious injury or mortality within the specified geographic area for the requested authorization. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe the Observatory's methods to estimate take by incidental harassment and present their estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The Observatory's estimates assume that marine mammals exposed to airgun sounds greater than or equal to 160 dB re: 1 μPa might change their behavior sufficiently for us to consider them as taken by harassment. They have based their estimates on the number of marine mammals that could be disturbed appreciably by operations with the 36-

airgun array during approximately 4,991 km (3,101.2 mi) of transect lines in the northeastern Pacific Ocean.

We assume that during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the echosounder and sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, we expect that the marine mammals would exhibit no more than short-term and inconsequential responses to the echosounder and profiler given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Based on the best available information, we do not consider that these reactions constitute a ''take'' (NMFS, 2001). Therefore, the Observatory did not provide any additional allowance for animals that could be affected by sound sources other than the airguns.

Ensonified Area Calculations—Because the Observatory assumes that the *Langseth* may need repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey; they have increased the proposed number of line-kilometers for the seismic operations by 25 percent (i.e., contingency lines).

The Observatory calculated the expected ensonified area by entering the planned survey lines (including the 25 percent contingency lines) into a Map-Info Geographic Information System (system). The Observatory used the system to draw a 160-dB radius (see Table 2) around the operating airgun array (i.e., the ensonified area) around each seismic line. This first calculation is the area excluding overlap.

Depending on the spacing of the transect lines within the ensonified area, the Observatory may also calculate areas of transit overlap. For example, if the ratio of transit overlap is 1.5 times the area excluding overlap, then the marine mammal that stayed within area during the entire survey could be exposed to acoustic stimuli approximately two times. However, it is unlikely that a particular animal would stay in the area during the entire survey. For the Juan de Fuca Survey, the transit lines are closely spaced together and the ratio of transect overlap is 1.7 greater than the area excluding overlapping transect lines. For the Cascadia Thrust Zone Survey the ratio is 2.8, and for the Cascadia Subduction Margin Survey the ratio is 2.0 times the area excluding overlap. Table 4 presents the area calculations for each survey. Refer to the authorization application and Assessment for additional information.

TABLE 4—ENSONIFIED AREA CALCULATIONS FOR THREE PROPOSED SEISMIC SURVEYS IN THE NORTHEAST PACIFIC OCEAN, DURING JUNE–JULY 2012

Survey	Area excluding overlap (km^2)	Area with contingency lines (km^2)	Transect line spacing	Overlap ratio (km^2)
Juan de Fuca Plate	18,471	23,089	Closely spaced	1.7
Cascadia Thrust Zone	11,448	14,310	Closely spaced	2.8
Cascadia Subduction Margin	11,387	14,234	Closely spaced	2.0

Density Information—The Observatory calculated the density data for 26 species reported off the Oregon and Washington coasts in the northeastern Pacific Ocean using the following data sources:

- Pooled results of the 1991–2008 NMFS Southwest Fishery Science Center ship surveys as synthesized by Barlow and Forney (2007) and Barlow (2010) for all species except the gray whale and harbor porpoise.
- Abundance estimates for gray whales that remain between Oregon and B.C. in summer and the within area out to 43 km (26.7 mi) from shore in the U.S. Navy's Keyport Range Complex Extension Environmental Impact Statement/Overseas Environmental Impact Statement (DoN, 2010); and
- The population estimate for the Northern Oregon/Washington Coast stock of harbor porpoises from the Pacific Marine Mammal Stock Assessments 2010 Report (Carretta *et al.,* 2010).

For the pooled results of the 1991–2008 NMFS Southwest Fishery Science Center ship surveys, the Observatory has corrected the densities for trackline detectability probability bias and availability bias. Trackline detectability probability bias is associated with diminishing sightability with increasing lateral distance from the track line [$f(0)$]. Availability bias refers to the fact that there is less than a 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by $g(0)$.

Exposure Calculations—The Observatory calculated the number of different individuals that could be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa by multiplying the expected density of the marine mammals by the ensonified area excluding areas of overlap. This area includes the 25 percent contingency lines.

Any marine mammal sightings within or near the designated exclusion zone will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160 dB re: 1 μPa sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB re: 1 μPa, which will result in overestimates for those species known to avoid seismic vessels.

Juan de Fuca Plate Survey Exposure Estimates

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 10,208 (see Table 5). The total includes 78 baleen whales, 56 of which are endangered: four blue whales (0.17 percent of the regional population), 30 fin whales (0.18 percent of the regional population), 19 humpback whales (0.09 percent of the regional population), and four sei whales (0.03 percent of the

population). In addition, 24 sperm whales (0.10 percent of the regional population) and 303 Steller sea lions (0.46 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 57 percent are delphinids and 42 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be harbor porpoises (2,153 or 4.12 percent), Dall's porpoises (1,935 or 4.61 percent), northern fur seals (1,931 or 0.30 percent), and northern elephant seals (1,058 or 0.85 percent).

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB RE: 1 μPa DURING THE PROPOSED JUAN DE FUCA PLATE SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JUNE–JULY 2012

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa [1]	Requested or adjusted take authorization	Approximate percent of regional population [2]
Gray whale	10	10	0
Humpback whale	19	19	0.09
Minke whale	11	11	0.12
Sei whale	4	4	0.03
Fin whale	30	30	0.18
Blue whale	4	4	0.17
Odontocetes			
Sperm whale	24	24	0.10
Pygmy/Dwarf sperm whale	16	16	N/A
Cuvier's beaked whale	10	10	0.46
Baird's beaked whale	27	27	3.0
Mesoplodon spp.[3]	40	40	3.95
Striped dolphin	1	[4] 2	0.01
Short-beaked common dolphin	237	[4] 238	0.06
Pacific white-sided dolphin	806	806	299
Northern right whale dolphin	297	297	3.57
Risso's dolphin	258	258	4.12
Killer whale	38	38	1.55
Harbor porpoise [5]	2,153	2,153	4.12
Dall's porpoise	1,935	1,935	4.61
Pinnipeds			
Northern fur seal	1,931	1,931	0.30
Steller sea lion	303	303	0.46
Harbor seal [5]	995	995	4.02
Northern elephant seal	1,058	1,058	0.85

N/A = Not Available
[1] Estimates are based on densities in Table 3 and an ensonified area (including 25% contingency of 23,089 km^2).
[2] Regional population size estimates are from Table 3 (page 48 in Application #1).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #1).
[5] Estimates based on densities from Table 3 (page 48 in Application #1) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 3,404 km.^{2}

Cascadia Thrust Zone Survey Exposure Estimates

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 15,100 (see Table 6). The total includes 79 baleen whales, 35 of which are endangered: Three blue whales (0.10 percent of the regional population), 18 fin whales (0.11 percent of the regional population), 12 humpback whales (0.06 percent of the regional population), and two sei whales (0.02 percent of the population). In addition, 15 sperm whales (0.06 percent of the regional population) and 188 Steller sea lions (0.29 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 63 percent are delphinids and 36 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be Dall's porpoises (1,199 or 2.86 percent), harbor porpoises (7,314 or 14 percent of the regional population or 9.2 percent of the overall population), and harbor seals (3,380 or 13.67 percent of the regional population or 4.6% of the overall population) and northern fur seals (1,197 or 0.18 percent) (Allen and Angliss, 2011). The percentages for harbor porpoises and harbor seals are the upper boundaries of the regional populations that could be affected by the proposed survey. However, these take estimates are small relative to the overall population sizes for each species in the northeast Pacific. Thus, these take estimates are likely an overestimate of the actual number of animals that may be taken by Level B harassment and we expect that the actual number of individual animals that may be taken by Level B harassment to be less than the request.

TABLE 6—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB RE: 1 μPa DURING THE PROPOSED CASCADIA THRUST ZONE SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa [1]	Requested or adjusted take authorization	Approximate percent of regional population [2]
Gray whale	35	35	0.18
Humpback whale	12	12	0.06
Minke whale	7	7	0.07
Sei whale	2	2	0.02
Fin whale	18	18	0.11
Blue whale	3	3	0.10
Odontocetes			
Sperm whale	15	15	0.06
Pygmy/Dwarf sperm whale	10	10	NA
Cuvier's beaked whale	6	6	0.28
Baird's beaked whale	17	17	1.86
Mesoplodon spp.[3]	25	25	2.45
Striped dolphin	1	[4] 2	<0.01
Short-beaked common dolphin	147	[4] 238	0.04
Pacific white-sided dolphin	500	500	1.86
Northern right whale dolphin	184	184	2.21
Risso's dolphin	160	160	2.55
Killer whale	24	24	0.96
Harbor porpoise [5]	7,314	7,314	14.00
Dall's porpoise	1,199	1,199	2.86
Pinnipeds			
Northern fur seal	1,197	1,197	0.18
Steller sea lion	188	188	0.29
Harbor seal [5]	3,380	3,380	13.67
Northern elephant seal	656	656	0.53

N/A = Not Available.
[1] Estimates are based on densities in Table 3 and an ensonified area (including 25% contingency of 14,310 km^2).
[2] Regional population size estimates are from Table 3 (page 47 in Application #2).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #2).
[5] Estimates based on densities from Table 3 (page 47 in Application #2) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 11.565 km^2.

Cascadia Subduction Margin Survey Exposure Estimates

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 8,132 (see Table 7). The total includes 54 baleen whales, 35 of which are endangered: three blue whales (0.10 percent of the regional population), 18 fin whales (0.11 percent of the regional population), 11 humpback whales (0.06 percent of the regional population), and two sei whales (0.02 percent of the population). In addition, 15 sperm whales (0.06 percent of the regional population) and 187 Steller sea lions (0.29 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 59 percent are delphinids and 40 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be harbor porpoises (2,580 or 4.94 percent), Dall's porpoises (1,193 or 2.84 percent), northern fur seals (1,190 or 0.18 percent), and harbor seals (1,192 or 4.82 percent).

TABLE 7—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB RE: 1 μPa DURING THE PROPOSED CASCADIA SUBDUCTION MARGIN SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa[1]	Requested or adjusted take authorization	Approximate percent of regional population [2]
Gray whale	12	12	0.06
Humpback whale	11	11	0.06

TABLE 7—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPa DURING THE PROPOSED CASCADIA SUBDUCTION MARGIN SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012—Continued

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa[1]	Requested or adjusted take authorization	Approximate percent of regional population[2]
Minke whale	6	6	0.07
Sei whale	2	2	0.02
Fin whale	18	18	0.11
Blue whale	3	3	0.10
Odontocetes			
Sperm whale	15	15	0.06
Pygmy/Dwarf sperm whale	10	10	NA
Cuvier's beaked whale	6	6	0.28
Baird's beaked whale	17	17	1.85
Mesoplodon spp.[3]	25	25	2.44
Striped dolphin	1	[4] 2	<0.01
Short-beaked common dolphin	146	[4] 238	0.04
Pacific white-sided dolphin	497	497	1.85
Northern right whale dolphin	183	183	2.20
Risso's dolphin	159	159	2.54
Killer whale	24	24	0.96
Harbor porpoise[5]	2,580	2,580	4.94
Dall's porpoise	1,193	1,193	2.84
Pinnipeds			
Northern fur seal	1,190	1,190	0.18
Steller sea lion	187	187	0.29
Harbor seal[5]	1,192	1,192	4.82
Northern elephant seal	652	652	0.53

N/A = Not Available.
[1] Estimates are based on densities in Table 3 and an ensonified area (including 25% contingency of 14,234 km^2).
[2] Regional population size estimates are from Table 3 (page 47 in Application #3).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #3).
[5] Estimates based on densities from Table 3 (page 47 in Application #3) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 4,080 km^2.

Encouraging and Coordinating Research

The Observatory and the Foundation will coordinate the planned marine mammal monitoring program associated with each seismic survey in the northwestern Pacific Ocean with other parties that may have interest in the area and/or may be conducting marine mammal studies in the same region during the seismic surveys.

Negligible Impact and Small Numbers Analysis and Determination

We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, the specified activities associated with the marine seismic surveys are not likely to cause permanent threshold shift, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and that we would likely avoid this impact through the incorporation of the required monitoring and mitigation measures (described previously in this document);

(3) The fact that cetaceans would have to be closer than 940 m (3,084 ft) in deep water, 1,540 m (5,052 ft) in intermediate depths, and 2,140 m (7,020 ft) in shallow depths, when the 36-airgun array is in use at 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(4) The fact that cetaceans would have to be closer than 1,100 m (3,609 ft) in deep water, 1,810 m (5,938 ft) in intermediate depths, and 2,520 m (8,268 ft) in shallow depths, when the 36-airgun array is in use at 12 m (39.4 ft) tow depth from the vessel to be exposed to levels of sound believed to have a

minimal chance of causing permanent threshold shift;

(5) The fact that cetaceans would have to be closer than 1,200 m (3,937 ft) in deep water, 1,975 m (6,480 ft) in intermediate depths, and 2,750 m (9,022 ft) in shallow depths, when the 36-airgun array is in use at 15 m (49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(6) The fact that cetaceans would have to be closer than 40 m (131 ft) in deep water, 60 m (197 ft) in intermediate depths, and 296 m (971 ft) in shallow depths, when the single airgun is in use at six to 15 m (20 to 49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(7) The fact that pinnipeds would have to be closer than 400 m (1,312 ft) in deep water, 550 m (1,804 ft) in intermediate depths, and 680 m (2,231 ft) in shallow depths, when the 36-airgun array is in use at 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(8) The fact that pinnipeds would have to be closer than 460 m (1,509 ft) in deep water, 615 m (2,018 ft) in intermediate depths, and 770 m (2,526 ft) in shallow depths, when the single airgun is in use at 12 m (39.4 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(9) The fact that pinnipeds would have to be closer than 520 m (1,706 ft) in deep water, 690 m (2,264 ft) in intermediate depths, and 865 m (2,838 ft) in shallow depths, when the single airgun is in use at 15 m (49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(10) The fact that pinnipeds would have to be closer than 12 m (39.4 ft) in deep water, 18 m (59 ft) in intermediate depths, and 150 m (492 ft) in shallow depths, when the single airgun is in use at six to 15 m (20 to 49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift; and

(11) The likelihood that marine mammal detection ability by trained visual observers is high at close proximity to the vessel.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the Observatory's planned marine seismic surveys, and we do not propose to authorize injury, serious injury or mortality for this survey. We anticipate only short-term behavioral disturbance to occur during the conduct of the survey activities. Tables 5, 6, and 7 of this document outline the number of requested Level B harassment takes that we anticipate as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. Further, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the Juan de Fuca Plate survey would last no more than 17 days, the Cascadia Thrust Zone survey would last approximately three days, and the Cascadia Subduction Margin survey would occur over 10 days.

Because the *Langseth* will move continuously along planned tracklines, each seismic survey would increase sound levels in the marine environment surrounding the vessel for 21 days during the first and second study and for 10 days during the last study. There will be an estimated 4-day period of non-seismic activity between the second and third survey.

Of the 31 marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species and two stocks are listed as endangered under the Endangered Species Act: The blue, fin, humpback, north Pacific right, sei, and sperm whales; the southern resident stock of killer whales; and the eastern U.S. stock of the Steller sea lion. These species are also categorized as depleted under the Marine Mammal Protection Act. With the exception of North Pacific right whales, the Observatory has requested authorized take for these listed species. To protect these animals (and other marine mammals in the study area), the Observatory must cease or reduce airgun operations if animals enter designated zones.

Based on available data, we do not expect the Observatory to encounter five of the 31 species under our jurisdiction in the proposed survey areas. They include the following: The north Pacific right, false killer, and short-finned pilot whales; the California sea lion; and the bottlenose dolphin because of the species' rare and/or extralimital occurrence in the survey areas. As mentioned previously, we estimate that 26 species of marine mammals under our jurisdiction could be potentially affected by Level B harassment over the course of the proposed authorization. For each species, these numbers are small, relative to the regional or overall population size and we have provided the regional population estimates for the marine mammal species that may be taken by Level B harassment in Tables 5, 6, and 7 in this document. Our practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

We have preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting three marine seismic surveys off Oregon and Washington in the northwestern Pacific Ocean, June through July, 2012, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Tables 5, 6, and 7 for the requested authorized take numbers of cetaceans.

While these species may make behavioral modifications, including temporarily vacating the area during the operation of the airgun(s) to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short duration of the research activities, have led us to preliminarily determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that the Observatory's

planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the required measures mitigate impacts to affected species or stocks of marine mammals to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the Marine Mammal Protection Act.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the Endangered Species Act, including the blue, fin, humpback, north Pacific right, sei, and sperm whales. The Observatory did not request take of endangered north Pacific right whales because of the low likelihood of encountering these species during the cruise.

Under section 7 of the Act, the Foundation has initiated formal consultation with the Service's, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. We (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division), have also initiated formal consultation under section 7 of the Act with the Endangered Species Act Interagency Cooperation Division to obtain a Biological Opinion (Opinion) evaluating the effects of issuing an incidental harassment authorization for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. We will conclude the formal section 7 consultation prior to making a determination on whether or not to issue the authorization. If we issue the take authorization, the Foundation and the Observatory must comply with the Terms and Conditions of the Opinion's Incidental Take Statement in addition to the mitigation and monitoring requirements included in the issued take authorization.

National Environmental Policy Act (NEPA)

With its complete application, the Foundation and the Observatory provided an ''Environmental Assessment and Finding of No Significant Impact Determination Pursuant to the National Environmental Policy Act, (NEPA: 42 U.S.C. 4321 et seq.) and Executive Order 12114 for a ''Marine Seismic Survey in the northeastern Pacific Ocean, 2012,'' which incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the northeastern Pacific Ocean, June–July 2012,'' prepared by LGL Limited environmental research associates.

The Assessment analyzes the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the Endangered Species Act. We have conducted an independent review and evaluation of the document for sufficiency and compliance with the Council of Environmental Quality and NOAA Administrative Order 216–6 § 5.09(d), Environmental Review Procedures for Implementing the National Environmental Policy Act, and have preliminarily determined that issuance of the incidental harassment authorization is not likely to result in significant impacts on the human environment. Consequently, we plan to adopt the Foundation's Assessment and intend to prepare a Finding of No Significant Impact for the issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Observatory's proposed marine seismic surveys in the northeast Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the incidental harassment authorization would not exceed one year from the date of its issuance.

Information Solicited

We request interested persons to submit comments and information concerning this proposed project and our preliminary determination of issuing a take authorization (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** we will forward copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10627 Filed 5–1–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2012–0008]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Department of the Army proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 1, 2012 unless comments are received which result in a contrary determination.

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

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

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

FOR FURTHER INFORMATION CONTACT: 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 Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report,

as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 20, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350–1 ARNG

SYSTEM NAME:

Guard University (GuardU).

SYSTEM LOCATION:

National Guard Bureau, Lavern E. Weber National Guard Professional Education Center Command Group, 2502 Omaha Ave., Suite 200, Camp Robinson, North Little Rock, AR 72115–9600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army (Active, National Guard and Reserve Components) and Department of the Army civilian personnel, Department of the Army contractor personnel (Army Knowledge Online (AKO) name and User Identification only).

CATEGORIES OF RECORDS IN THE SYSTEM:

Resident and distance learning course and personnel data to include individual's name, scheduling, testing, academic, graduation, and attrition data. It will include Army Knowledge Online (AKO) name and User Identification only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; and Army Regulation 350–1, Army Training and Leader Development.

PURPOSE(S):

Guard University (GuardU) provides a web-based content delivery system for Army National Guard training and education. It provides courses to Soldiers worldwide, while monitoring and reporting their progress for instructors and leaders. It supports individual creativity, team collaboration, peer review, instructor-led and self-paced training and education. GuardU provides a learning content management and delivery platform that provides synchronous and asynchronous access to training and education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on electronic storage media.

RETRIEVABILITY:

Retrieved by AKO name/User Identification (UID).

SAFEGUARDS:

The web services are secured through a security key embedded in the web service communication. Attempts to communicate with the web services at Digital Training Management System (DTMS) without the security key will not be processed. The remaining PII (name and email address) is encrypted on tape backups and the key shall be changed periodically for security reasons. Security measures are adequate and the risk to GuardU is minimal. Information is also protected by firewalls, antivirus software and AKO authentication. Records are accessed by users with the appropriate profiles or roles and by persons responsible for servicing the system in performance of their official duties. A risk assessment has been performed and will be made available upon request.

RETENTION AND DISPOSAL:

Records are maintained in the current electronic file area until no longer needed for conducting business, but not longer than 6 years after the members separation, then destroyed by erasure from electronic systems.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, U.S. Army National Guard, Training Division, Distributed Learning Branch, 111 South George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Program Manager, U.S. Army National Guard, Training Division, Distributed Learning Branch, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individuals should provide full name, unit number, rank, military occupational specialty, skill level, and signature.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves should address written inquiries to the Program Manager, U.S. Army National Guard, Training Division, Distributed Learning Branch, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individuals should provide full name, unit number, rank, military occupational specialty, skill level, and signature.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents; and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD staff, personnel, training and military course instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–10554 Filed 5–1–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2012–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice To Add a System of Records.

SUMMARY: The Department of the Navy proposes to add a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 1, 2012 unless comments are received which result in a contrary determination.

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Department of the Navy, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000 or call at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a(r)), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 20, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12293–1

SYSTEM NAME:

Human Resource Civilian Portfolio (HRCP).

SYSTEM LOCATION:

Space and Naval Warfare Command, SPAWAR, 1325 10th Street SE., Bldg 196, Washington, DC 20374–7000.

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and job applicants for civilian appropriated/non-appropriated fund (NAF) positions in the Department of Navy (DON).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, home address, place of birth, citizenship, emergency contact, and security clearance; employee email address; employee phone numbers to include home, work, pager, fax and mobile; race and national origin; handicap code; and foreign language capability; projected suspense information for personnel actions; job applications and employee resumes; position authorization and control information; position descriptions and performance elements; internal assigned employee ID, Billet ID number, pay, benefits, and entitlements data; historical information on employees, including job experience, education, training, and training transaction data; performance plans, interims, appraisals, closeouts and ratings; professional accounting or other certifications or licenses; awards information and merit promotion information; separation and retirement data; and adverse and disciplinary action data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations; 5 U.S.C. Chapters 11, Office of Personnel Management; 13, Special Authority; 29, Commissions, Oaths and Records; 31, Authority for Employment; 33, Examination Selection, and Placement; 41, Training; 43, Performance Appraisal; 51, Classification; 53, Pay Rates and Systems; 55, Pay Administration; 61, Hours of Work; 63, Leave; 72, Antidiscrimination, Right to Petition Congress; 75, Adverse Actions; 83, Retirement; 99, Department of Defense National Security Personnel System; 5 U.S.C. 7201, Antidiscrimination Policy; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, as amended; 29 CFR 1614.601, EEO Group Statistics; SECNAV Instruction 12250.6, Civilian Human Resources Management in the Department of the Navy; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide Human Resource information and system support for the DON civilian workforce worldwide to access and update their personal information, submit documents, and obtain personnel related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DON as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of Department of Navy's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), internal assigned employee ID, and Billet ID number.

SAFEGUARDS:

Access to data is multi-tiered and based on a need to know, and is managed by a designated command representative knowledgeable in the area of that command's total workforce. The first tier of a user account is profile based, which limits the user to specific employee types and/or data. Users in a specific profile cannot view data outside of that profile's restrictions. The second tier further restricts access by use of permissions, which allow a user specific

access to application functions. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers. Password complexity, expiration, minimum length, and history, as well as use of profiles and permissions assists in assuring only appropriate personnel have access to data.

RETENTION AND DISPOSAL:

Temporary records maintained at naval activities: With the exception of performance records, destroy upon separation or transfer of employee from DON or when 1 year old, whichever is sooner (if employee separates for military service or transfers to another agency as a result of a transfer of function, leave required temporary material in the folder).

Performance Ratings Records of Separating Employees: At time employee transfers or resigns, transfer performance ratings of record, close-out and summary ratings, along with the performance plan on which the most recent rating was based to the new Civilian Personnel Office (CPO) or National Personnel Records Center (NPRC).

SYSTEM MANAGER(S) AND ADDRESS:

Office of Civilian Human Resources (OCHR), 614 Sicard St SE., Suite 100, Washington Navy Yard, DC 20374–7000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to HRSD, Office of Civilian Human Resources, 614 Sicard St SE., Suite 100, Washington Navy Yard, DC 20374–7000.

The request should be signed and include full name, dates of service, Social Security Number (SSN), and a complete return mailing address.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to HRSD, Office of Civilian Human Resources, 614 Sicard St SE., Suite 100, Washington Navy Yard, DC 20374–7000.

The request should be signed and include full name, dates of service, Social Security Number (SSN), and a complete return mailing address.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained primarily from official Department of Navy and Department of Defense programs of record; Defense Civilian Personnel Data System (DCPDS), Contractor Verification Systems (CVS)/Defense Enrollment Eligibility Recording System (DEERS), and from the individual and/or support staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–10553 Filed 5–1–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Institute of Education Sciences; Pell Grant Expansions Under the Pell Grant Expansions (PGE) Study 2012

SUMMARY: The Pell Grant Expansions under the PGE is a two-part, five-year demonstration study sponsored by the U.S. Department of Education that focuses on the effects of expanded access to Pell grants on students' employment and earnings outcomes. The primary outcome of interest is (1) the employment status and earnings of students who participate in the study while secondary outcomes include (2) students' experiences with and participation in education and training, (3) measures of student debt and financial aid, and (4) the extent of participation in job search assistance services.

DATES: Interested persons are invited to submit comments on or before July 2, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04848. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell Grant Expansions Under the PGE Study 2012.

OMB Control Number: Pending .

Type of Review: New .

Total Estimated Number of Annual Responses: 13,400.

Total Estimated Number of Annual Burden Hours: 3,932.

Abstract: This study consists of two substudies, each of which will examine the impact of a single change to the Pell grant eligibility criteria. The first substudy will relax the prohibition on receipt of Pell grants by students with a bachelors' degree. Individuals eligible for the first substudy must have a

bachelor's degree, be unemployed or underemployed, and pursue a vocational training program up to one year in duration. The second substudy will reduce the minimum duration and intensity levels of programs that Pell grant recipients must participate in from 15 weeks with 600 minimum clock hours to 8 weeks with 150 minimum clock hours. Each substudy will operate through a set of PGE schools that provide education and training services that qualify as PGE programs.

Participants in both substudies will be randomly assigned to either (1) a treatment group, which will have expanded access to Pell grants; or (2) a control group, which will not have access. Within both substudies, the treatment group will be very similar to the control at the time of random assignment except for access to Pell grants. Subsequent differences in the employment and earnings outcomes between treatment and control group members can then be attributed to Pell grant access. The first substudy will involve roughly 28 PGE schools with an average of 100 students participating per school. The second substudy will involve roughly 40 PGE schools with an average of 200 participating students per school. The expected sample of both substudies combined is approximately 10,800 students. Data for this evaluation will come from participants' Free Application for Federal Student Aid (FAFSA) applications, PGE school administrative records, Social Security Administration earnings statements, and a survey of study participants. The study participant enrollment period is expected to last from July 2012 to January 2014. Data extracts from FAFSA applications will occur between October and December during years 2012–2014. Administrative extracts from PGE schools will occur between January and March during years 2013–2015. A stratified survey of treatment and control group members with a targeted total sample size of 2,000 will be fielded between July 2014 and March 2015.

Dated: April 26, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–10621 Filed 5–1–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; Baccalaureate and Beyond Longitudinal Study 2008/12 (B&B:08/12) Full Scale

SUMMARY: This request for OMB approval is to conduct a second follow-up full scale data collection for the Baccalaureate and Beyond Longitudinal Study of 2008/2012 from July 2012 through March 2013.

DATES: Interested persons are invited to submit comments on or before June 1, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04844. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Baccalaureate and Beyond Longitudinal Study 2008/12 (B&B:08/12) Full Scale.

OMB Control Number: 1850–0729.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 16,464.

Total Estimated Number of Annual Burden Hours: 8,283.

Abstract: The primary purpose of the B&B series of studies is to describe the various paths of recent college graduates into employment and additional education. Baseline data for the B&B:08 cohort were collected as part of the National Postsecondary Student Aid Study. The first follow-up interview (B&B:08/09) collected information from respondents one year after they received their bachelor's degree; the second follow-up (B&B:08/12) will collect data four years after bachelor's degree receipt. Interview data will be supplemented with a variety of administrative data sources, including the Central Processing System, the National Student Loan Data System, and the National Student Clearinghouse.

Dated: April 26, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–10623 Filed 5–1–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13417–002]

Western Technical College; Notice of Application Accepted for Filing With the Commission, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Scoping, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 13417–002.

c. *Date filed:* October 21, 2011.

d. *Applicant:* Western Technical College.

e. *Name of Project:* Angelo Dam Hydroelectric Project.

f. *Location:* The project would be located on the La Crosse River in the Township of Angelo, Monroe County, Wisconsin at an existing dam owned by Monroe County and regulated by the Wisconsin Department of Natural Resources. The project would not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Western Technical College, c/o Mr. Michael Pieper, Vice President, Finance and Operations, 400 Seventh Street North, P.O. Box C–0908, La Crosse, Wisconsin 54602–0908; Phone: (608) 785–9120.

i. *FERC Contact:* Isis Johnson, (202) 502–6346, *isis.johnson@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The project would be located at an existing dam currently owned by Monroe County. The dam was built in 1854, and acquired in the 1920s by Northern States Power who rebuilt, owned, and operated a hydroelectric project at that location until it was abandoned and the generating equipment was removed in 1969. In 1998, Monroe County rehabilitated the dam and installed new tainter gates with cable drum hoists.

The existing Angelo dam is an earthen embankment with a maximum structural height of 20 feet (14 feet at the spillway) and a total length of 507.3 feet. The spillway is constructed of reinforced concrete and consists of four, 13.5-foot-wide by 11.4-foot-high bays with 13.5-foot-wide by approximately 7-foot-high steel tainter gates. In addition to the dam, the proposed project would consist of: (1) A 22.84-foot-long by 16.08-foot-wide trashrack with 2-inch clear spacing; (2) a 14.5-foot-long by 16.08-foot-wide by 13-foot-deep reinforced concrete intake structure; (3) a 20-foot by 20-foot by 20-foot reinforced concrete box forebay; (4) a 24.5-foot-long by 26-foot-wide by 40-foot-high powerhouse located at the right abutment of the dam containing a 205-kilowatt vertical double-regulated Kaplan turbine; (5) a 30-foot-long, 480-volt overhead transmission line connecting the powerhouse generator to a step-up transformer located on a pole which is part of Northern States Power's 2.7-kilovolt distribution line; and (6) appurtenant facilities. The projected annual energy generation would be 948,500 kilowatt-hours.

m. Due to the dam already existing, the limited scope of proposed construction at the project site, the applicant's close coordination with federal and state agencies during the preparation of the application, and the completion of studies during pre-filing consultation, we intend to waive scoping and expedite the review process. Based on a review of the application, resource agency consultation letters, and the fact that no comments have been filed on the final license application to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will assess the potential effects of project construction and operation on geology and soils, aquatic resources, terrestrial resources, threatened and endangered species, recreation and land use, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov.*

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is not waived, the schedule would be lengthened).

Milestone	Target date
Notice of the availability of the EA	July 2012.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10531 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1256–031]

Loup River Public Power District; Notice of Application Tendered For Filing With the Commission and Establishing Procedural Schedule For Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1256–031.

c. *Date Filed:* April 16, 2012.

d. *Applicant:* Loup River Public Power District (Loup Power District).

e. *Name of Project:* Loup River Hydroelectric Project (Loup River Project).

f. *Location:* On the Loup River, Loup Canal (a diversion canal off the Loup River), and Platte River in Nance and Platte counties, Nebraska. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Neal Suess, President/CEO, Loup Power District, P.O. Box 988, 2404 15th Street Columbus, Nebraska 68602, Telephone (866) 869–2087.

i. *FERC Contact:* Lee Emery, (202) 502–8379 or *lee.emery@ferc.gov*.

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of (upstream to downstream): (1) A 1,320-foot-long, 6-foot-high diversion dam on the Loup River; (2) an intake structure composed of eleven 24-foot-long by 5-foot-high steel intake gates located on the north bank of the Loup River immediately upstream of the diversion dam; (3) three 20-foot-long by 6-foot-high steel sluice gates located between the diversion dam and the intake structure; (4) the 35-mile-long Loup Canal; (5) a 2-mile-long settling basin located in the upper portion of the Loup Canal and containing a floating hydraulic dredge and skimming weir; (6) the Monroe Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 2.612 megawatts (MW); (7) a 760-acre regulating reservoir, Lake Babcock, with a storage capacity of 2,270 acre-feet at its full pool elevation of 1,531 feet; (8) a 200-acre regulating reservoir, Lake North, with a storage capacity of 2,080 acre-feet at an elevation of 1,531 feet; (9) a concrete control structure in the south dike linking the two reservoirs; (10) a 60-foot-long by 104-foot-wide by 40-foot-high inlet structure with trashracks; (11) three 20-foot-diameter by 385-foot-long steel penstocks connecting the inlet structure with a powerhouse (Columbus Powerhouse); (12) the Columbus Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 15.2 MW; and (13) appurtenant facilities. The project has a combined installed capacity of 53.4 MW.

The Monroe Powerhouse operates in a run-of-river mode (i.e., canal inflow to the powerhouse closely approximates outflow from the powerhouse with no storage of canal flow). The maximum hydraulic capacity of the canal at the Monroe Powerhouse is 3,500 cubic feet per second (cfs). The Monroe Powerhouse spans the canal and functions as an energy-producing canal drop structure.

The Columbus Powerhouse operates as a daily peaking facility. The water levels in Lake Babcock and Lake North are generally drawn down about 2 to 3 feet to produce power during times of peak electrical demand. In off-peak hours, when there is less demand for electricity, the turbines are turned down or shut off, which allows Lake Babcock and Lake North to refill, thereby allowing peaking operations to occur the following day. The hydraulic capacity of the canal at the Columbus Powerhouse is 4,800 cfs.

The minimum leakage rate at the Loup River diversion dam and sluice gate structure is about 50 cfs. During hot weather conditions, Loup Power District operates the diversion in a manner that allows flows of between 50 to 75 cfs (including the leakage flow) to pass into the Loup River downstream of the diversion to prevent high water temperatures that could cause fish mortality.

Loup Power District proposes new and improved recreational amenities at the project; however, there are no proposed changes to the existing project facilities or operations.

Loup Power District proposes to remove three areas of land from the project boundary that it finds are not necessary for project operations or purposes. In addition, Loup Power District proposes to add three parcels of land to the project boundary that it finds are needed for project purposes.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	June 2012.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 2012.
Commission issues Draft EA	February 2013.
Comments on Draft EA	March 2013.
Modified terms and conditions	May 2013.
Commission issues Final EA	August 2013.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10534 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14308–001]

Carbon Zero, LLC; Notice of Application Accepted for Filing With the Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14308–001.

c. *Date filed:* February 17, 2011.

d. *Applicant:* Carbon Zero, LLC.

e. *Name of Project:* Vermont Tissue Mill Hydroelectric Project.

f. *Location:* On the Walloomsac River, in the Town of Bennington, Bennington County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William F. Scully, Carbon Zero, LLC, P.O. Box 338, North Bennington, VT 05257; (802) 442–0311; *wfscully@gmail.com.*

i. *FERC Contact:* Amy K. Chang, (202) 502–8250, or email at *amy.chang@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* Vermont Tissue Mill Project would consist of two existing dams separated by a 500-foot-wide island and include: (1) An existing 15-foot-high, 85-foot-long primary dam with a spillway crest elevation of 555.0 feet above mean sea level (msl) topped with reinstalled 4-inch-high flashboards; (2) a refurbished 6-foot-high, 8-foot-wide flood gate located on the primary dam south abutment; (3) an existing 6-foot-high, 80-foot-long secondary dam with a spillway crest elevation of 555.33 feet above msl with a new 2.5-foot-high, 2.5-foot-wide minimum flow weir equipped with stop logs; (4) an existing 2,400-foot-long, 6.4-acre impoundment with a normal water surface elevation of 555.41 feet above msl; (5) an existing intake structure equipped with two 12-foot-high, 16-foot-wide flume openings equipped with stop log slots and new trashracks connected to two water conveyance channels, one 12-foot-high, 35-foot-long and one 12-foot-high, 85-foot-long; (6) an existing powerhouse with two new Kaplan turbine generating units, a 215 kilowatt (kW) unit and a 145 kW unit, with a total installed capacity of 360 kW; (7) a refurbished tailrace discharging water from the powerhouse into the main channel downstream of the primary dam; (8) a new 1.5-foot-diameter minimum flow valve in the powerhouse discharging water into an existing 35-foot-wide, 50-foot-long tailrace; (9) a reconstructed, breached 8-foot-high, 2-foot-wide, 45-foot-long retaining wall; and (10) a new buried 480-volt, 125-foot-long transmission line connecting the powerhouse to the regional grid. The project would be operated in a run-of-river mode and would have an annual generation of 1,447.5 megawatt-hours.

m. Due to the project works already existing and the limited scope of proposed rehabilitation of the project site described above, the applicant's close coordination with federal and state agencies during the preparation of the application, and agency recommended preliminary terms and conditions, we intend to waive scoping and expedite the licensing process. Based on a review of the application, resource agency consultation letters including the preliminary terms and conditions, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of the availability of the EA	October 2012.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10532 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12965–002]

Wickiup Hydro Group, LLC; Oregon; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed Wickiup Hydro Group, LLC's application for an original license for the Wickiup Dam Hydroelectric Project (FERC Project No. 12965–002), which would be constructed at the existing Wickiup dam on the Deschutes River in Deschutes County near the city of La Pine, Oregon. The proposed project, if licensed, would occupy 1.02 acres of federal lands jointly managed by the U.S. Department of the Interior, Bureau of Reclamation, and the U.S. Department of Agriculture, Forest Service.

Staff prepared a draft environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at www.ferc.gov using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Matt Cutlip by telephone at 503–552–2762 or by email at *matt.cutlip@ferc.gov*.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10535 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1603–000]

PGPV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of PGPV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 16, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10556 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1604–000]

Cactus Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cactus Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 16, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10555 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–12–000]

Sunoco Pipeline L.P.; Notice of Petition for Declaratory Order

Take notice that on April 20, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 19 CFR 385.207(a)(2) (2012), Sunoco Pipeline L.P. (SPLP) filed a petition for a declaratory order approving (1) priority service and the overall tariff and rate structure for the proposed West Texas-Longview Access pipeline and (2) priority service and the overall tariff and rate structure for the proposed West Texas-Houston Access pipeline.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Tuesday, May 15, 2012.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10533 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–60–000]

Southwest Power Pool; Western Area Power Administration; Basin Electric Cooperative; Heartland Consumers Power District; Notice of Petition for Declaratory Order

Take notice that on April 24, 2012, pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Southwest Power Pool (SPP), Western Area Power Administration (Western), Basin Electric Power Cooperative (Basin Electric), and Heartland Consumers Power District (Heartland), jointly submitted a petition requesting the Commission to issue a declaratory order confirming: (1) Midwest Independent System Operator, Inc. (MISO) is obligated by the terms of the Congestion Management Process contained in a Joint Operating Agreement (JOA) between SPP and MISO to respect the Reciprocal Coordinated Flowgates (RCF) of a third party that has executed a Reciprocal Coordination Agreement with SPP; (2) the SPP-Western JOA is a Reciprocal Coordination Agreement under the MISO–SPP JOA; and (3) MISO is obligated by the MISO–SPP JOA to respect the Integrated System of Western, Basin Electric, and Heartland RCFs.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 24, 2012.

Dated: April 25, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10537 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14381–000]

Qualified Hydro 15, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 9, 2012, Qualified Hydro 15, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Blue River Dam Hydroelectric Project (Blue River Dam project) to be located on the Blue River in the vicinity of Blue River, in Lane County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize flows from the existing 1,265-foot-long earth-fill dam on the Blue River, which is owned and operated by the U.S. Army Corps of Engineers. Additional existing project features would be modified for use by the proposed project. The existing concrete intake structure would have trash racks added. The existing 1,800-foot-long concrete-lined outlet tunnel would be lined with steel. The existing stilling basin would be extended 70 feet and modified to accommodate a new bifurcation chamber and gatehouse.

New project features would consist of the following: (1) A steel bifurcation chamber and concrete gatehouse in the stilling basin that would provide flow to the penstock and directly back into the Blue River when incoming flows exceed plant capacity or when the project is not operating; (2) a powerhouse gate that would control flow into the penstock; (3) a 600-foot-long, 12-foot diameter steel penstock from the stilling basin to the powerhouse; (4) a 70-foot by 50-foot reinforced concrete powerhouse containing two turbine/generators units for a total capacity of 20 megawatts; (5) a 125-foot-long, 60-foot-wide tailrace that would return flow back to the Blue River; (6) a substation; (7) an approximately 1.5-mile-long, 115-kilovolt transmission line which would tie into the existing Bonneville Power Administration Blue River substation; and (8) appurtenant facilities. The estimated annual generation of the Blue River Dam project would be 50 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Qualified Hydro 15, LLC, 239 Causeway St., Suite 300, Boston, MA; phone: (978) 283–2822.

FERC Contact: Ryan Hansen (202) 502–8074 or *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be

paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14381–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10530 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–134–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on April 13, 2012, Trunkline Gas Company, LLC (Trunkline), 5051 Westheimer Road, Houston, Texas 77056–5306, filed in Docket No. CP12–134–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA), as amended, to abandon in place two natural gas supply laterals and related facilities located in Vermilion Parish, Louisiana, and extending into State and Federal waters, offshore Louisiana in the Vermilion Block, under Trunkline's blanket certificate issued in Docket No. CP83–84–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Trunkline proposes to abandon in place its Line Nos. 210A–2300 and 210A–2400, including their associated meters and appurtenances. Trunkline states that transmission Line No. 210A–2300 consists of approximately 9.48 miles of 10-inch diameter pipeline which is located between Vermilion Blocks 23 and 26B, offshore Louisiana. Trunkline also states that gathering Line No. 210A–2400 consists of approximately 13.33 miles of 16-inch diameter pipeline that extends from a subsea connection on Trunkline's Line No 210A–2300 in Vermilion Block 23 to Trunkline's Line No. 210A–100 onshore at approximately Mile Post 23 in Vermilion Parish. Trunkline further states that Chevron U.S.A., the sole customer served by these facilities, has given Trunkline its written consent to abandon the two pipeline segments. Trunkline estimates that it would cost $4,326,847 to abandon Lines No. 210A–2300 and 210A–2400 in place.

Any questions concerning this application may be directed to Stephen T. Veatch, Senior Director of Certificates and Tariffs, Trunkline Gas Company, LLC, 5051 Westheimer Road, Houston, Texas 77056–5306, telephone at (713) 989–2024, facsimile at (713) 989–1176, or via email: *Stephen.Veatch@sug.com.*

This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: April 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10536 Filed 5–1–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 22 FERC ¶ 62,044 (1983).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0257; FRL–9344–6]

Diflubenzuron; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wyoming Department of Agriculture to use the pesticide diflubenzuron to treat up to 26,000 acres of alfalfa to control grasshoppers and Mormon crickets. The applicant proposes a use which is supported by the Interregional (IR)–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 17, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0257, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0257. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or

email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9356 fax number: (703) 605–0781; email address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Wyoming Department of Agriculture has requested the Administrator to issue a specific exemption for the use of diflubenzuron (CAS Reg. No. 35367–38–5) on alfalfa to control grasshoppers and Mormon crickets. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

As part of the request, the applicant asserts that projected population levels for these damaging insect pests are higher than normal for the 2012 season. The applicant claims that registered alternatives will not provide adequate control to avert significant economic losses from occurring.

The Applicant proposes to make no more than two applications of diflubenzuron, at a rate of 0.032 lbs. active ingredient (a.i.) (equivalent to 2 fl. oz. of product containing 2 lbs. a.i. per gallon). Application could be made on up to 26,000 acres of alfalfa, from the date of approval, if granted, until October 31, 2012, in the state of Wyoming. If the maximum proposed acreage were treated at the maximum rate, a total of 814 lbs. active ingredient (407 gallons formulated product) could be applied.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing

section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the applications.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Wyoming Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10342 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0968; FRL–9345–7]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the pesticide applicant, Valent USA Corporation. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Autumn Metzger, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5314; email address: *metzger.autumn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0968. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. EUP

EPA has issued the following EUP:

59639–EUP–16. Issuance. Valent USA Corporation, P.O. Box 8025, Walnut Creek, CA 94596. This EUP allows the use of 2,500 pounds of the insecticide etoxazole on up to 20,000 acres of field corn, pop corn or corn grown for seed to evaluate the control of mites over larger scale and commercial plots. The program is authorized only in the State of California. The EUP is effective from March 15, 2012 to March 14, 2013.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Agricultural commodities, Experimental use permits, Pesticides and pest.

Dated: April 18, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10318 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9347–4]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Tables 1 through 4 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a February 22, 2012, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 5 of Unit II. to voluntarily cancel these product registrations. In the February 22, 2012, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective as provided in Unit VI.

FOR FURTHER INFORMATION CONTACT: Jolene Trujillo, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0103; fax number: (703) 308–8005; email address: *trujillo.jolene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of 40 products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number in Tables 1 through 4 of this unit.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
004787–00060	Cheminova Fipronil Technical	Fipronil.
005905–00497	5 lb Dimethoate Systemic Insecticide	Dimethoate.
006836–00159	LFQ–30	Poly(oxy-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl dichloride).
009444–00170	CB–38–2 For Insect Control	Piperonyl Butoxide, Pyrethrins.
010807–00101	Repco-Tox Space Spray Insecticide	Resmethrin.
010807–00107	Fog Kill Oil Base Insecticide	Resmethrin.
010807–00110	Aqua-Kill Insecticide	Resmethrin.
028293–00160	Unicorn House and Carpet Spray 11	Tetramethrin, Phenothrin.
066222–00026	Pramitol 2.5% Liquid Vegetation Killer	Prometon.
067760–00107	Rhyme TC Termiticide/Insecticide	Fipronil.
082542–00019	Technical Propiconazole	Propiconazole.
082542–00020	Propiconazole 41.8% EC Fungicide	Propiconazole.
083851–00016	Amitide Imazapyr Technical 98%	Imazapyr.
086068–00001	Texcan Glyphosate Technical	Glyphosate.
086068–00002	Texcan 62% Glyphosate MUP	Glyphosate-isopropylammonium.

TABLE 2—REGISTRATIONS FOR PRODUCTS CONTAINING FENARIMOL WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
010163–00273	Rubigan E.C.	Fenarimol.
010163–00274	Rubigan A.S. Turf and Ornamental	Fenarimol.
010163–00275	Rubigan A.S.	Fenarimol.
010163–00276	Rubigan Technical	Fenarimol.
010163–00290	Riverdale Patchwork	Fenarimol.
010163–00302	Fenarimol Technical	Fenarimol.
OR030037	Rubigan E.C.	Fenarimol.

TABLE 3—REGISTRATIONS FOR PRODUCTS CONTAINING CHLORONEB WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
002217–00692	Gordon's Professional Turf Products Teremec SP Turf Fungicide.	Chloroneb.
009198–00182	Andersons Golf Products Fungicide V	Chloroneb.
009198–00204	Andersons Golf Products Fungicide IX	Chloroneb, Thiophanate-methyl.

TABLE 4—REGISTRATIONS FOR PRODUCTS CONTAINING PENTACHLORONITROBENZENE (OR PCNB) WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
005481–00279	PCNB 75% Wettable Powder	Pentachloronitrobenzene.
005481–00419	PCNB 75W Turf and Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–00438	80% PCNB	Pentachloronitrobenzene.
005481–00441	PCNB 75 DG	Pentachloronitrobenzene.
005481–00453	PCNB 75 WSP	Pentachloronitrobenzene.
005481–00457	Turfpro WSP Turf & Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–08981	Terraclor 75% Wettable Powder	Pentachloronitrobenzene.
005481–08983	Terrachlor Technical	Pentachloronitrobenzene.
005481–08990	Terrachlor 90% Dust Concentrate	Pentachloronitrobenzene.
005481–08996	Terrazan PCNB Technical 99%	Pentachloronitrobenzene.
005481–08999	Terrachlor Technical 96	Pentachloronitrobenzene.
005481–09034	Gustafson Terrachlor 80% Dust Concentrate	Pentachloronitrobenzene.
005481–09036	RTU PCNB Seed Protectant	Pentachloronitrobenzene.
005481–09037	Gustafson Apron-Terrachlor Dust Seed Treatment	Pentachloronitrobenzene Metalaxyl.
005481–09038	Terra-Coat WP	Pentachloronitrobenzene.

Table 5 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 through 4 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Tables 1 through 4 of this unit.

TABLE 5—REGISTRANTS WITH PENDING REQUESTS FOR CANCELLATION

EPA Company No.	Company name and address
2217	PBI/Gordon Corp., 1217 West 12th Street, P.O. Box 014090, Kansas City, MI 64101.
4787	Cheminova A/S, Agent: Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
5905	Helena Chemical Co., Agent Helena Products Group, 7664 Smythe Farm Road, Memphis, TN 38120.
6836	Lonza, Inc., 90 Boroline Road, Allendale, NJ 07401.
9198	The Andersons Lawn Fertilizer Division, Inc., 521 Illinois Avenue, P.O. Box 119, Maumee, OH 43537.
9444	Waterbury Companies, Inc., Agent: FMC Corporation, 1101 Penn. Avenue NW., Suite 325, Washington, DC 20004.
10163; OR030037	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10807	Amrep, Inc., 990 Industrial Park Drive, Marietta, GA 30062.
28293	Phaeton Corporation, Agent: Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153.
66222	Makhteshim-Agan of North America, Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th Street NW., Gig Harbor, WA 98332.
67760	Cheminova, Inc., Agent: Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
82542	Source Dynamics, LLC, 10039 E. Troon North Drive, Scottsdale, AZ 85262.
83851	Amitide, LLC, 21 Hubble, Irvine, CA 92618.
86068	Texcan Investments & Marketing Company, Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the February 22, 2012, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Tables 1 through 4 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Tables 1 through 4 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 through 4 of Unit II. are cancelled. The effective date of the cancellations that are the subject of this notice can be found in Unit VI. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 through 4 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of February 22, 2012 (77 FR 10516) (FRL–9336–4). The comment period closed on March 23, 2012.

VI. Effective Dates of Cancellation and Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows:

A. Registrations Listed in Table 1 of Unit II

The effective date of cancellation of these products is May 2, 2012. The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until May 2, 2013, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

B. Registrations Listed in Table 2 of Unit II

The effective date of cancellation of these products is July 31, 2013. The registrants will be allowed to sell and distribute existing stocks of products containing fenarimol until July 31, 2013. Thereafter, registrants will be prohibited from selling or distributing these pesticide products, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant will be allowed to sell and distribute existing stocks through July 31, 2015. After this date, remaining existing stocks of products containing fenarimol labeled for all uses, already in the hands of users may be used until exhausted, provided that such use complies with the EPA-approved label and labeling of the product.

C. Registrations Listed in Table 3 of Unit II Except No. 002217–00692

The effective date of cancellation of these products is May 2, 2012. The registrant will be allowed to sell and distribute existing stocks until December 31, 2013. Thereafter, registrants will be prohibited from selling or distributing these pesticide products, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

D. Registration No. 002217–00692 Listed in Table 3 of Unit II

The effective date of cancellation of this product is December 31, 2013. The registrant may continue to sell or distribute existing stocks of chloroneb for 1 year from the date of the cancellation. Thereafter, registrants will be prohibited from selling or distributing this pesticide product, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

E. Registrations Listed in Table 4 of Unit II

The registrant is prohibited from selling or distributing the PCNB products listed in Table 4, except for export in accordance with FIFRA section 17 or for proper disposal, effective upon publication of this Cancellation Order, that is, as of May 2, 2012. Persons other than the registrant also are prohibited from selling or distributing existing stocks of products listed in Table 4, except for export in accordance with FIFRA section 17 or for proper disposal, effective upon publication of this Cancellation Order.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 25, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–10436 Filed 5–1–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Friday, April 27, 2012

Date: April 20, 2012.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, April 27, 2012, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item Nos.	Bureau	Subject
1	Consumer and Governmental Affairs	*Title:* Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (''Cramming'') (CG Docket No. 11–116); Consumer Information and Disclosure (CG Docket No. 09–158) and Truth-in-Billing and Billing Format (CC Docket No. 98–170) *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that protects consumers by adopting and proposing additional rules to help consumers prevent and detect the unlawful and fraudulent placement of unauthorized charges on their telephone bills.
2	Media	*Title:* Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations *Summary:* The Commission will consider a Notice of Proposed Rulemaking inviting comment on whether to allow noncommercial educational broadcast stations to conduct on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations.
3	Media	*Title:* Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations (MM Docket No. 00–168) and Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398) (MM Docket No. 00–44) *Summary:* The Commission will consider a Second Report and Order that increases transparency and improves public access to community-relevant information by moving the television broadcast station public file from paper to the Internet.
4	Media and Office of Engineering and Technology.	*Title:* Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF (ET Docket No. 10–235) *Summary:* The Commission will consider a Report and Order establishing a regulatory framework for channel sharing among television licensees in connection with an incentive auction of spectrum.
5	Wireline Cometition	*Title:* Universal Service Contribution Methodology (WC Docket No. 06–122) and A National Broadband Plan for Our Future (GN Docket No. 09–51) *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking seeking comment on proposals to reform and modernize how Universal Service Fund contributions are assessed and recovered.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at FCC@*BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–10640 Filed 4–30–12; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
021062F	International Trade Compliance Group, LLC, 101 North Riverside Drive, Suite 203, Pompano Beach, FL 33062.	February 21, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–10607 Filed 5–1–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

AOG International, Inc. (OFF), 4801 Woodway Drive, 371 East Houston, TX 77056, Officers: J. Shelli Ali, Vice President (Qualifying Individual), Christina L. Forth-Matthews, President, Application Type: New OFF License.

Azimuth Lines Inc. (OFF), 111 Ivy Lane, Bridgewater, NJ 08807, Officers: Mohan Krishnamurti, President/Secretary (Qualifying Individual), Radha Ramesh, Treasurer, Application Type: New OFF License.

Berto L. Batista Urena and Juan A. Rodriquez dba Embarque San Miguel (NVO & OFF), 294 Passaic Street, #1, Passaic, NJ 07055, Officer: Berto L. Batista, Partner (Qualifying Individual), Juan Rodriguez, Vice President, Application Type: New NVO & OFF License.

CLN Worldwide, LLC (NVO & OFF), 1825–C Cross Beam Drive, Charlotte, NC 28217, Officer: David E. Sitton, Managing Member (Qualifying Individual), Application Type: New NVO & OFF License.

Conceptum Logistics (USA), LLC (NVO & OFF), 2203 Timberloch Place, #238, The Woodlands, TX 77380, Officers: Pamela H. Ceravolo, Managing Director (Qualifying Individual), Norbert Goerlitz, Vice President/COO, Application Type: QI Change.

Falcon Maritime and Aviation, Inc. (NVO), 159–15 Rockaway Blvd., Jamaica, NY 11434, Officers: Richard A. Shelala, President (Qualifying Individual), Robert M. Shelala, Vice President/Secretary, Application Type: New NVO License.

Global Forwarding Enterprises Limited dba Global GlobalForwarding.com dba ForwardingServices.com dba Global Forwarding Enterprises LLC dba ContainerQuote.com (NVO & OFF), 348 Route 9 N, Suite G, Manalapan, NJ 07726, Officers: Rachel Micari, Manager (Qualifying Individual), Pavel Kapelnikov, Member/Manager, Application Type: Add OFF Service.

I.T. Freight Corporation (NVO & OFF), 1970 NW 129th Avenue, Suite 105, Miami, FL 33182, Officers: Nicolas I. Cassis, Secretary (Qualifying Individual), Jorge Zambrano, President/Treasurer, Application Type: New NVO & OFF License.

Lorden International Inc. (NVO), 1000 Lakes Drive, #260, West Covina, CA 91760, Officers: Larry Lee, Treasurer (Qualifying Individual), Daniel Shaw, President/Secretary, Application Type: New NVO.

Master Transportation Cargo, LLC (OFF), 9600 NW 38th Street, #310, Miami, FL 33178, Officers: Hector J. Vega, Member/Manager (Qualifying Individual), Gustavo H. Alvarez, Member/Manager, Application Type: New OFF License.

Multimodal Container Consulting LLC dba World, Maritime NVOCC (OFF), 2081 Raritan Road, Scotch Plains, NJ 07076, Officers: Robin Lynch, Managing Member (Qualifying Individual), Gina Lynch, Member, Application Type: License Transfer.

Orion SLM LLC (NVO & OFF), 9010 SW 214th Lane, Cutler Bay, FL 33189, Officers: Bernardo Flores, Manager (Qualifying Individual), Michael E.J. Watkins, Member, Application Type: New NVO & OFF License.

Schooner Lines Company (NVO), 34 Conestoga Manor, Leola, PA 17540, Officers: James Madden, Chief Operating Manager (Qualifying Individual), Mykola Chobotar, Chief Executive Manager, Application Type: New NVO License.

Transmarine Shipping, Inc. (NVO & OFF), 11222 S. La Cienega Blvd., #252, Inglewood, CA 90394, Officer: Yuk Lau, Secretary (Qualifying Individual), Shuigen Luo, President/Chief Financial Officer, Application Type: New NVO & OFF License.

Webgistix Corporation (NVO & OFF), 127 E. Warm Springs, #A, Las Vegas, NV 89119, Officer: Joseph Aldo Disorbo, President (Qualifying Individual), Application Type: Add NVO Service.

Dated: April 27, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–10604 Filed 5–1–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 022268NF.

Name: USI–USA, Inc.

Address: 13030 Fellowship Way, Reno, NV 89511.

Date Revoked: March 7, 2012.

Reason: Voluntarily surrendered license.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–10605 Filed 5–1–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR part 238) to acquire shares of a savings and loan 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 May 16, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Frederick W. Tausch,* Merrimack, New Hampshire; to acquire voting shares of Monadnock Bancorp, Inc., and thereby indirectly acquire voting shares of Monadnock Community Bank, both in Peterborough, New Hampshire.

Board of Governors of the Federal Reserve System, April 26, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–10476 Filed 5–1–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0172]

CoStar Group, Inc., Lonestar Acquisition Sub, Inc., and LoopNet, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ACoStar LoopNet, File No. 111 0172'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/costarloopnetconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Justin A. Stewart-Teitelbaum (202–326–3597), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 26, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 16, 2012. Write ACoStar LoopNet, File No. 111 0172'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/costarloopnetconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ACoStar LoopNet, File No. 111 0172'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 29, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from CoStar Group, Inc. (''CoStar''), Lonestar Acquisition Sub, Inc., and LoopNet, Inc. (''LoopNet'') (collectively, ''Respondents''). Pursuant to an Agreement and Plan of Merger dated April 27, 2011, Lonestar Acquisition Sub, Inc., a wholly-owned subsidiary of CoStar, intends to acquire all of the common stock of LoopNet in exchange for cash and stock considerations with a total equity value of approximately $860 million (the ''acquisition''). The Commission's Complaint alleges that CoStar and LoopNet have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the Federal Trade Commission Act, by eliminating actual, direct, and substantial competition between CoStar and LoopNet, and between CoStar and Xceligent, Inc. (''Xceligent''), and increasing the likelihood that CoStar will exercise market power unilaterally in the provision of commercial real estate (''CRE'') listings databases and information services.

The proposed Consent Agreement would resolve these competitive concerns by requiring the divestiture of LoopNet's interest in Xceligent, CoStar's most direct competitor on a product basis. Owing to the circumstances surrounding the acquisition and the characteristics of the industry at issue, the proposed Consent Agreement further imposes certain conduct requirements to assure the continued viability of Xceligent as a competitor to the merged firm and to reduce barriers to competitive entry and expansion. These additional provisions will facilitate Xceligent's geographic expansion and prevent foreclosure of Respondents' established customer base. Together, the divestiture and conduct obligations will make Xceligent a stronger independent competitor to the merged firm. The proposed Consent Agreement will thus remedy the loss or diminution of competition that would result from the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the proposed Decision and Order (''Order'').

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way.

I. Respondents and Other Relevant Entities

A. CoStar

CoStar is the largest provider of CRE information services in the United States, offering a researched listings database with nationwide coverage. CoStar proactively tracks and aggregates CRE listings and information to create and maintain an in-depth and comprehensive CRE database. CoStar is a publicly traded, for-profit corporation.

B. LoopNet

LoopNet operates the most heavily trafficked CRE listings database in the United States. LoopNet provides a platform for CRE market participants to post listings and other detailed information about available properties, and aggregates that user-generated content into a database searchable by the public. Through this platform, LoopNet also offers some CRE information services with nationwide coverage. LoopNet is a publicly traded, for-profit corporation.

Starting in 2007, LoopNet acquired a substantial ownership stake in Xceligent, a provider of CRE information and listings services, with coverage focused on the Midwest and South. Today, LoopNet provides Xceligent with funding and information to aid Xceligent in expanding its geographic scope.

C. Xceligent

Xceligent, a privately held corporation, is a third leading provider of CRE information services in the United States, offering a researched listings database. Xceligent's model closely resembles CoStar's, with a research staff that proactively tracks and aggregates CRE listings and information to create and maintain an in-depth and comprehensive CRE database.

II. The Proposed Complaint

CoStar's acquisition of LoopNet presents antitrust concerns in the markets for CRE listings databases and CRE information services. Listings databases provide a means for parties to CRE transactions to publicize and to search for available properties for sale and for lease. CRE information services compile the data industry participants need to evaluate CRE assets and opportunities, informing decisions ranging from the determination of asking price to whether to execute a given sale or lease agreement. Real estate brokers, lenders, investors, developers, appraisers, government agencies, and others connected to the CRE industry require listings databases

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

and information services with geographic coverage that corresponds to their unique scope of operations. The coverage needs of a given customer may be as broad as the entire United States, or as narrow as a city neighborhood.

CoStar and LoopNet are the only two providers of CRE listings databases with nationwide coverage. CoStar is the only current provider of full-inventory, research verified CRE listings databases and information services with national coverage. CoStar's closest competitor on a product basis, Xceligent, today provides full-inventory, research-verified listings databases and information services in 33 metropolitan areas. Other providers offer CRE listings databases and information services with coverage of a particular local or regional area or of a particular subset of the total CRE landscape, but none have achieved the critical mass of users and data that CoStar and LoopNet possess today.

The acquisition may substantially lessen competition in these relevant markets by eliminating actual, direct, and substantial competition between CoStar and LoopNet, and between CoStar and Xceligent because of LoopNet's substantial ownership stake in Xceligent. The acquisition therefore may also increase the likelihood that CoStar will exercise market power unilaterally.

Timely, competitively meaningful entry is unlikely to mitigate these anticompetitive effects. Significant network effects characterize the market for CRE listings databases and create a substantial barrier to new entry. For both listings databases and information services, entry and expansion are difficult, costly, and time-consuming.

III. The Proposed Consent Agreement

The proposed Consent Agreement and the Order include the obligation to divest certain LoopNet data to Xceligent and conduct requirements that may modify Respondents' current and future contractual agreements with its customers. These provisions are intended to ensure that the remedy is responsive to the history and characteristics of the relevant markets. The Order incorporates these carefully-tailored provisions to assure the successful implementation of the remedy and to effectuate the Order's remedial purpose. Some of these provisions are highlighted below.

A. Divestitures

The proposed Consent Agreement is intended to remedy the acquisition's alleged anticompetitive effects by, among other things, requiring the divestiture of LoopNet's interest in Xceligent to DMG Information, Inc. (''DMGI''). DMGI is a U.S.-based subsidiary of British media and data conglomerate Daily Mail & General Trust, PLC, a publicly traded, for-profit firm with 2011 revenues of nearly £2 billion. DMGI specializes in business-to-business information services and has significant experience in the CRE information space. DMGI's strong, existing presence in the CRE information space includes substantial and long-standing investments in CRE information firms including Trepp, LLC; Real Capital Analytics, Inc.; Environmental Data Resources, Inc.; and BUILDERadius, Inc.

Respondents have reached an agreement to sell to DMGI LoopNet's interest in Xceligent and in the URL '' commercialsearch.com.'' In addition to these assets, Respondents have agreed to divest to DMGI certain LoopNet data that will facilitate Xceligent's expansion into new metropolitan areas. The need for this data divestiture arises from the unique historical relationship between LoopNet and Xceligent and from the high initial costs associated with entry and expansion in the relevant markets. These divestitures assure the continued viability of Xceligent as CoStar's competitor and enable Xceligent to grow rapidly into a more complete, national listings database and information services alternative to the merged firm. DMGI is well-equipped to replace LoopNet and become the controlling shareholder of Xceligent. DMGI has the resources and capability to provide Xceligent with the financial and strategic assistance required for effective and efficient continued expansion. The divestitures will therefore preserve the existing competition between CoStar and Xceligent and will allow Xceligent to replace any competition lost between CoStar and LoopNet as a result of the acquisition.

B. Conduct Provisions

The Order imposes certain conduct requirements that will lower entry barriers to the markets for CRE listings databases and information services. Paragraph III.A. of the Order prevents Respondents from restricting, directly or indirectly, customers' ability to support Xceligent. The history and data-driven nature of the relevant markets, coupled with the high costs of data collection and the network effects inherent in the industry, have led to significant barriers to entry and expansion. Paragraph III.A. ensures that industry participants, including the largest national CRE brokerage firms, can bolster entry efforts—whether through financial investment, CRE information-sharing, or public endorsement—without fear of reprisal. This provision thus reduces entry barriers by allowing industry participants to assist in the development and growth of Xceligent.

In order to prevent long-term CoStar subscription commitments from foreclosing competitive entry or expansion, Paragraph III.B. of the Order requires Respondents to allow current and future customers, without penalty, to terminate their existing contracts with twelve (12) months' notice. This provision ensures that Xceligent has available customers in any and all metropolitan areas where they offer competing products. The resulting revenue opportunities and feasibility of gaining broad customer acceptance will make entry or expansion into local coverage areas more efficient and effective.

Similarly, Paragraphs III.F. and III.G. of the Order include provisions that aim to protect Xceligent for a limited period while it expands the breadth and geographic scope of its services. These restrictions are necessary because of the importance of such expansion in ensuring an effective remedy. Paragraph III.F. prevents Respondents from conditioning the sale, lease, or license of, or the subscription to, any of Respondents' products on the sale, lease, or license of, or the subscription to, any other of Respondents' products. Paragraph III.F. also prohibits Respondents from requiring customers to subscribe to multiple geographic coverage areas in order to gain access to a single coverage area of interest. These protections extend for a period of five (5) years post-acquisition. Paragraph III.F. also requires Respondents to continue to offer all currently available products on a stand-alone basis for three (3) years post-acquisition. A related provision, Paragraph III.G., prohibits Respondents from limiting the use of the REApplications product, a software tool for managing market research. For three (3) years after the Order date, if Respondents continue to offer REApplications, Paragraph III.G. provides that customers shall be permitted to use REApplications in support of, or in connection with, their purchase, lease, or license of CRE database services from Respondents' competitors. Together, Paragraphs III.F. and III.G. ensure that customers are free to turn to Xceligent or other firms for the services those firms provide, without forfeiting their access to other CoStar products on which they rely. These provisions therefore advance the Order's remedial purpose in recognition of, and in response to, the relatedness of the products at issue, the indispensable

nature of those products, and the currently limited selection of providers to customers of those products.

Paragraphs III.C. and III.D. of the Order provide certain protections to Respondents' current and future customers so that they are free to avail themselves of their rights and opportunities post-acquisition. Paragraph III.C. prohibits Respondents from intentionally disrupting or limiting service to customers except in specific, enumerated circumstances. This provision ensures that Respondents' customers are protected in their ability to conduct their day-to-day business by designating inappropriate suspension of service as a retaliatory act punishable under Paragraph III.H. of the Order. In order to address the possible chilling effects of the industry's historically litigious reputation, Paragraph III.D. grants Respondents' current and future customers the right to resolve any disputes with Respondents through arbitration.

C. Compliance and Notification Requirements

Paragraph V. of the Order requires Respondents to provide notice to the Federal Trade Commission thirty (30) days prior to any planned acquisition of any firm that gathers, markets, or sells CRE listings or CRE information in the United States for a period of five (5) years. For an additional five years thereafter, the Order requires Respondents to provide prior notice of planned acquisitions of any such firms with revenues of $15 million or greater.

Paragraph VI. of the Order appoints Guy Dorey as Monitor to assure Respondents' ongoing compliance with their obligations and responsibilities under the Order. Among other responsibilities, Paragraph VI. empowers the Monitor, at Respondents' expense, to review and audit compliance with Order provisions relating to the divestitures of assets and information and to customers' rights to support Xceligent.

To assure that Respondents fully comply with the obligations of Paragraph II. of the Order, Paragraph VII. of the Order allows the Commission to appoint a Divestiture Trustee to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets and information.

Paragraph VIII. of the Order requires Respondents to submit periodic reports of compliance. The Order requires reporting every sixty (60) days for two (2) years following the Order date, and annually thereafter until the Order terminates in ten (10) years.

Paragraph IX. of the Order requires Respondents to give the Commission prior notice of certain events that might affect compliance obligations arising from the Order.

D. Additional Provisions

Paragraph X. of the Order provides that the Order shall terminate after ten (10) years.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2012–10550 Filed 5–1–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues will conduct its ninth meeting in May. At this meeting, the Commission will discuss topics related to the ethical issues associated with the development of medical countermeasures for children as well as access to, and privacy of, human genome sequence data.

DATES: The meeting will take place on Thursday, May 17, 2012, from 9 a.m. to approximately 5:30 p.m.

ADDRESSES: The Embassy Row Hotel, 2015 Massachusetts Ave. NW., Washington, DC 20036. Telephone: (202) 265–1600.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Telephone: (202) 233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the ninth meeting of the Presidential Commission for the Study of Bioethical Issues (the Commission). The meeting will be open to the public with attendance limited to available space. The meeting will also be webcast at *http://www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an advisory panel of the nation's leaders in medicine, science, ethics, religion, law, and engineering. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda items for the Commission's ninth meeting are, first, to discuss the ethical issues associated with the development of medical countermeasures for children, and second, to discuss issues of privacy of, and access to, human genome sequence data.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at *http://www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at

Esther.Yoo@bioethics.gov in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: April 23, 2012.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2012–10513 Filed 5–1–12; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information on Guidance for the Specification of a Secure, Online Reporting System for Streamlining Programmatic, Fiscal, and Other Data From DHHS-Funded HIV Prevention, Treatment, and Care Services Grantees

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is seeking to identify interest and obtain information relevant to the design, deployment, operations, maintenance, and future enhancement of a centralized, secure, flexible data reporting system to streamline the collection, processing, and sharing of programmatic, funding, and other data reported to DHHS Operating Divisions (OpDivs) by grantees funded to provide HIV prevention, treatment, and care services.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. EST on May 17, 2012.

ADDRESSES: Electronic responses are strongly preferred and may be addressed to [*HIVOpenData@hhs.gov*]. Written responses should be addressed to: U.S. Department of Health and Human Services, Room 443–H, 200 Independence Ave. SW., Washington, DC 20201. Attention: HIV Open Data Project.

FOR FURTHER INFORMATION CONTACT: Andrew D. Forsyth Ph.D. or Vera Yakovchenko, MPH, Office of HIV/AIDS and Infectious Disease Policy (OHAIDP), (202) 205–6606.

SUPPLEMENTARY INFORMATION:

In July 2010, the White House released the National HIV/AIDS Strategy (NHAS) for the United States that outlined four key goals: (1) Reduce the number of people who become infected with HIV; (2) increase access to care and optimize health outcomes for people living with HIV; (3) reduce HIV-related health disparities; and (4) achieve a more coordinated national response to the HIV epidemic in the United States.[1] Central to the latter goal were two related directives. The first was to develop improved mechanisms to monitor, evaluate, and report on progress toward achieving national goals. And the second was to simplify grant administration activities by standardizing data collection and reducing undue grantee reporting requirements for federal HIV programs.

In December 2009, the White House also released its Open Government Directive,[2] which seeks to improve access to government data in a manner that enhances transparency, fosters participation through the public's contribution of ideas and expertise to decision-making, and enhances collaboration through new partnerships within the federal government and between public and private institutions. Notwithstanding existing clearance requirements or legitimate reasons to protect information, the Directive highlighted the need for the following: (1) Timely and accessible online publication of government information; (2) improved quality of government information; (3) creation of a culture of open government; and (4) establishment of a policy framework for Open Government. The release of the Directive was followed shortly thereafter by the DHHS Open Government Plan,[3] which seeks to build upon the White House's emphasis on transparency, collaboration, and collaboration to ensure that the government works better for all Americans.

An important contribution of the DHHS Open Government Plan is its reference to new technological developments that make it possible to streamline the collection, sharing, and processing of programmatic and fiscal data in a manner that facilitates greater transparency, participation, and collaboration, even in such critical and sensitive areas as the DHHS investment in HIV prevention, treatment, and care services. At present, DHHS OpDivs that fund these services use a mixture of non-interoperable information processing systems to collect programmatic, fiscal, and other data from grantees. Moreover, these systems often utilize different indicators to monitor the progress of HIV/AIDS programs that vary in their specifications (*e.g.,* numerators, denominators, time frames) and other key parameters. As a result, many required HIV/AIDS data elements are inconsistent, impede evaluation and monitoring of all relevant DHHS-funded services, and add undue burden to HIV services grantees charged with reporting obligations often from multiple DHHS OpDivs.

Under consideration at DHHS is the design, deployment, operations, maintenance, and future enhancement of a centralized, secure, flexible data reporting information system to compile programmatic, funding, and other data reported to DHHS OpDivs by grantees funded to provide HIV prevention, treatment, and care services. In effect, DHHS is exploring the possibility of establishing a single data reporting tool for funders, grantees, and sub-grantees that builds upon or shares many of the features of the Health Resources and Services Administration's (HRSA) Ryan White HIV/AIDS Services Report (RSR), which is a secure, online, data collection system for programmatic and fiscal data. Similarly, such a system might share features central to the National Institutes of Health's Electronic Research Administration (ERA), which offers a one-stop solution ''to manage the receipt, processing, review, award and monitoring of over $30 billion in research and non-research grants'' (see *http://era.nih.gov*). Moreover, such a system would offer a secure data solution that permits internal and external access to data, eliminates paper-based reporting, and streamlines the process of data collection and sharing in a manner that advances the DHHS Open Government Plan.

The HIV Open Data Project envisioned might offer several benefits, such as: (1) Improve mechanisms to monitor, evaluate, and report on progress toward achieving NHAS goals; (2) ensure more coordinated program administration; (3) utilize a common protocol for establishing patient identifiers to protect confidentiality and de-identify client data; (4) reduce

[1] *http://www.whitehouse.gov/administration/eop/onap/nhas.*

[2] *http://www.whitehouse.gov/open/documents/open-government-directive.*

[3] *http://www.hhs.gov/open/plan/opengovernmentplan/transparency/dashboard.html.*

administrative and infrastructural costs associated with reporting to or maintaining independent data systems; (5) streamline and standardize data collection; (6) facilitate data sharing among federal and non-federal partners; (7) reduce bottlenecks and redundant data entry to different data systems; (8) integrate with electronic health record systems; (9) improve accountability and tracking of grantees with multiple funding streams; (10) facilitate data standardization and deployment of common core indicators that could form the basis of performance dashboards; (11) identify services gaps and unmet need; and (12) enhance transparency, participation, and collaboration around key public policy decisions relevant to the DHHS investment in HIV prevention, treatment, and care services.

Accordingly, this request for information seeks public comment on several key dimensions of such a project, including but not limited to the following:

1. In evaluating the feasibility of such a centralized data system, what specific steps would be critical to the design, deployment, operations, maintenance, and enhancement of such a system, particularly in light of addressing interoperability issues of existing data systems operated by DHHS OpDivs that support HIV prevention, treatment, or care services (e.g., Centers for Medicare and Medicaid Services, HRSA, Substance Abuse and Mental Health Services Administration, Indian Health Service, Centers for Disease Control and Prevention)?

2. What existing systems currently in use to monitor health grants offer the features desired and what are the strengths and challenges of (a) designing an entirely new online resource or (b) adopting an existing resource (e.g., HRSA's RSR or others)?

3. What are the greatest challenges encountered in reporting data (describe your reporting obligations, if applicable) and what specific solutions have DHHS grantees implemented to streamline divergent, non-interoperable reporting systems?

4. And what data would prove most useful for different stakeholders to receive from such a centralized system?

5. What costs, benefits, and risks need to be given careful consideration in development of such a resource? What are the estimated costs and return on investment of each component?

6. What technological resources and expertise would be needed to design, deploy, operate, maintain, and enhance such a system and what extant models exist for achieving the goal of a secure electronic resource capable of achieving the benefits noted above?

7. What system architecture do you recommend for the project, particularly considering the government's desire to keep the project simple and streamlined (i.e. using as few different software packages and tools as possible)? What architecture, expertise, and other components are indispensible to the success of the design, deployment, operations, maintenance, and enhancement of such a system?

8. What would a phased implementation plan consist of? If a modular or phased approach is recommended, what is a realistic timeframe for the completion of the project?

9. What additional information not specifically addressed elsewhere in this RFI that would be important for the government to bear in mind in developing such a system?

Dated: April 25, 2012.

Ronald O. Valdiserri,

Deputy Assistant Secretary for Health (Infectious Diseases), Office of HIV/AIDS and Infectious Disease Policy.

[FR Doc. 2012–10591 Filed 5–1–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: P4 Peptide From Streptococcus Pneumoniae

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, exclusive license (excluding the nonexclusively licensed field of use entitled ''Use of P4 as either a carrier and/or immunoenhancer in a polysaccharide vaccine conjugate for prevention of Streptococcus pneumonia infection in humans'') to practice the inventions embodied in the patent application referred to below to Viper Therapeutics, having a place of business in Atlanta, Georgia. The patent rights in these inventions have been assigned to the government of the United States of America. The patent(s) to be licensed are:

''U.S. Patent 7,919,104 entitled ''Functional Epitopes of Streptococcus Pneumoniae PsaA Antigen and Uses Thereof,'' filed 7/18/2008, claiming priority to U.S. Provisional Patent Application No. 60/682,495, filed 5/19/2005, and all related continuing and foreign patents/patent applications for the technology family. CDC Technology ID No. I–030–04.

Status: Issued.

Priority Date: 5/19/2005.

Issue Date: 4/5/2011.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology

This technology consists of a P4 peptide which contains functional epitopes of the PsaA protein of *Streptococcus pneumoniae.* This technology also includes an antibody that can bind to the epitopes of the defined peptides. The technology is a complete kit that includes two vaccines comprised of two separate peptides, a pharmaceutical carrier for each vaccine, methods of using the peptides and antibodies, and diagnostic kits comprising a P4 peptide.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to Donald Prather, J.D., Ph.D., Technology Licensing and Marketing Specialist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, Telephone: (770) 488–8612; Facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–10547 Filed 5–1–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Announcement of Requirements and Registration for ''Seeing My World through a Safer Lens: What Does Injury and Violence Look Like in My Community?'' Video Contest

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

Award Approving Official: Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces the launch of the *Seeing My World through a Safer Lens: What Does Injury and Violence Look Like in My Community?* video contest. The CDC National Center for Injury Prevention and Control (Injury Center) is reaching out to students, injury and violence professionals, and the general public throughout the United States to answer the question, ''What does injury and violence prevention look like in my community?'' Through the *Seeing My World through a Safer Lens* video contest, Contestants can create a short video that reflects injury and violence prevention activities that are in line with the Injury Center's key topics and messages. This Challenge will raise awareness that, despite the fact that injuries and violence are serious public health issues, they are actually preventable. By having Contestants create personalized videos to submit to the video contest, we will show how proven prevention strategies are being implemented in various forms of communities. Further, by showcasing the winning videos in each category of submission (Student View, General Public View, and Injury and Violence Professional View), we will show that steps for injury and violence prevention can be taken by anyone and anywhere in the U.S.

DATES: Contestants can begin submission of videos on May 1, 2012, until the end of the submission period July 31, 2012. Judging will take place between August 1–31, 2012, and winners will be notified and prizes awarded September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Rupal Mehta, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4779 Buford Highway NE., Mailstop F–63, Atlanta, Georgia 30341, phone: 770–488–3984; email: *Ien8@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants of the *Seeing My World through a Safer Lens* video contest will be asked to submit a short video that reflects how injury and violence prevention look like in their communities. Key prevention messages on Injury Center focus areas will be provided for inclusion in the videos. The videos should reflect positive prevention messaging and scenarios that students, injury and violence professionals, and the general public may face in their efforts to reduce injuries and violence where they live, work, study, or play.

Eligibility Rules for Participating in the Competition

The Challenge is open to any Contestant, defined as an individual or team of U.S. citizens or permanent residents of the United States who are 13 years of age or older (with the permission of a parent/guardian if under 18 years of age). Contestants may submit more than one entry if they have developed more than one video.

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by Centers for Disease Control and Prevention's National Center for Injury Prevention and Control;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment. Federal employees seeking to participate in this contest outside the scope of their employment should consult their ethics official prior to developing their submission.

(5) May not be employees of the CDC Injury Center, judges of the Challenge, or any other party involved with the design, production, execution, or distribution of the Challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children).

(6) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, Contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, Contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

Registration Process for Participants

The *Seeing My World through a Safer Lens* Challenge can be registered for through *www.challenge.gov.* Interested persons should read the official rules posted on the Challenge site, *www.SaferLens.challenge.gov.* Prior to entering a submission to the Challenge, Contestants must follow the Challenge before the end of the submission period.

Amount of the Prize

Each category of submission (Student View, Injury and Violence Professional View, and General Public View) shall be awarded ONE prize in the amount of $500.00 after the notification of the winner.

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

Submissions to the Challenge will be assessed by an informed panel of judges of Injury Center program staff and external injury and violence professionals in compliance with the requirements of the America COMPETES Act. Judges will be named after the commencement of the Challenge. The judging panel will make decisions based on the following criteria:

(1) *Creativity:* Each entry will be judged on creative presentation of injury and violence prevention messages.

(2) *Use of Key Topics Message Boxes:* Key messages are provided for areas of Violence Prevention, Home and Recreational Safety, Motor Vehicle Safety, and Traumatic Brain Injury. One or more of the provided messages should be incorporated into the video, and be portrayed accurately.

(3) *Communication of Positive Injury and Violence Message:* Submissions will be judged on the expression of positive prevention injury and violence messages. The submissions should not show any acts of violence, profane language, inappropriate content, or personal or professional attacks.

(4) *Length of Video:* All submissions should be 90 seconds or less, and should use the required time to efficiently express the positive injury and violence prevention message.

(5) *Video and Audio Quality:* All types of videos will be accepted into the Challenge. However, effort to show quality content will be assessed.

Additional Information

Key injury and violence message boxes will be provided for use in each video on the topics of: Violence Prevention, Home and Recreational Safety, Motor Vehicle Safety, and Traumatic Brain Injury. More information on the topic areas can be found through *www.cdc.gov/injury.*

Regarding Copyright/Intellectual Property: Upon Submission, each Contestant warrants that he or she is the sole owner of the submission, that the Submission is wholly original with the Contestant and does not infringe on any copyright or any other rights of any third party of which the Contestant is aware.

Submission Rights: By participating in this Challenge, each Contestant grants to the CDC Injury Center an irrevocable, paid-up, royalty-free nonexclusive worldwide license to post, link to, share, and display publicly on the Web. All Contestants will retain all other intellectual property rights in their submissions.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email, telephone, or mail after the date of the judging. Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Privacy

If Contestants choose to provide the CDC with personal information by registering or filling out the submission form through the Challenge.gov Web site, that information is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Contest. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

General Conditions

The CDC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at CDC's sole discretion.

Participation in this Contest constitutes a contestant's full and unconditional agreement to abide by the Contest's Official Rules found at *www.Challenge.gov.*

Authority: 15 U.S.C. 3719

Dated: April 23, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–10548 Filed 5–1–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0663]

Determination of Regulatory Review Period for Purposes of Patent Extension; Alair Bronchial Thermoplasty System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Alair Bronchial Thermoplasty System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Alair Bronchial Thermoplasty System. Alair Bronchial Thermoplasty System is indicated for the treatment of severe persistent asthma in patients 18 years and older whose asthma is not well controlled

with inhaled corticosteroids and long-acting beta agonists. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Alair Bronchial Thermoplasty System (U.S. Patent No. 6,411,852) from Asthmatx, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2011, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Alair Bronchial Thermoplasty System represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Alair Bronchial Thermoplasty System is 1,743 days. Of this time, 1,259 days occurred during the testing phase of the regulatory review period, while 484 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* July 21, 2005. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective July 21, 2005.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 30, 2008. FDA has verified the applicant's claim that the premarket approval application (PMA) for Alair Bronchial Thermoplasty System (PMA P080032) was initially submitted December 30, 2008.

3. *The date the application was approved:* April 27, 2010. FDA has verified the applicant's claim that PMA P080032 was approved on April 27, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,114 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by *July 2, 2012.* Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 24, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10516 Filed 5–1–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0333 and FDA–2010–E–0334]

Determination of Regulatory Review Period for Purposes of Patent Extension; KALBITOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KALBITOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product KALBITOR (Ecallantide). KALBITOR is indicated for treatment of acute attacks of hereditary angioedema in patients 16 years of age and older. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for KALBITOR (U.S. Patent Nos. 5,795,685 and 7,276,480) from Dyax Corp., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In

a letter dated February 17, 2011, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of KALBITOR represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KALBITOR is 2,855 days. Of this time, 2,420 days occurred during the testing phase of the regulatory review period, while 435 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* February 8, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 8, 2002.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* September 23, 2008. FDA has verified the applicant's claim that the biologics license application (BLA) for KALBITOR (BLA 125277/0) was initially submitted on September 23, 2008.

3. *The date the application was approved:* December 1, 2009. FDA has verified the applicant's claim that BLA 125277/0 was approved on December 1, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,645 days and 178 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 2, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 24, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10518 Filed 5–1–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0114]

Determination of Regulatory Review Period for Purposes of Patent Extension; Victoza

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Victoza and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VICTOZA (liraglutide (rDNA origin)). VICTOZA is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Victoza (U.S. Patent No. 6,268,343) from Novo Nordisk A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 25, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Victoza represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Victoza is 3,370 days. Of this time, 2,757 days occurred during the testing phase of the regulatory review period,

while 613 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* November 5, 2000. The applicant claims October 5, 2000, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 5, 2000, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 23, 2008. FDA has verified the applicant's claim that the new drug application (NDA) for Victoza (NDA 22–341) was initially submitted on May 23, 2008.

3. *The date the application was approved:* January 25, 2010. FDA has verified the applicant's claim that NDA 22–341 was approved on January 25, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 2, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 24, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10517 Filed 5–1–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Healthy Tomorrows Partnership for Children Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of a non-competitive one-year extension with funds for the National Healthy Tomorrows Technical Assistance Resource Center (U50).

SUMMARY: The Health Resources and Services Administration (HRSA) will be issuing a non-competitive one-year extension with funds for the National Healthy Tomorrows Technical Assistance Resource Center at the American Academy of Pediatrics (AAP). Up to $176,855 will be awarded over a one-year extended project period. The National Healthy Tomorrows Technical Assistance Resource Center provides support for the activities of the Healthy Tomorrows Partnership for Children Program (HTPCP), community-based grants that address priority issues determined by the community. Through a cooperative agreement, the Resource Center also offers consultation to HTPCP program participants to ensure successful implementation and sustainability of community-based initiatives; facilitates involvement of local partners such as pediatricians, State/local AAP chapters, State/local maternal and child health agencies, and other private sector partners in HTPCP projects to promote successful implementation of community-based maternal and child health initiatives; and conducts a national evaluation of HTPCP projects that assesses critical factors contributing to program sustainability, effectiveness and impact of community-based projects post HTPCP funding, and the ability of projects to develop meaningful evaluation and sustainability plans. A 2005 national evaluation found that 80 percent of HTPCP projects are fully or partially sustained 5 years post-Federal funding. The proposed extension with funds will allow the Maternal and Child Health Bureau (MCHB) to align the National Healthy Tomorrows Technical Assistance Resource Center with the National Center for Medical Home Implementation.

SUPPLEMENTARY INFORMATION: Recipient of record and intended award amount is:

Organization name	Cooperative agreement number	State	FY2011 Authorized funding level	FY2012 Estimated funding level
The American Academy of Pediatrics (AAP)	U50MC07618	IL	$176,855	$176,855

Amount of the Award: Up to $176,855 for one recipient over a one-year project period.

CFDA Number: 93.110.

Current Project Period: 9/1/2011 through 8/31/2012.

Period of Supplemental Funding: 9/1/2012 through 8/31/2013.

Authority: Title V of the Social Security Act, Section 501(a)(2), (42 U.S.C. 701 (a)(2)).

Justification

Over 75 percent of Healthy Tomorrows projects are involved in case management/care coordination or establishing a medical home in underserved and vulnerable communities. HTPCP has long encouraged Healthy Tomorrows projects involved in case management/care coordination or medical home to adopt the medical home model, so the combination of these investments achieves efficiencies. The National Healthy Tomorrows Technical Assistance Resource Center provides resources to grantees interested in medical home implementation, but has limited capacity to offer detailed technical assistance to grantees assessing the benefits and challenges of implementing a meaningful medical home in communities with finite resources. A strategic partnership with

the National Center for Medical Home Implementation would provide the National Healthy Tomorrows Technical Assistance Resource Center with the capacity, capability, and efficiency to foster effective examples of medical home in underserved and vulnerable communities.

During the one-year extension period, MCHB will hold discussions with the project officers of the two resource centers to develop a plan to incorporate the goals and objectives of the National Healthy Tomorrows Technical Assistance Resource Center into the FY 2013 competitive guidance for the National Center for Medical Home Implementation. This partnership will strengthen and advance the medical home model in small, community-driven projects that strive to increase access to direct services for pregnant women, infants, children and youth and promote prevention initiatives. A one-year extension will also ensure that there is no disruption in the provision of technical assistance (via site visits), training and evaluation of Healthy Tomorrows grantees as MCHB plans for this consolidation.

FOR FURTHER INFORMATION CONTACT: Madhavi Reddy, MSPH, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18A–55, Rockville, Maryland 20857; email *mreddy@hrsa.gov*.

Dated: April 25, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–10507 Filed 5–1–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Solicitation of Comments

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of opportunity to provide written comments.

SUMMARY: This **Federal Register** Notice solicits comments on Parts A through F of the Ryan White HIV/AIDS Program. Comments are solicited to inform the 2013 reauthorization of the Program, which was most recently reauthorized under Title XXVI of the Public Health Service Act (PHS), as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White HIV/AIDS Program). Stakeholders will be invited to share written comments regarding reauthorization of the Ryan White HIV/AIDS Program through the Web portal at *www.regulations.gov.*

HRSA's HIV/AIDS Bureau will also host listening sessions in the form of teleconferences or webinars to engage stakeholders across the U.S. At least four listening sessions will be conducted, each targeting different geographic areas. The listening sessions will offer stakeholders the opportunity to discuss reauthorization of the Ryan White HIV/AIDS Program.

Listening sessions will be announced as dates are determined. Dates will be announced at *http://hab.hrsa.gov/reauthorization/.*

DATES: Submit written comments no later than July 31, 2012.

ADDRESSES: Written comments should be submitted on-line through *www.regulations.gov.* Individuals wishing to submit comments on the Ryan White HIV/AIDS Program should search for the following term: ''HRSA–2012–0003.'' Navigate directly to the appropriate section at *http://hab.hrsa.gov/reauthorization/.*

SUPPLEMENTARY INFORMATION: Written comments addressing Parts A through F of the Ryan White HIV/AIDS Program are welcome from all Ryan White stakeholders, including grantees, advocacy organizations, State and local administrators, and other members of the Ryan White HIV/AIDS Program and the HIV/AIDS community. Stakeholders are strongly encouraged to clearly organize comments and include headings to indicate which part of the Ryan White HIV/AIDS Program the comment(s) address(es), such as Parts A, B, C, D or F. For stakeholders who plan to submit comments addressing multiple parts of the Program, it is suggested that comments pertaining to the same part are grouped and that each group of comments is preceded with a heading stating the relevant part of the Program.

To ensure an opportunity for all stakeholders to contribute to regional aspects of disease/epidemic, HRSA recommends that individuals participate in the listening session assigned to their geographic area.

Dated: April 25, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–10508 Filed 5–1–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Nature and Acquisition of Speech Code.

Date: May 8, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita r. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.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. 93.864, 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: April 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–10584 Filed 5–1–12; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Review of RFP–NIAID–DAIT–NIHAI2011038 ''Bioinformatics Integration Support Contract (BISC).''

Date: May 25, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Quirijn Vos, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@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: April 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–10585 Filed 5–1–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group Dissemination and Implementation Research in Health Study Section.

Date: June 1, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: June 4, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Michael H Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 4, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Maqsood A Wani, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: June 4, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Mushtaq A Khan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cardiovascular and Sleep Epidemiology Study Section.

Date: June 4, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Julia Krushkal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301–435–1782, *krushkalj@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development-2 Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin National Harbor, 171 Waterfront Street, National Harbor, MD 20745.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–10577 Filed 5–1–12; 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; Molecular and Behavioral Mechanisms of Mental Disorders.

Date: May 15–16, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@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: April 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–10575 Filed 5–1–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,).

Maxxam Analytics *, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227, (Formerly: SE.D. Medical Laboratories).

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (Federal Register, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2012–10546 Filed 5–1–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0016]

President's National Security Telecommunications Advisory Committee; Correction

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting; correction.

SUMMARY: The Department of Homeland Security published a document in the **Federal Register** of April 25, 2012, concerning the President's National Security Telecommunications Advisory Committee (NSTAC) meeting. The document contained incorrect information regarding the time and status of the meeting sessions.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, 703–235–4957.

Correction

In the **Federal Register** of April 25, 2012, in FR Doc 2012–9979, on page 24728, in the third column, correct the ''Dates'' caption to read:

DATES: The NSTAC will meet in a closed session on Tuesday, May 15, 2012, from 9 a.m. to 12 p.m. and in an open session on Tuesday, May 15, 2012, from 1:45 p.m. to 5:10 p.m.

Additionally, on page 24729, in the second column, correct the first complete sentence to read: ''Additionally, the NSTAC will receive a briefing on the Government's current initiatives with respect to the National Public Safety Broadband Network.''

Dated: April 26, 2012.

Arnella Terrell,

Federal Register Certification Official.

[FR Doc. 2012–10510 Filed 5–1–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0975]

National Maritime Security Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of May 1, 2012, a notice announcing a National Maritime Security Advisory Committee (NMSAC) partially closed public meeting on May 15–16, 2012, in the Washington, DC metropolitan area. This notice corrects that previous notice to add an explanation for why 15-days advance notice was not given.

DATES: The Committee will meet in closed session on Tuesday, May 15, 2012 from 9 a.m. to 11:30 a.m. and in open session on Tuesday, May 15, 2012 from 1 p.m. to 5 p.m. and Wednesday, May 16, 2012 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach us on or before May 9, 2012.

ADDRESSES: The Committee will meet in closed session at the National Maritime Intelligence Center and in open session at the American Bureau of Shipping, 1400 Key Blvd., Suite 800, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or email *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard's May 1, 2012 notice of the May 15–16, 2012, NMSAC meeting inadvertently failed to contain an explanation for its publication less than 15 calendar days prior to the meeting, as required by General Services Administration rules 41 CFR 102–3.150. The reason the notice was published only 14 calendar days prior to the meeting was an administrative delay due to publication schedule and extensive meeting preparation. The Coast Guard regrets the delay in publication, but notes that the notice was publicly available on the **Federal Register** Web site 13 calendar days prior to the meeting. Additionally, all known interested parties were made aware of the meeting with sufficient time for planning purposes.

It is critical that this meeting be held on the announced meeting date because the advisory committee members have limited availability for the remainder of the calendar year. Delays in committee discussions could have significant ramifications for ongoing Coast Guard studies and evaluations on the agenda for the upcoming meeting. Maintaining the current meeting schedule allows the Coast Guard to continue deliberations and make forward progress regarding multiple maritime security initiatives.

If you have been adversely affected by the delay in publishing the notice, contact Mr. Ryan Owens (see **FOR FURTHER INFORMATION CONTACT**) and the Coast Guard will make every effort to accommodate you.

Dated: April 30, 2012.

Michael W. Mumbach,

Acting Chief, Office of Regulations and Administrative Law (CG–0943), U.S. Coast Guard.

[FR Doc. 2012–10668 Filed 4–30–12; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Bonded Warehouse Proprietor's Submission (CBP Form 300). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 6814) on February 9, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 1, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–

13).Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: CBP Form 300.

Abstract: CBP Form 300, *The Bonded Warehouse Proprietor's Submission,* is filed annually by each warehouse proprietor. The information on CBP Form 300 is used by CBP to evaluate warehouse activity for the year. This form must be filed within 45 days of the end of his business year, pursuant to the provisions of the Tariff Act of 1930, as amended, 19 U.S.C. 66, 1311, 1555, 1556, 1557, 1623 and 19 CFR 19.12(5). The information collected on this form helps CBP determine all bonded merchandise that was entered, released, and manipulated in the warehouse. CBP Form 300 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_300.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 300.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,800.

Estimated Number of Total Annual Responses: 1,800.

Estimated Time per Response: 25 hours.

Estimated Total Annual Burden Hours: 45,000.

Dated: April 26, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–10522 Filed 5–1–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5637–N–01]

Notice of Intent To Prepare a Environmental Impact Statement (EIS) for the HOPE SF Development at Potrero Terrace and Potrero Annex Public Housing Development, San Francisco, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Intent to Prepare an EIS and to Conduct Public Scoping Meeting.

SUMMARY: This provides notice to the public, agencies, and Indian tribes that the City and County of San Francisco's Mayor's Office of Housing (MOH), as the Responsible Entity in accordance with 24 CFR 58.2(a)(7), intends to prepare a Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the HOPE SF Development at the Potrero Terrace and Potrero Annex Public Housing Development (Potrero HOPE SF Master Plan Project). The EIR/EIS will be a joint National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) document. The EIR will satisfy requirements of CEQA (Public Resources Code 21000 *et seq.*) and the State CEQA Guidelines (14 California Code of Regulations 15000 et seq.), which require that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. The proposed action is subject to NEPA, because funding for the project may include HUD funds from programs subject to regulation by 24 CFR part 58; these include, but are not limited to, Community Development Block Grant (CDBG) funds under Title I of the Housing and Community Development Act of 1974; Home Investment Partnership Program (HOME) grants under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 as amended; Project Based Section 8 Vouchers under the United States Housing Act of 1937; and/or Section 8(o)(13) and Public Housing operating subsidies for mixed income developments authorized under the U.S. Housing Act of 1937, Section 35. This notice is in accordance with the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508.

A Draft EIR/EIS will be prepared for the proposed action described herein. Comments relating to the Draft EIR/EIS are requested and will be accepted by the contact person listed below. When the Draft EIR/EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIR/EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIR/EIS should contact the person listed below within 30-days after publication of this notice.

This EIS will be a NEPA document intended to satisfy requirements of federal environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has provided for assumption of its NEPA authority and NEPA lead agency responsibility by the City and County of San Francisco. The EIR will be a CEQA document intended to satisfy State environmental statutes (Public Resources Code 21000 et seq. and 14 California Code of Regulations 15000 et seq.).

ADDRESSES: All interested agencies, tribes, groups, and persons are invited to submit written comments on the project named in this notice and on the Draft EIS to the contact person shown in this notice. The office of the contact person should receive comments and all comments so received will be considered prior to the preparation and distribution of the Draft EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues that the EIS should consider, recommended mitigation measures, and alternatives associated with the proposed action. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a ''Cooperating Agency.''

FOR FURTHER INFORMATION CONTACT: Eugene Flannery, Environmental Compliance Manager, City and County of San Francisco Mayor's Office of Housing, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103; Phone: (415) 701–5598; Fax (415) 701- 5501; email: *eugene.flannery@sfgov.org.*

SUPPLEMENTARY INFORMATION:

A. Background

The MOH, acting under authority of section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)), section 288 of the HOME Investment Partnerships Act (42 U.S.C. 12838), section 26 of the United

States Housing Act of 1937 (42 U.S.C. 1437x) and HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, will prepare an EIS to analyze potential impacts of the Potrero HOPE SF Master Plan Project.

The proposed development would be on approximately 39 net acres in the T 2S R 5W portion of San Francisco on the San Francisco North Quadrangle 7.5-minute U.S.G.S. topographic quadrangle map. The project site is located on the southeastern border of the Potrero Hill neighborhood. The project site is one and one-half blocks west of Interstate 280 (I–280), four blocks east of U.S. Highway 101 (U.S. 101), two blocks north of Cesar Chavez Street and is bordered to the northwest by the Potrero Hill Recreation Center. The eastern edge of the site sits on a ridge paralleling Pennsylvania Street below. The project site is comprised of several parcels that contain the Potrero Terrace and Potrero Annex properties and an adjacent San Francisco Unified School District (SFUSD) owned property. Combined, these parcels have a total acreage of approximately 39 acres, including roads. Areas of the project site have very steep slopes. The highest topographic elevation is to the north at the intersection of 23rd Street and Arkansas Street at 265 feet above mean sea level (msl) and the lowest elevation is to the south at the intersection of 26th Street and Connecticut Street at 40 feet above msl. Surrounding land uses include residential, commercial, recreational, and industrial uses. To the north and northwest there are multi-family residences, single-family residences, and the Potrero Hill Recreation Center. To the west are multi-family residences, single-family residences, and Starr King Elementary School. To the south are industrial uses. Across Texas Street to the east are multi-family residential, single-family residential, and industrial uses. The obsolete buildings that make up the site are in need of replacement. In addition, dead-end streets and steep topography isolate this housing development from the surrounding neighborhood.

Built in two phases in 1941 and 1955, the Potrero site is comprised of two of the oldest public housing developments in San Francisco, Potrero Terrace and Potrero Annex. Together, these public housing developments house a population of approximately 1,200 people. The proposed project would replace all 606 existing housing units; incorporate additional affordable housing and market-rate homes into the community; and add amenities such as open space, retail opportunities, and neighborhood services. Including the 606 public housing units, the proposed project would build up to 1,700 homes. The proposed project would include buildings between three to eight stories, and would range in height from 40 feet to 85 feet. Development would occur in phases to minimize disruption to existing residents. The proposed project would include new vehicle connections, new pedestrian connections, a new circulation pattern and new bus transit stops. In addition, the proposed project would incorporate green construction and sustainable principles.

Alternatives to the Proposed Action

There are three alternatives to the proposed action to be analyzed in the EIS. Alternative 1 is a variation of the project density. Alternative sites for the project were explored early in the process and it was determined that no other more viable site was available.

Alternative 1—Reduced Development Alternative

Number of Units: 1,280.
Maximum Height: 40 feet.
Acreage: 39 acres (no change).
Percent Reduction: 25 percent.

Alternative 2—Replacement of Existing Public Housing Units

Number of Units: 606 units.
Acreage: 39 acres.
No Community Center, No retail, no additional open space.
Percent Reduction: 64 percent.

Alternative 3—No Project Alternative

The No Project Alternative would analyze the ''no action'' alternative, which would be the continuation of uses on the site; therefore, existing buildings and tenants would remain at the project site and no new buildings or uses would be constructed.

B. Need for the EIS

The proposed project may constitute an action significantly affecting the quality of the human environment and an EIS will be prepared on this project by the City and County of San Francisco's MOH in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Responses to this notice will be used to: (1) Determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

C. Scoping

A public EIS scoping meeting will be held on a date within the comment period and after at least 15 days of publishing this Notice of Intent. Notices of the scoping meeting will be mailed when the date has been determined. The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input to the environmental process. At the meeting, the public will be able to view graphics illustrating preliminary planning work and talk with MOH staff, and members of the consultant team providing technical analysis to the project. Translators will be available. Written comments and testimony concerning the scope of the EIS will be accepted at this meeting. In accordance with 40 CFR 1501.7 affected Federal, State, and local agencies, any affected Indian tribe, and other interested parties will be sent a scoping notice. Owners and occupants within a 300-foot radius will also be notified of the scoping process. In accordance with 24 CFR 58.59, the scoping hearing will be preceded by a notice of public hearing published in the local news media 15 days before the hearing date.

The scoping process associated with the CEQA process took place from November 2010 through December 2010. A CEQA public scoping meeting was held on November 22, 2010.

D. Probable Environmental Effects

The following subject areas will be analyzed in the combined EIR/EIS for probable environmental effects: Land Use and Planning (land use patterns, relationship to plans/policies and regulations; Visual Quality/Aesthetics (views/light and glare); Socioeconomics and Community (demographic character changes, displacement); Environmental Justice (disproportionately high and adverse effects on minority and low income populations); Cultural/Historic Resources; Transportation and Circulation; Noise (construction and operational); Air Quality (construction and operational); Greenhouse Gas Emissions; Wind and Shadow; Recreation; Utilities and Service Systems (water supply, stormwater, sewer, solid waste); Public Services (fire, police, schools, parks); Biological Resources; Geology/Soils; Hydrology/Water Quality (erosion control and drainage); Hazardous and Hazardous Materials; Mineral and Energy Resources; and Agriculture and Forest Resources.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: April 25, 2012.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–10580 Filed 5–1–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–02]

Privacy Act: Notification of a New Privacy Act System of Records, Veterans Homelessness Prevention Demonstration Evaluation Data Files System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of a New Privacy Act System of Records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new Privacy Act of 1974 (5 U.S.C. 552a) System of Records Notice (SORN) for the Veterans Homelessness Prevention Demonstration Evaluation Data Files (VHPD Data Files) system. The VHPD Data Files system will involve collaborative efforts needed to evaluate certain HUD homelessness prevention programs. The demonstration evaluation will involve data analysis from particular jurisdictions to assist HUD's Office of Policy Development and Research (PD&R) and its researchers with examining cross-agency coordination, expanding data collection and analysis, conducting comprehensive program evaluations, and enhancing homelessness prevention efforts. HUD's Office of Policy Development and Research is focusing on data collection efforts, analysis, research, and program evaluation to promote better practice and outcomes in certain homelessness prevention programs to assist with resolving complex matters affecting homelessness among veterans.

DATES: *Comments Due Date:* June 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. Fax comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m., weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Harold Williams, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 4156, Washington, DC 20410, Telephone Number (202) 402–8087. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a (e)(4) and (11), as amended, notice is given that HUD proposes to establish a new system of records identified as the Veterans Homelessness Prevention Demonstration Evaluation Data Files (VHPD Data Files) system. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: April 25, 2012.

Jerry E. Williams,

Chief Information Officer.

HUD/PD&R.01

SYSTEM NAME:

Veterans Homelessness Prevention Demonstration Evaluation Data Files System (VHPD Data Files).

SYSTEM LOCATION:

Silber & Associates, 13067 Twelve Hills Road, Suite B Clarksville, Maryland 21029–1144; Urban Institute, 2100 M Street NW., Washington, DC 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in VHPD, the Homelessness Prevention and Rapid Re-housing Program (HPRP), and Veterans Affairs medical service centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Some but not all records under this System of Records Notice will be derived from the Homeless Management Information System (HMIS) and the Veteran Affairs Medical Centers (VAMC) records that collect homeless data. Other records, including personal and sensitive information, will be obtained from persons enrolled in VHPD, as follows: name, social security number, participant study unique ID, date of birth, home address, home telephone, and personal email address, as well as names and contact information for up to three friends and/or family members. The dataset will also contain sensitive information, including race/ethnicity, gender, marital status, spouse's name, number of children, income and financial data (earned income, benefit receipt, including Supplementary Social Security Income, Social Security Disability Insurance, Temporary Assistance for Needy Families and other benefits, and assets), employment history, educational level, medical history and information, disability, criminal record, residential history, homeless program utilization, barriers to housing, and veteran status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Housing and Urban Development Act of 1970, Section 502 (Pub. L. 91–609; 84 Stat. 1784; 12 U.S.C. 1701z–1 *et seq.*)

PURPOSES:

The system of records will enable evaluation of the Veterans Homelessness Prevention Demonstration. The Notice of Funding Availability (NOFA) issued by HUD stated that ''the evaluation will include an in-depth exploration of programs developed in each of the five sites.'' The five sites are: Camp Pendleton (San Diego, CA); Fort Hood (Killeen, TX); Fort Drum (Watertown, NY); Joint Base Lewis-McChord (Tacoma, WA); MacDill Air Force Base (Tampa, FL). The Notice directs the evaluation to focus particular attention ''on the structure and effectiveness'' of collaboration at the local level between the local Continuum of Care grantee, the Veterans Administration and the Department of Labor. The evaluation will assess the effectiveness of homelessness prevention assistance delivered through this demonstration program; outcomes of interest include housing stability, earnings, employment, and access to health services. Further, the evaluation will investigate the unique needs of new cohorts of veterans, especially veterans of Operation Enduring Freedom and Operation Iraqi Freedom, particular types of veterans, such as female veterans, members of the National Guard and Reserve, military families and veterans with combat-related risk factors. To measure the effectiveness of the program, the evaluation will follow veterans and their families after program completion and ascertain if there have been any improvements in measures of

housing stability, self-sufficiency, employment and earnings, family well-being, and health. There will be two types of data files created as part of this evaluation: a Master File will be created that contains personally identifying information but does not contain study data. A Study File will be created that does not contain any personally identifying information. The only variable in both the Master File and the Study File will be a numeric unique study identifier. The Study File will be used for data analysis and will be stored in a separate location from the Master File that contains identifying information. This will enable the Master File to be used for follow-up contacts and for linking data from administrative datasets, while minimizing the risk to confidentiality. The evaluation goal is to collect data to enable analysis, research, and program evaluation to promote better practice and monitoring of outcomes in certain HUD homelessness prevention programs, to assist with resolving complex matters affecting veteran homelessness today.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The proposed routine use disclosures of data in the system are all necessary for, or at least compatible with, the purposes for which the SOR will be created. We propose to establish the following routine use disclosures of information maintained in the system:

1. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the records pertain;

2. To the National Archives and Records Administration or other Federal Records management agency pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

3. To the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when HUD or any component thereof disclose information to DOJ during the course of an investigation to the extent necessary to obtain information pertinent to the investigation under applicable HUD administered Rental Housing Assistance Programs;

4. To contract researchers, researchers consultants, grantees and their employees authorized to collect, analyze, and write reports about the data as needed to evaluate the effectiveness of prevention homeless assistance efforts; to analyze primary study data with administrative data as needed to track program participants' outcomes as required for the evaluation research; to conducting research and statistical analyses and for writing reports related to the evaluation of HUD programs and demonstrations relevant to this system of records pursuant to an approved data sharing agreement; and

5. To appropriate agencies, entities, and persons when: (a) HUD or a provider of service to HUD suspects or has confirmed that the security or confidentiality of the system of records has been compromised; (b) the Department 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 HUD or another agency or entity) that rely upon compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Survey and administrative data will be stored on a secure, password-protected network drive. Only personnel authorized by the project director will be given access using technical controls based on access policies administered by the system administrator. Hard copies, including DVDs and other records, are stored in locked cabinets to which only authorized personnel have access.

RETRIEVABILITY:

When used for data analysis, records are retrieved by unique study identifier. To link data from administrative sources to study data records are retrieved by social security number.

SAFEGUARDS:

Hard copy files are stored in a locked file which can be accessed only by staff who have signed a Staff Confidentiality Pledge. Each data user's permissions will be defined based on the user's role in the project. Study data will be aggregated or de-identified at the highest level possible for each, required, authorized use. Survey and administrative data will be stored on a secure, password-protected network drive. Authorized personnel accessing the data through the survey system will be monitored through a secured restricted access monitoring system, which complies with Federal Information Processing Standards (FIPS). Data is protected by endpoint protection, firewall access controls and policies that provide access to authorized personnel only. Full disk encryption and software and client firewall policies are implemented. Authorized uses are allowed access with user name and password. The system resides on locked premises and is accessible only by the system administrator.

RETENTION AND DISPOSAL:

All hard copy data files and materials containing personal identifiers will be destroyed within six months of project completion in 2014. The Master File containing personally identifiable information will be destroyed within 6 months of study completion using a method described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006). At the end of the contract, dvd(s) and hardcopy records that do not need to be retained will be shredded and the remainder of the files will be shredded after the three-year retention period required in the contract. Stripped electronic data files that do not contain any personally identified information will be retained permanently in accord with 44 U.S.C. 101 and the policies governing retention and disposal of research data in HUD Handbook 2225.6 (Appendices 9 and 67) and HUD Handbook 2229.1.

SYSTEM MANAGER(S) AND ADDRESS:

Carol S. Star, Director, Department of Housing and Urban Development, Office of Policy Development & Research, Division of Program Evaluation, 451 Seventh Street SW., Room 8120, Washington, DC 20410.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact Harold Williams, Acting Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Harold Williams, Acting Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Provide verification of your identity by providing two proofs of official identification. Your verification of

identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) Contesting contents of records: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410;

(ii) Appeals of initial HUD determinations: In relation to contesting contents of records, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subjects and the Homeless Management Information Systems in participating Continuums of Care.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2012–10581 Filed 5–1–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–03]

Privacy Act of 1974; Notice of a New System of Records, Department of Housing and Urban Development—Veterans Affairs Supportive Housing (HUD–VASH), HUD/PIH.02

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new Privacy Act System of Records, Department of Housing and Urban Development—Veterans Affairs Supportive Housing System (HUD–VASH), HUD/PIH.02.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of Housing and Urban Development (HUD) is providing notice of its intent to establish a new system of records, Department of Housing and Urban Development—Veterans Affairs Supportive Housing System (HUD–VASH), HUD/PIH.02.

DATES: *Effective Date:* This proposal shall become effective, without further notice, *June 1, 2012,* unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: June 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Inquiries pertaining to Privacy Act records, contact Harold Williams, Acting Chief Privacy Officer, telephone number (202) 402–8087, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Regarding program related inquiries contact Nicole Faison, Program Advisor, telephone number (202) 475–7963, 451 Seventh Street SW., Room PCFL1, Washington, DC 20410, for the Office of Public and Indian Housing (PIH): Real Estate Assessment Center. [The above telephone numbers are not toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as the Housing and Urban Development—Veterans Affairs Supportive Housing System (HUD–VASH). Pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(4)), and 5 U.S.C. 552a(e)(11), the system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: April 25, 2012.

Jerry E. Williams,

Chief Information Officer.

HUD/PIH.02

SYSTEM NAME:

Housing and Urban Development—Veterans Affairs Supportive Housing System (HUD–VASH).

SYSTEM LOCATIONS:

The files will be maintained at the following locations: U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; and on servers located in Charleston, WV. The servers are maintained by HUD's contractor, Information Technology Services (HITS) and HUD's information technology partners: Electronic Data Services (EDS) and Lockheed Martin.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq;* Title VI of the Civil Rights Act of 1962 (42 U.S.C. 2000d); The Fair Housing Act (42 U.S.C. 3601–3619); The Housing and Community Development Act of 1981, Public Law 97–35, 85 stat., 348,408; The Housing and Community Development Act of 1987, 42 U.S.C. 3543; The National Housing Act: Research and Demonstrations, 12 U.S.C. 170z–1; and Establishment of Department, 42 U.S.C. 3532(b).

PURPOSES:

HUD–VASH will serve as a national repository of information related to PHAs, HUD-assisted families, HUD-assisted properties for the purpose of monitoring and evaluating the effectiveness of the HUD–VASH program. Through a collaborative effort, HUD and the Department of Veteran Affairs (VA) seek to advance the goals of the nation's federal strategic plan to prevent and end homelessness of veterans through the collection, analysis, and reporting of quality and timely data on veterans' homelessness. HUD will use the data provided by VA to track a veteran's use of available HUD and VA resources to secure affordable rental housing; as well as monitor administration of the HUD–VASH program by Public Housing Agencies (PHAs) and PHA-hired management agents. HUD will compare VA-provided data related to the HUD–VASH program to data maintained in HUD's system of records, the Inventory Management System, also known as the Public and Indian Housing Information Center (PIC) (referred hereinafter as IMS/PIC), HUD/PIH.01 for the purpose of assisting HUD and VA with the following: (1) Reducing

homelessness among the nation's veterans; (2) identifying and understanding the needs of homeless veterans and developing programs and services to address those needs; (3) effectively administering the HUD–VASH program by HUD and VA business partners; (4) monitoring and evaluating the HUD–VASH program; and 5) producing aggregate statistical data without any personal identifiers, precluding the use of this data to make decisions concerning the rights, benefits, or privileges of specific individuals, or providers of services with respect to assistance provided under the HUD–VASH program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families residing in a HUD-assisted property and/or receiving rental housing assistance via the HUD–VASH program administered by HUD, PHAs and PHA-hired management agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the following information as reported to HUD by VA, PHAs and PHA-hired management agents.

A. The following information is provided to HUD by VA through a current Data Use Agreement, Computer Matching Agreement, or other authorizing document pursuant to the Federal Privacy Act (5 U.S.C. 552a, as amended):

1. General information including: Homeless Operational Management and Evaluation System (HOMES) start date, the name of the lease case manager, the primary VA Medical Center (VAMC) where the veteran is/has been seen; the secondary VAMC where the veteran is/has been seen (if applicable); and the date that the HUD–VASH entry form was completed;

2. Personally identifiable information (PII) of the veteran including: the veteran's name, social security number (SSN), date of birth, identification as to whether or not the veteran entered the HUD–VASH program, the date of HUD–VASH program entry by the veteran, the reason why the veteran did not enter the HUD–VASH program (if applicable), and the veteran's current address;

3. A HUD–VASH monthly status report including the following information: the veteran's voucher status, the PHA code, the date the referral package was forwarded to the PHA, the date the voucher was issued/denied by the PHA, the date the voucher was revoked or expired (if applicable), the date the veteran selected a home to occupy, the date of the housing quality inspection, the date the housing assistance payment was paid to the landlord, the date the housing assistance payment contract was signed, the date the veteran moved into HUD–VASH housing, the date the voucher was ported (if applicable), an indication of whether or not the veteran had contact with a HUD–VASH clinician for case management during the past 30 days, the veteran's housing arrangement and zip code during the reporting period, a description of the veteran's employment pattern in the past 30 days, an indication of whether or not the veteran received any money in the past 30 days, an indication of whether or not the veteran received any non-cash benefit during the past 30 days, an indication of whether or not the veteran has a representative payee or fiduciary, and the veteran's responses to a service satisfaction survey.

4. Exit information including: the date the veteran ended participation in the HUD–VASH program, the most important reason why the veteran ended participation in HUD–VASH case management, status of the veteran's HUD–VASH voucher, veteran's housing arrangement and zip code after ending participation in the HUD–VASH program, the name of the individual the veteran will be living with after ending participation in the HUD–VASH program, the veteran's arrangement for employment after ending participation in the HUD–VASH program, the veteran's arrangement for receipt of VA financial benefits (disability payments or other support) after ending participation in the HUD–VASH program; and whether or not the veteran received any money in the 30 days prior to ending participation in the HUD–VASH program.

B. The following information is provided to HUD by PHAs and PHA-hired management agents to HUD's existing system of records, IMS/PIC, HUD/PIH.01:

1. PHA information: agency name, HUD-assigned PHA code, and the HUD program type in which the family participates.

2. PHA point of contact information for individuals that work for, and access IMS/PIC and oversee the PHA's administration (i.e. Mayors, board members, managers, directors, etc.: individual's name, agency's physical address, agency's mailing address, agency's telephone numbers, email addresses for points of contact.

3. Action information: type of action (new admission, annual reexamination, interim reexamination, portability move-in, portability move-out, end of participation, other change of unit, Family Self Sufficiency/Welfare-to-Work (FSS/WTW) addendum only, annual reexamination searching, issuance of voucher, expiration of voucher, annual Housing Quality Standards (HQS) inspection, historical adjustment, and void); effective date of action, indication of correction of previous submitted information, type of correction, date family was admitted into a PIH rental assistance program, projected effective date of next reexamination of family income and/or composition, indication of whether or not the family is or has participated in the FSS program within the last year, identification of special Section 8 program, identification of other special HUD rental program(s) the family is participating in, and ''PHA Use Only'' fields which are used by PHAs for general administrative purposes or other uses as prescribed by HUD.

4. Family composition (which includes the following (PII) as reported by the family and verified by PHAs and PHA-hired management agents: last name, first name, middle initial, date of birth, age on effective date of action, sex, relationship to head of household, citizenship status, disability status, race, ethnicity, SSN, alien registration number, total number of household members, family subsidy status under the noncitizens rule, eligibility effective date, and former head of household's SSN.

5. Geographical and unit information:

i. Background at admission information as reported by the family: date family entered the waiting list, zip code before admission, whether or not the family was homeless at time of admission, whether or not the family qualifies for admission over the very low-income limit, whether or not the family is continuously assisted under the 1937 Housing Act, whether or not there is a HUD-approved income targeting disregard.

ii. Subsidized Unit information: unit number and street address, city, state and zip code in which the subsidized unit is located, whether or not the family's mailing address is the same address of the unit to be occupied by the family, family's mailing address (unit number and street address, city, state, and zip code) if different from the address of the subsidized unit, number of bedrooms, date the unit last passed HQS inspection, date of last annual HQS inspection, year the unit was built, and the structure type of the unit.

6. Family assets information, as reported by the family and verified by PHAs and PHA-hired management agents, which includes the type of asset, cash value of the asset, anticipated annual income derived from the asset,

passbook rate, imputed asset income, and final asset income.

7. Family income information, as reported by the family and verified by PHAs and PHA-hired management agents, which includes the income sources, PHA income calculations, annual income derived from the income sources, income exclusion amount in accordance with HUD program requirements and annual income amount after deducting allowable income exclusions for each household member of the family, total household annual income, amounts of permissible deductions and other deductions to annual income in accordance with HUD program requirements, and amount of family adjusted annual income.

8. Total tenant payment (TTP), minimum rent amount, most recent TTP amount, and tenant rent calculation information in accordance with HUD requirements for the specific PIH rental assistance program the family is currently participating in.

9. Family Self-Sufficiency (FSS) and Welfare-to-Work (WTW) program information: type of self-sufficiency program the family is participating in, FSS report category, FSS effective date, PHA code of PHA administering FSS contract, WTW report category, WTW effective date of action, PHA code of PHA that issued the WTW voucher, PHA code of PHA counting the family as enrolled in its WTW voucher program if different than the PHA Code of PHA that issued the WTW voucher; and general information pertaining to the employment status of the head of household, date current employment began, type of employment benefits head of household receives from employer, number of years of school completed by the head of household, type of other federal assistance received by the family, number of children receiving childcare services, and optional information related to the type of family services the family needs, whether or not the need was met during participation in the FSS or WTW program, and the name of the service provider; FSS contract, account and exit information; and WTW voucher program information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted pursuant to 5 U.S.C. 552a(b) of the Privacy Act, other routine uses include:

Categories of users and routine uses of information contained in HUD–VASH may include:

1. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the records pertain;

2. To the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist;

3. To the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when HUD or any component thereof disclose information to DOJ during the course of an investigation to the extent necessary to obtain information pertinent to the investigation under applicable HUD administered rental housing assistance programs;

4. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation;

5. To any federal, state, and local agency pursuant to an approved computer matching agreement (e.g., state agencies administering the state's unemployment compensation laws, state welfare and food stamp agencies, U.S. Department of Health and Human Services, and U.S. Social Security Administration): To verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, to identify and recover improper payments in accordance with the Improper Payments Elimination and Recovery Act of 2010 (Pub. L. 111–204, 31 U.S.C. 3301 note and 31 U.S.C. 3321 note), and to aid in the identification of tenant errors, fraud, and abuse in HUD rental assistance programs through HUD's routine tenant income computer matching programs in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act;

6. To individuals under contract to HUD or under contract to another agency with funds provided by HUD: For the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors, eligibility determinations, etc., (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

7. To PHAs and PHA-hired management agents, and auditors of HUD rental housing assistance programs: To verify program compliance, continued eligibility and the amount of housing assistance received;

8. To PHAs and PHA-hired management agents of HUD rental housing assistance programs: To identify and resolve discrepancies in tenant and program data;

9. To researchers affiliated with academic institutions, with not-for-profit organizations, or with federal, state, or local governments, or to policy researchers: Without personally identifiable information: For the performance of research and statistical activities on housing and community development issues (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

10. To HUD contractors, independent public auditors and accountants, and PHAs: For the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and financial reporting requirements (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

11. To the U.S. Department of Veterans Affairs (VA) for statistical analysis to advance the goals of the nation's federal strategic plan to prevent and end homelessness through the collection, analysis, and reporting of quality and timely data on veterans homelessness to assist VA with the establishment and/or verification of the following: Reducing homelessness among our nation's veterans; identify and understand the needs of homeless veterans and to develop programs and services to address those needs; effective administration of the HUD–Veterans Affairs Supportive Housing (VASH) program by HUD and VA business partners; HUD–VASH program monitoring and evaluation; and the production of aggregate statistical data without any personal identifiers, which will not be used to make decisions concerning the rights, benefits, or privileges of specific individuals, or providers of services with respect to assistance provided under the HUD–VASH program;

12. To the U.S. Department of Veterans Affairs (VA), under approved computer matching agreement, or data sharing agreement pursuant to a Presidential Executive Order (EO) mandate and in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act:

To identify and recover overpayments (improper payments) of rental assistance, determine compliance with program requirements by program administrators and participants of HUD rental housing assistance programs, deter future abuses in rental housing assistance programs, reduce administrative costs associated with manual program evaluation and monitoring efforts, and ensure that only eligible participants receive rental assistance in the correct amount;

13. To any Federal agency pursuant to statutory or regulatory authority in accordance with the provisions of the U.S. Federal Privacy Act (5 USC 552a) and Computer Matching and Privacy Protection Act; and,

14. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD 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 systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS

STORAGE:

Records are stored manually and electronically in PHA office automation equipment and paper files, respectively. Records are also stored on HUD computer servers for HUD and PHA staff to access via the Internet. HUD's information technology partners, Electronic Data Services (EDS) and Lockheed Martin maintain disk and backup files of IMS/PIC data.

RETRIEVABILITY:

An individual's records may be retrieved by computer search of indices by the individual's name, date of birth, and/or SSN. PHA records may be retrieved by PHA Code, User ID, and/or IMS/PIC user's last name. **Note:** A user's search capability is limited to only those program participants within the user's jurisdiction and assigned to his or her User ID.

SAFEGUARDS:

Records have limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. Background screening, limited authorization and access with access limited to authorize personnel and authorize users. User's access, updates access, read-only access, and approval access based on the user's role and security access level.

RETENTION AND DISPOSAL:

Electronic records are maintained and destroyed in accordance with requirements of the HUD Records Disposition Schedule, 2225–6. In accordance with 24 CFR 908.101 and HUD record retention requirements at 24 CFR 85.42, PHAs are required to retain at least three years' worth of IMS/PIC data either electronically or in paper form.

SYSTEM MANAGERS AND ADDRESSES:

Office of Public and Indian Housing (PIH), Real Estate Assessment Center (REAC) Nicole Faison, HUD–VASH Business Owner. Department of Housing and Urban Development, 451 Seventh Street SW., Room PCFL1, Washington, DC 20410; John D. Strzalka, HUD–VASH System Project Manager. Department of Housing and Urban Development, 451 Seventh Street SW., Room PCFL2, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Harold Williams, Acting Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES:

Since individual information reported in HUD-VASH is submitted to HUD by VA and PHAs based on information collected directly from the individual, individuals must contact the VA and PHA, respectively, to request correction of any individual-supplied information reported incorrectly by the VA or PHA. HUD does not have the ability to modify VA or PHA-reported data within HUD-VASH. With respect to any HUD determination based on HUD-VASH data, the procedures for appealing HUD's initial determination records are outlined in 24 CFR Part 16.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting:

i. Contesting contents of records: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410;

ii. Appeals of initial HUD determinations: In relation to contesting contents of records, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

HUD-VASH receives data from HUD contractors, PHAs, PHA-hired management agents, the Department of Veteran Affairs, and other federal, state and local agencies. The HUD-VASH data reported by PHAs and PHA-hired management agents is electronically transmitted to IMS/PIC using PHA-owned software or via HUD's Family Reporting Software (FRS) and subsequently imported into HUD-VASH.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2012–10578 Filed 5–1–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2012–N102; 91200–1232–0000–P2]

Proposed Information Collection; Control and Management of Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and

other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by July 2, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0133'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. *Abstract.* The Migratory Bird Treaty Act prohibits the take, possession, import, export, transport, sale, purchase, or bartering of migratory birds or their parts except as permitted under the terms of a valid permit or as permitted by regulations. In 2006, we issued regulations establishing two depredation orders and three control orders that allow State and tribal wildlife agencies, private landowners, and airports to conduct resident Canada goose population management, including the take of birds. We monitor the data collected for activities under these orders and may rescind an order if monitoring indicates that activities are inconsistent with conservation of Canada geese.

Control order for airports. 50 CFR 21.49 allows managers at commercial, public, and private airports and military airfields and their employees or agents to implement management of resident Canada geese to resolve or prevent threats to public safety. An airport must be part of the National Plan of Integrated Airport Systems and have received Federal grant-in-aid assistance or be a military airfield under the jurisdiction, custody, or control of the Secretary of a military department. Each facility exercising the privileges of the order must submit an annual report with the date, numbers, and locations of birds, nests, and eggs taken.

Depredation order for nests and eggs. 50 CFR 21.50 allows private landowners and managers of public lands to destroy resident Canada goose nests and eggs on property under their jurisdiction provided they register annually on our Web site at *https://epermits.fws.gov/eRCGR*. Registrants must provide basic information, such as name, address, phone number and email, and identify where the control work will occur and who will conduct it. Registrants must return to the Web site to report the number of nests with eggs they destroyed.

Depredation order for agricultural facilities. 50 CFR 21.51 allows States and tribes, via their wildlife agency, to implement a program to allow landowners, operators, and tenants actively engaged in commercial agriculture to conduct damage management control when geese are committing depredations or to resolve or prevent other injury to agricultural interests. State and tribal wildlife agencies in the Atlantic, Central, and Mississippi Flyway portions of 41 States can implement the provisions of the order. Agricultural producers must maintain a log of the date and number of birds taken under this authorization. States and tribes exercising the privileges of the order must submit an annual report of the numbers of birds, nests, and eggs taken and the county where take occurred.

Public health control order. 50 CFR 21.52 authorizes States and tribes of the lower 48 States to conduct (via the State or tribal wildlife agency) resident Canada goose control and management activities when the geese pose a direct threat to human health. States and tribes operating under this order must submit an annual report summarizing activities, including the numbers of birds taken and the county where take occurred.

Population control. 50 CFR 21.61 establishes a managed take program to reduce and stabilize resident Canada goose populations when traditional and otherwise authorized management measures are not successful or feasible. A State or tribal wildlife agency in the Atlantic, Mississippi, or Central Flyway may request approval for this population control program. If approved, the State or tribe may use hunters to harvest resident Canada geese during the month of August. Requests for approval must include a discussion of the State's or tribe's efforts to address its injurious situations using other methods or a discussion of the reasons why the methods are not feasible. If the Service Director approves a request, the State or tribe must (1) keep annual records of activities carried out under the authority of the program, and (2) provide an annual summary, including number of individuals participating in the program and the number of resident Canada geese shot. Additionally, participating States and tribes must monitor the spring breeding population by providing an annual estimate of the breeding population and distribution of resident Canada geese in their State.

II. Data

OMB Control Number: 1018–0133.

Title: Control and Management of Resident Canada Geese, 50 CFR 20.21, 21.49, 21.50, 21.51, 21.52, and 21.61.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State fish and wildlife agencies, tribes, and local governments; airports, landowners; and farms.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Activity	Number of respondents	Number of responses	Completion time per response hours	Total annual burden hours
21.49—Airport Control Order—Annual Report	50	50	1.5	75
21.50—Nest and Egg Depredation Order—Registration and Report	2,000	4,000	.5	2,000
21.51—Agricultural Depredation Order—Recordkeeping	600	600	.5	300
21.51—Agricultural Depredation Order—Annual Report	20	20	8	160
21.52—Public Health Control Order—Annual Report	20	20	1	20
21.61—Population Control Approval Request—Recordkeeping and Annual Report	8	8	24	192
21.61—Population Control Approval Request—Population Estimates	8	8	160	1,280
Totals	2,706	4,706		4,027

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: April 26, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–10579 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2012–N089; 4500030113]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on May 31, 2012. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before June 1, 2012.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–0119'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0119.

Title: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Description of Respondents: Primarily State, local, or tribal governments. However, individuals, businesses, and not-for-profit organizations could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement/plan.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Original Agreement	4	4	2,000	8,000
Monitoring	7	7	600	4,200
Reporting	7	7	120	840
Totals	18	18	.....	13,040

Abstract: Section 4 of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) specifies the process by which we can list species as threatened or endangered. When we consider whether or not to list a species, the ESA requires us to take into account the efforts being made by any State or any political subdivision of a State to protect such species. We also take into account the efforts being made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or called for in such documents could prevent some species from becoming so imperiled that they meet the definition of a threatened or endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003) encourages the development of conservation agreements/plans and provides certainty about the standard that an individual conservation effort must meet for us to consider whether it contributes to forming a basis for making a decision about the listing of a species. PECE applies to ''formalized conservation efforts'' that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document. To assist us in evaluating a formalized conservation effort under PECE, we collect information such as a conservation plan, monitoring results, or progress reports. The development of such agreements/plans is voluntary. There is no requirement that the individual conservation efforts included

in such documents be designed to meet the standard in PECE. The PECE policy is posted on our Candidate Conservation Web site at *http://www.fws.gov/endangered/what-we-do/candidate-conservation-process.html*.

Comments: On November 15, 2011, we published in the **Federal Register** (76 FR 70748) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on January 17, 2012. We received two comments in response to this notice.

Commenter 1 agreed that the collection of information is necessary. The commenter recommends that the PECE policy be vetted with nongovernment organizations (NGOs), States, and Federal agencies so that when these groups are developing conservation efforts for species that may be petitioned to be listed under the ESA, they understand the evaluation bar that must be met in order for their conservation efforts to be considered as part of the Service's listing determination.

Response: On June 13, 2000, we published a **Federal Register** notice (65 FR 37102) soliciting public comments on the draft policy. We received comments from 44 entities, primarily States and NGOs. We evaluated these comments and incorporated them into the final policy, which includes a section on the evaluation criteria that conservation efforts must meet. The final policy is posted on our Candidate Conservation Web page (*http://www.fws.gov/endangered/what-we-do/candidate-conservation-process.html*) and on our Laws and Policies Web page (*http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html*).

Commenter 2 objected to paying for the collection of information and said that funding should be eliminated. The commenter also said its purpose is not explained very well.

Response: Evaluation of conservation actions as part of our listing decision is required by the ESA, and therefore cannot be eliminated. An explanation of the policy and the policy itself are posted on our Candidate Conservation Web page. The commenter did not provide comments on the burden estimate; ways to enhance the quality, utility, and clarity of information; or on the ways to minimize the burden.

Commenter 1 agreed that the PECE policy will not have a $100 million annual effect or adversely affect an economic sector, productivity, jobs, the environment, or other units of government in the collection of data. However, the commenter stated that the implementation of conservation efforts measures associated with the listing under the ESA will certainly meet both the monetary bar and the adverse impacts bar.

Response: The burden estimates for implementing conservation actions covered by this information collection are limited to the amount of time needed to prepare the conservation agreements and to conduct the monitoring and reporting. The burden estimates do not cover the monetary cost of implementing the conservation measures themselves. The ESA specifies that we must base listing determinations *solely on the basis of the best scientific and commercial data available* (emphasis added) after conducting a review of the status of the species and after taking into account those conservation practices, if any, being made by any State or any political subdivision of a State to protect such species. In making a listing determination, we also consider the conservation efforts of entities other than States and political subdivisions of States. The PECE policy describes how we will evaluate, as part of the listing determination, the extent which these conservation actions reduce the threats facing a species. Under the requirements of the ESA, we cannot use economic impacts as part of our listing determination.

Commenter 1 stated that the PECE policy is not well distributed or understood, and claimed that finding the most recent PECE was difficult. The commenter suggested that we provide a link to the most recent version for future review, and stated that better dissemination and explanation of the policy would bolster the quality, utility and clarity of the information.

Response: See above for links to the policy.

Commenter 1 stated that it is in the State's best interest to have conservation programs be successful and to allow activities that have and will occur across the landscape to continue. The commenter does not mind providing this information, provided that the Service will be acting in good faith to advance the conservation program to an approved State.

Response: We coordinate closely with State wildlife management agencies in the conservation and management of endangered and threatened species under the ESA. State wildlife agencies are our primary conservation partners, and we routinely share data with them. In addition, under section 6 of the ESA, we provide grants to States and territories to participate in a wide array of voluntary conservation projects for candidate, proposed, and listed species. The grant program provides funding to States and territories for species and habitat conservation actions on non-Federal lands. A State or territory must currently have, or enter into, an approved cooperative agreement with the Secretary of the Interior to receive grants. Most States and territories have entered into these agreements for both plant and animal species.

We have not made any changes to our information collection requirements as a result of these comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: April 26, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–10576 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2012–N047; FXRS12650400000S3–123–FF04R02000]

St. Vincent National Wildlife Refuge, FL; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive

conservation plan and environmental assessment (Draft CCP/EA) for St. Vincent National Wildlife Refuge (NWR) in Franklin and Gulf Counties, Florida, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2012.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Laura Housh, via U.S. mail at Okefenokee National Wildlife Refuge, 2700 Suwannee Canal Road, Folkston, GA 31537. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under ''Draft Documents.'' Comments on the Draft CCP/EA may be submitted to the above postal address or by email to *stvincentccp@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh at 912/496–7366, extension 244 (telephone); 912/496–3322 (fax); or via email at *stvincentccp@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for St. Vincent NWR. We started the process through a notice in the **Federal Register** on April 8, 2009 (74 FR 16002). For more about the refuge and our CCP process, please see that notice. St. Vincent NWR was established in 1968, to protect and conserve migratory birds in accordance with the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715D).

St. Vincent NWR is situated along the gulf coast of northwest Florida, about 60 miles from Panama City and 80 miles from Tallahassee. The approved acquisition boundary for the refuge is approximately 13,736 acres. The current management boundary is approximately 12,490 acres. We oversee 21 Farm Service Agency easements (1,625 acres) in 6 counties. The 12,490-acre refuge boundary includes two islands—St. Vincent Island (12,358 acres) and Pig Island (46 acres). It also includes a mainland tract (86 acres).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (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, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Significant issues addressed in the Draft CCP/EA include: (1) The control of invasive exotic species combined with education; (2) the need for more education, outreach, and awareness of the refuge; (3) the need to evaluate the appropriate size and staff needed to accomplish established purposes (i.e., consider biologist and wildlife officer positions); (4) the need to broaden and strengthen relationships and partnerships internally and externally; (5) the need to better understand the potential impacts of climate change on refuge resources; (6) the need to evaluate accessibility issues; and (7) the need to acquire additional funding to support refuge needs.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative C as our proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

Under this alternative, there would be no action taken to improve or enhance the refuge's current habitats, or improve wildlife and public use management programs. Species of Federal responsibility, such as threatened and endangered species and migratory birds, would continue to be monitored at present levels. Additional species monitoring would occur as opportunistic events when contacts outside our staff offer support. Current habitat management, including prescribed fire and hydrological restoration, would continue as outside resources become available to assist our staff. Management of exotic, invasive, and nuisance animal and plant species would continue to be opportunistic. The public use programs of hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation would continue at present levels. Acquisition of lands into the refuge would occur when funding is appropriated and as willing sellers are interested in selling land that is necessary for refuge operations and/or critical habitats for sensitive species. The staff would consist of a manager, office assistant, forestry technician, and biological science technician, along with supplementary support from the remainder of the North Florida National Wildlife Refuge Complex staff, when available, as well as support from volunteers and partners.

Alternative B: Focus on Natural and Primitive Processes

The focus of Alternative B would be to emphasize the natural and primitive processes, while adhering to policy, mandates, and the missions of the Service and refuge. We would continue to support actions necessary to protect and manage for species of Federal responsibility, such as threatened and endangered species and migratory birds. Additional key species would be monitored as the refuge transitions into a more natural and primitive environment.

We would aggressively attempt to restore the hydrology to natural conditions with the removal of additional roads on St. Vincent Island. All water control structures, including the impoundment system on St. Vincent Island, would be opened to allow natural flow of water to and from the bay and the gulf. Under this alternative, prescribed burning would be discontinued, to allow natural fire events to occur unless human life or property is involved. Since the purchase of the refuge, there has been minimal emphasis on timber conditions, so a forest habitat assessment would be conducted on refuge lands. The eradication of exotic species (e.g., feral hogs and sambar deer) would be a key component of this alternative.

Wildlife-dependent recreational uses would continue, with some major changes. The hunt program would consist of a quality white-tailed deer and raccoon hunt (sambar deer and feral hog hunts would be phased out as eradication of these species occurs). As this alternative focuses on natural and primitive processes, camping during hunts would be discontinued and self check-in stations would be installed. Fishing opportunities would be based on natural processes, since stocking of freshwater fish would be discontinued.

Wildlife observation, photography, and environmental education and interpretation would continue to focus on a natural and primitive process, with a discontinuation of vehicle tours.

We would continue to maintain and build relations with partners, volunteers, and the friends group as they relate to managing the resource, supporting the strategic habitat conservation (SHC) initiative, and the landscape conservation cooperative (LCC). There would continue to be a need for research and studies on the refuge to gain a better understanding of the resource and the changes resulting from environmental and human events.

We would staff the refuge at current levels, plus add an assistant manager, a wildlife biologist, a maintenance worker, and a wildlife officer.

Alternative C: Focus on Native and Imperiled Species (Proposed Alternative)

This alternative expands on Alternative A, with an increased effort to manage and protect the refuge's native and imperiled species. Under this alternative, we would continue to survey and monitor species of Federal responsibility, such as threatened and endangered species and migratory birds, and key native species. We would also gain a better understanding of native species. Additional efforts would be made to protect and support nesting opportunities for key species, as well as gain a better understanding of population dynamics of some species. There would be evaluations to determine if it is suitable to reestablish populations of the eastern indigo snake, gopher tortoise, and eastern wild turkey.

We would continue to manage lakes 1, 2, and 3 by seasonal draw-downs to support the needs of shorebirds and wading birds. Lakes 4 and 5 would continue to support deep water for a freshwater fisheries program, with occasional draw-down to manage the vegetation within the system. Since the purchase of the refuge, there has been minimal emphasis on timber conditions, so a forest habitat assessment would be conducted. The management of exotic, invasive, and nuisance animals and plants would be a focus, with emphasis on aggressively eradicating feral hogs.

Wildlife-dependent recreational uses would be expanded. The hunt program would consist of white-tailed deer, raccoon, and sambar deer. Fishing would consist of saltwater and freshwater opportunities. Wildlife observation, wildlife photography, and environmental education and interpretation would be enhanced to focus on imperiled species and the unique barrier island history and ecosystem as they relate to the coastal environment. We would enhance the environmental education program to incorporate Florida Sunshine Standards, while establishing guidelines for public programs. Vehicle tours that meet management objectives would continue as long as we have sufficient staff to support the program. The refuge would be staffed at current levels, in addition to an assistant manager, a wildlife biologist, a maintenance worker, a wildlife officer, a visitor services specialist, and a boat operator. Under this alternative, we would hire a wildlife biologist student through the Student Career Experience Program, continue the Youth Conservation Corps Program, and explore opportunities to work with students through the Student Conservation Association and AmeriCorps programs. Even with the increased staff, we would continue to expand our volunteer program and build stronger relations with the friends group and partners to manage our resources, supporting the SHC initiative and the LCC. As climate change affects the refuge, increased research and studies would need to be conducted on species and habitats, to support the best management decisions through adaptive management.

Next Step

After the comment period ends, we will analyze the comments and address them.

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.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: March 29, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–10571 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000.L13100000.PB0000.24 1E]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from those who wish to assign record title or transfer operating rights in a lease for oil and gas or geothermal resources. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0034.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before June 1, 2012.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0034), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0034'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Division of Fluid Minerals, at 202–912–7148. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Gamble. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5

CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on January 24, 2012 (77 FR 3496), and the comment period ended March 26, 2012. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0034 in your correspondence. 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.

The following information is provided for the information collection:

Title: Oil, Gas, and Geothermal Resources: Transfers and Assignments (43 CFR Subparts 3106, 3135, and 3216).

Forms:

- Form 3000–3, Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources; and
- Form 3000–3a, Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources.

OMB Control Number: 1004–0034.

Abstract: The information collected in Form 3000–3 enables the BLM to process applications to transfer interests in oil and gas or geothermal leases by assignment of record title. The information collected in Form 3000–3a enables the BLM to process applications to transfer operating rights in (i.e., sublease) oil and gas or geothermal leases. The information in both forms enables the BLM to identify the interest that is proposed to be assigned or transferred; determine whether the proposed assignee or transferee is qualified to obtain the interest sought; and ensure that the proposed assignee or transferee does not exceed statutory acreage limitations.

Frequency of Collection: On occasion. Responses are required to obtain or retain a benefit.

Estimated Number and Description of Respondents: 10,933 applicants who wish to assign record title or transfer operating rights in a lease for oil and gas or geothermal resources.

Estimated Reporting and Recordkeeping "Hour" Burden: 5,467 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: $929,305.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–10583 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14905–A; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management will issue an appealable decision to Chinuruk Incorporated, Successor in Interest to NGTA, Incorporated. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Chinuruk Incorporated, Successor in Interest to NGTA, Incorporated. The lands are in the vicinity of Nightmute, Alaska, and are located in:

Seward Meridian, Alaska

T. 5 N., R. 88 W.,
Sec. 3;
Sec. 31.

Containing 79.98 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News*.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until June 1, 2012 to file an appeal.
2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.
3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–10552 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19558–A; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chinuruk Incorporated, Successor in Interest to Umkumiute, Limited. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Chinuruk Incorporated, Successor in Interest to Umkumiute, Limited. The lands are in the vicinity of Umkumiute, Alaska, and are located in:

Seward Meridian

T. 6 N., R. 90 W.,
Sec. 35.

Containing approximately 40 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until June 1, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–10551 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L51100000.GN0000 LVEMF09CF200 241A; 12–08807; MO# 4500032952; TAS: 14X5017]

Notice of Availability of the Final Environmental Impact Statement for the Phoenix Copper Leach Project, Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Phoenix Copper Leach Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency (EPA) publishes its notice in the **Federal Register**.

ADDRESSES: Copies of the FEIS for the Phoenix Copper Leach Project are available for public inspection at the BLM, 50 Bastian Road, Battle Mountain, Nevada. Interested persons may also review the FEIS at the Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Dave Davis, Phoenix Project Manager, telephone: 775–635–4150; address: BLM, 50 Bastian Road, Battle Mountain, NV 89820, Attn.: Dave Davis; or by email at: *CU_Leach@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Newmont Mining Corporation (Newmont) has submitted a proposed Amendment to the Plan of Operations for a new copper processing plant and appurtenant facilities to the BLM. The proposed project would be located in north-central Nevada approximately 12 miles southwest of Battle Mountain on both public and private lands in Lander County, Nevada. The project, as proposed, will disturb a total of 902 acres: 708 acres of private land owned by Newmont and 194 acres of public land. These lands are located in an already heavily mined area and the copper ore was previously being mined and placed on existing waste-rock facilities. The proposed project would involve the expansion and operation of the existing Phoenix Mine to include copper leaching/beneficiation of copper oxide rock material that previously has been permitted for disposal on currently permitted waste rock facilities. Active mining and processing for the proposed project would last approximately 24 years; overall closure and reclamation activities are anticipated to extend approximately 25 years beyond the operational phase. A minimum of 13 years of re-vegetation, and reclamation monitoring would be required following mine closure.

The BLM is also reviewing Newmont's application under the Mining Law of 1872; the BLM Code of Federal Regulations, Surface Management Regulations at 43 CFR 3809; and the Use and Occupancy Regulations at 43 CFR 3715, in response to Newmont's application for mining and processing of copper ore while preventing undue or unnecessary degradation of public lands.

The BLM will decide whether to grant an approval of the Amendment to the Plan of Operations as submitted or to modify it based on mitigation developed through this NEPA analysis.

The Draft Environmental Impact Statement (DEIS) for the Phoenix Copper Leach Project described and analyzed the proposed project's site-specific impacts for all affected resources. Two action alternatives, the Proposed Action and the Reona Copper Heap Leach Facility Elimination Alternative, were analyzed in detail, in addition to the No Action Alternative. Eleven additional alternatives presented in the DEIS were considered but eliminated from further analysis.

The Notice of Availability of the DEIS was published in the **Federal Register** on October 28, 2011, starting a 45-day public comment period that ended on December 12, 2011.

The BLM mailed 160 letters to individuals, non-government organizations, and local, state, and federal agencies who had stated an

interest during the 2006 scoping period for the proposal. In addition, 11 copies of the DEIS were sent to local tribal councils who had stated an interest in the DEIS.

On November 30, 2010, eight individuals from the Battle Mountain and Elko Bands of the Te-Moak Shoshone Tribe, the Duckwater and the Yomba Shoshone Tribes were hand-delivered copies of the DEIS after a site visit to the proposed project site. The attending tribal members did not provide any specific individual or collective concerns related to the proposal.

A news release in the local papers announcing the availability of the DEIS was published and the DEIS was posted on the BLM Nevada Web site.

All comments received on the DEIS and internal BLM review were considered and incorporated as appropriate in the FEIS. Based on the proposed mitigation in the DEIS as well as applicant committed environmental protection measures, the BLM's preferred alternative is the proposed action. The mitigation measures and the applicant committed environmental protection measures will become conditions of approval of the Project. This FEIS is abbreviated. The FEIS document includes the changes made to the DEIS, as well as copies of the comments provided during the DEIS comment period and BLM responses to those comments. To understand the FEIS one must have to have both the DEIS and the FEIS and then compare the changes.

Douglas W. Furtado,

District Manager, Battle Mountain.

[FR Doc. 2012–10565 Filed 4–27–12; 11:15 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0061

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for the Permanent Regulatory Program—Small Operator Assistance Program (SOAP). This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 1, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax to (202) 395–5806 or by email to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203–SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or via email at *jtrelease@osmre.gov*. You may also review this information collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR part 795—Permanent Regulatory Program—Small Operator Assistance Program. OSM is requesting a 3-year term of approval for the information collection activity.

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 this collection of information is 1029–0061. Responses are required to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 7, 2012 (77 FR 6141). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

SUMMARY: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities (SRAs).

Total Annual Responses: 4.

Total Annual Burden Hours: 93 hours. This includes 18 hours per operator to complete form, 1 hour for laboratory to request contract, 70 hours for SRAs to award laboratory contract, and 4 hours for SRAs to review application and prepare response letter.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed under Addresses. Please refer to control number 1029–0061 in your correspondence.

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: April 25, 2012.

Andrew F. DeVito,

Chief Division of Regulatory Support.

[FR Doc. 2012–10457 Filed 5–1–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–842]

Certain Cameras and Mobile Devices, Related Software and Firmware, and Components Thereof and Products Containing the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 29, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of HumanEyes Technologies, Ltd. of Israel. A supplement to the complaint was filed on April 18, 2012. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cameras and mobile devices, related software and firmware, and components thereof and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,665,003 (''the '003 patent'') and U.S. Patent No. 7,477,284 (''the '284 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 26, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cameras and mobile devices, related software and firmware, and components thereof and products containing same that infringe one or more of claims 1–3 and 22 of the '003 patent and claims 1–3, 10, 20, 27–29, 36, and 37 of the '284 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: HumanEyes Technologies, Ltd., 1–4 High Tech Village, Edmond Safra Campus, The Hebrew University, Givat Ram, 91390 Jerusalem, Israel.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan.

Sony Corporation of America, 550 Madison Avenue, New York, NY 10022.

Sony Electronics Inc., 16530 Via Esprillo, San Diego, CA 92127–1708.

Sony Mobile Communications AB, 202 Hammersmith Road, London W6 7DN, United Kingdom.

Sony Mobile Communications (USA) Inc., 333 Piedmont Road, Suite 600, Atlanta, GA 30305.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10557 Filed 5–1–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–841]

Certain Computers and Computer Peripheral Devices and Components Thereof and Products Containing the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 27, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Technology Properties Limited, LLC of Cupertino, California. Letters supplementing the complaint were filed on April 11, 2012, and April 16, 2012. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the

sale within the United States after importation of certain computers and computer peripheral devices and components thereof and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,976,623 (''the '623 patent''); U.S. Patent No. 7,162,549 (''the '549 patent''); U.S. Patent No. 7,295,443 (''the '443 patent''); U.S. Patent No. 7,522,424 (''the '424 patent''); U.S. Patent No. 6,438,638 (''the '638 patent''); and U.S. Patent No. 7,719,847 (''the '847 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 26, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computers and computer peripheral devices and components thereof and products containing the same that infringe one or more of claims 1–4, 9–12, and 17–19 of the '623 patent; claims 7, 11, 19, and 21 of the '549 patent; claims 1, 3, 4, 7, 9, 11, 12, and 14 of the '443 patent; claims 25, 26, 28, and 29 of the '424 patent; claims 13–18 and 25–27 of the '638 patent; and claims 1–3 of the '847 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, CA 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Acer Inc., 8F, 88, Sec.1, Xintai 5th Road, Xizhi, New Taipei City 221, Taiwan.

Brother Industries, Ltd., 15–1, Naeshiro-cho, Mizuho-ku, Nagoya, Aichi 467–8561, Japan.

Canon Inc., 30–2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146–8501, Japan.

Dane-Elec Memory, 159 Avenue Gallieni, BP33, 93171 Bagnolet Cedex, France.

Dell Inc., One Dell Way, Round Rock, TX 78682.

Falcon Northwest Computer Systems, Inc., 2015 Commerce Drive, Medford, OR 97504.

Fujitsu Limited, Shiodome City Center, 1–5–2 Higashi-Shinbashi, Minato-ku, Tokyo, 105–7123, Japan.

Jasco Products Company, 10 East Memorial Road, Building B, Oklahoma City, OK 73114 –2205.

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, CA 94304–1185.

HiTi Digital, Inc., 9F., No. 225, Sec. 3, Beixin Road, Xindian Dist., New Taipei City 231, Taiwan.

Kingston Technology Company, Inc., 17600 Newhope Street, Fountain Valley, CA 92708.

Micron Technology, Inc., 8000 S. Federal Way, Boise, ID 83707–0006.

Lexar Media, Inc., 47300 Bayside Parkway, Fremont, CA 94538.

Microdia Limited, The Concourse, Technology Drive, San Jose, CA 95110.

Newegg Inc., 16839 East Gale Avenue, City of Industry, CA 91745.

Rosewill Inc., 17708 Rowland Street, City of Industry, CA 91748.

Sabrent, 9720 Variel Avenue, Chatsworth, CA 91311.

Samsung Electronics Co., Ltd., Samsung Main Building, 250, Taepyeongno 2-ga, Jung-gu, Seoul 100–742, Republic of Korea.

Seiko Epson Corporation, 3–3–5 Owa, Suwa, Nagano, Japan.

Shuttle Inc., No. 30, Lane 76, Rei Kuang Road, Nei-Hu Dist., Taipei, Taiwan.

Systemax Inc., 11 Harbor Park Drive, Port Washington, NY 11050.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10558 Filed 5–1–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities; Proposed collection; Comments Requested: CRS Customer Satisfaction Survey

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Community Relations Service (CRS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 2, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gilbert Moore, Deputy Director, Community Relations Service, 600 E Street NW., Suite 6000, Washington, DC 20530, Office phone (202) 305–2935.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Response to 'Quality of Service' Survey.

(2) *Title of the Form/Collection:* CRS 'Quality of Service' Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CRS Community Relations Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Local and state elected officials, heads of support service agencies as Police, Education, Human Relations agencies, heads of public advocacy organizations, and vested formal and informal community leaders. Abstract: The CRS 'Customer Satisfaction Survey' will help CRS maintain the highest standards of professional conciliation and mediation work while also identifying new areas and programs of expertise needed to improve service deliverables to emerging community concerns.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete the form within approximately 15 minute.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total CRS burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–10480 Filed 5–1–12; 8:45 am]

BILLING CODE 4410–17–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: September 11th Victim Compensation Fund Objection Form

ACTION: CORRECTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This is a correction to a notice previously submitted. This proposed information collection was previously published in the **Federal Register**, Volume 77, Number 20, Page 4827 on January 31, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 1, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Jonathan Olin, 202–514–5585.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Victim Compensation Objection Form

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Anyone expressing a potential objection to the filing of a claim by a purported personal representative of a deceased victim. Abstract: This form is to be submitted in connection with potential objections made to claims filed with the September 11th Victim Compensation Fund of 2001. The form asks that the objection be characterized and explained or be withdrawn.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 objectors with an average of 2.0 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 100 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–10482 Filed 5–1–12; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and Proposed Stipulation, Settlement Agreement and Order Under the Federal Debt Collection Procedure Act and The Federal Priority Act

Notice is hereby given that on April 25, 2012, a proposed Consent Decree in *United States* v. *the Atlas-Lederer Company, et al.,* Civil Action No. C–3–91–309, and a proposed Stipulation, Settlement Agreement and Order in *United States* v. *Larry Katz, et al.,* Civil Action No. 3:05–cv–0058, were lodged with the United States District Court for the Southern District of Ohio.

In *Atlas-Lederer,* the United States sought reimbursement of response costs in connection with the United Scrap Lead Superfund Site in Troy, Miami County, Ohio (''the Site''). The Consent Decree resolves the United States' claims against a defunct scrap metal company, Senser Metal Company, and its deceased owner and operator, Saul Senser, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), as well as resolves the United States' claim against Mr. Senser under Ohio ''veil piercing'' law. This is an ''ability-to-pay'' settlement based on financial analyses conducted by the Department's Antitrust Corporate Finance Unit. Senser Metal and Mr. Senser's Estate (represented by Kenneth Senser as the Executor the Estate of Saul Senser) will pay the United States $279,750 within 30 days of entry of the Consent Decree. The Consent Decree also resolves the United Scrap Lead Respondent Group's (''Respondent Group'') CERCLA claims against Senser Metal Company for response costs incurred by the Respondent Group in cleaning up the Site under an earlier Consent Decree. The settling Senser defendants will pay the Respondent Group $21,500 within 30 days of entry of the Consent Decree.

In *Katz,* the United States filed suit against Mr. Senser and other defendants seeking to recover funds under the Federal Debt Collection Procedures Act, 28 U.S.C. 3006 and 3307, and the Federal Priority Act, 31 U.S.C. 3713(a). In its complaint, the United States alleged, among other things, that Mr. Senser liquidated the assets of Senser Metal Company and fraudulently diverted a portion of the proceeds to himself. To resolve this claim, the Estate of Saul Senser, together with Kenneth Senser in his capacity as Executor of the Estate, will pay the United States $279,750 within 30 days of entry of the Stipulation, Settlement Agreement and Order.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement embodied in the proposed Consent Decree and the proposed Stipulation, Settlement Agreement and Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *the Atlas-Lederer Company, et al.,* D.J. Ref. 90–11–3–279B and or *United States* v. *Larry Katz, et al.,* D.J. Ref. 90–11–3–279/4.

The proposed Consent Decree and the proposed Stipulation, Settlement Agreement and Order may be examined at the Office of the United States Attorney, Southern District of Ohio, Federal Building Room 602, 200 West Second Street, Dayton, Ohio, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, both documents may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree and the proposed Stipulation, Settlement Agreement and Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree copy'' (*EESCDCOPY.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $9.25 (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.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–10588 Filed 5–1–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0051]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Certification of Secure Gun Storage or Safety Devices

ACTION: 30-Day Notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35, page 10559 on February, 22, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 1, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be directed to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection. If you have questions concerning the collection, please contact Nicholas O'Leary at *fipb-informationcollection@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Secure Gun Storage or Safety Devices.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.42. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The requested information will be used to ensure that applicants for a Federal firearms license are in compliance with the requirements pertaining to the availability of secure gun storage or safety devices.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 63,514 respondents will complete the form in 1 minute.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,058 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–10481 Filed 5–1–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Accellera Systems Initiative

Notice is hereby given that, on April 11, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Accellera Systems Initiative (''Accellera'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aldec, Inc., Henderson, NV; AMD, Sunnyvale, CA; Australian Semiconductor Technology Company, Adelaide, AUSTRALIA; Boeing, El Segundo, CA; Cisco Systems, San Jose, CA; Cypress Semiconductor, San Jose, CA; Duolog, Dublin, IRELAND; Freescale Semiconductor, Austin, TX; IBM, Hopewell Junction, NY; Jasper Design Automation, Mountain View, CA; Magillem Design Services, Paris, FRANCE; Oracle Corporation, Santa Clara, CA; Paradigm Works, Inc., Andover, MA; Renesas Mobile, Salo, FINLAND; Semifore, Inc., Mountain View, CA; SpringSoft, San Jose, CA; Vayavya Labs, Belguam, INDIA; Verilab, Austin, TX; and Xilinx, Inc., San Jose, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Accellera intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, Accellera filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on February 6, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2012 (77 FR 14045).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–10515 Filed 5–1–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before June 1, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR includes the reporting and third party notice and disclosure requirements that a plan must satisfy under interim final regulations implementing provisions of the Affordable Care Act pertaining to internal claims and appeals, and the external review process.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0144. The current OMB approval is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on February 23, 2012 (77 FR 10781).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0144. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Plans.

OMB Control Number: 1210–0144.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 117,864.

Total Estimated Number of Responses: 117,864.

Total Estimated Annual Burden Hours: 886.

Total Estimated Annual Other Costs Burden: $642,461.

Dated: April 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–10582 Filed 5–1–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0026]

Proposed Extension of Existing Information Collection; Ground Control for Surface Coal Mines and Surface Work Areas of Underground Coal 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 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. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 77.1000–1. OMB last approved this information collection request on October 13, 2009. The OMB approval for this information collection expires on October 31, 2012.

DATES: All comments must be postmarked or received by midnight Eastern Time on July 2, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0026'' and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (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 1219–0026'' 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

Section 103(a) of the Federal Mine Safety & Health Act of 1977 (30 U.S.C. 813(a)) (the Mine Act)) requires that frequent inspections and investigations in coal or other mines shall be made each year for the purposes of, among other things, gathering information with respect to mandatory health or safety standards and determining whether an imminent danger exists. Section 103(h) of the Mine Act requires that every operator of a coal or other mine establish and maintain records, make reports, and provide required information to the Secretary (30 U.S.C. 813(h)).

Each operator of a coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The mine operator is required by 30 CFR 77.1000–1 to file the ground control plan under § 77.1000 for highwalls, pits and spoil banks with the appropriate District Manager. Each plan is reviewed by MSHA to ensure that highwalls, pits, and spoil banks are maintained in a safe condition through the use of sound engineering design.

This information collection addresses the recordkeeping associated with:

§ 77.1000–1 Filing of plan required by 77.1000—Highwalls, pits and spoil banks; plans.

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 this safety standard on ground control plans for surface coal mines and surface work areas of underground coal mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the 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 document 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 to evaluate each plan to ensure that highwalls, pits, and spoil banks are maintained in a safe condition through the use of sound engineering design to ensure the health and safety of miners. MSHA has updated the estimates 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.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Ground Control for Surface Coal Mines and Surface Work Areas of Underground Coal Mines.
OMB Number: 1219–0026.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 77.1000–1.
Total Number of Respondents: 844.
Frequency: Various.
Total Number of Responses: 844.
Total Burden Hours: 5,840 hours.
Total Annual Cost Burden: $2,844.

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).

Dated: April 26, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–10523 Filed 5–1–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 1, 2012 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on February 15, 2012 (77 FR 8901 and 8902). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed 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 collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Selective Service Record Request.

OMB number: 3095–00XX.

Agency form numbers: NA Form 13172.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 3,200.

Estimated time per response: 2 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 107.

Abstract: The National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers the Selective Service System (SSS) records. The SSS records contain both classification records and registration cards of registrants born before January 1, 1960. When registrants or other authorized individuals request information from or copies of SSS records they must provide on forms or letters certain information about the registrant and the nature of the request. Requestors use NA Form 13172, Selective Service Record Request to obtain information from SSS records stored at NARA facilities.

Dated: April 26, 2012.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–10609 Filed 5–1–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Availability for the Final Certification Criteria for Non-Federal Regional Information Coordination Entities (RICE) as Approved by the Interagency Ocean Observing Committee (IOOC)

AGENCY: National Science Foundation (NSF).

ACTION: Notice of availability.

SUMMARY: The National Science Foundation publishes this notice on behalf of the IOOC to announce the release of the final RICE certification criteria. These certification criteria establish eligibility for non-federal assets to be integrated into the U.S. Integrated Ocean Observation System (IOOS) and to ensure compliance with all applicable standards and protocols. These certification criteria were developed in response to a requirement in the Integrated Coastal Ocean Observation System Act of 2009 (33 U.S.C. 3601–3610) and are applicable to RICEs as defined in the Act, including Regional Associations.

ADDRESSES: The final certification criteria are available on the IOOC Web site: *http://www.iooc.us*. For the public unable to access the Internet, printed copies can be requested by contacting the IOOC Support Office at the address below. The public is encouraged to submit questions electronically to *certification@iooc.us*. If you are unable to access the Internet, questions may be submitted via fax or regular mail. Faxed questions should be sent to 202–332–8887 with Attn: IOOC Support Office. Questions may be submitted in writing to the Consortium for Ocean Leadership, Attention: IOOC Support Office, 1201 New York Avenue NW., 4th Floor, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the IOOC Support Office, telephone: 202–787–1622; Email: *certification@iooc.us*.

SUPPLEMENTARY INFORMATION: On 30 March 2009, President Barack Obama signed into law the Integrated Coastal and Ocean Observation System Act of 2009. Among the requirements in the Act is a directive to the IOOC to ''develop contract certification standards and compliance procedures for all non-Federal assets, including regional information coordination entities, to establish eligibility for integration into the System and to ensure compliance with all applicable standards and protocols established by the Council, and ensure that regional observations are integrated into the System on a sustained basis.'' The IOOC chartered two working groups consisting of subject matter experts on IOOS data partners and regional entities to draft recommended certification criteria. The recommended draft criteria were approved by the IOOC on 20 October 2011 and released for public input. After a sixty-day public comment period and adjudication of public input the IOOC drafted final certification criteria.

The IOOC is the federal interagency committee established to lead the interagency planning and coordination of ocean observing activities including IOOS. Eleven federal agencies participate in the IOOC, with NOAA serving as the lead federal agency for IOOS implementation and administration.

Dated: April 27, 2012.

Bob Houtman,

Co-Chair, Interagency Ocean Observation Committee.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–10560 Filed 5–1–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under

the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 1, 2012. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application: 2013–003

1. *Applicant:* Steven D. Emslie, Department of Biology and Marine Biology, University of North Carolina, Wilmington, NC 28403.

Activity for Which Permit Is Requested

Take, and Enter Antarctic Specially Protected Areas (ASPA's), The applicant plans to enter ASPA 102—Rookery Islands; ASPA 103—Ardery and Odbert Islands; ASPA 104—Sabrina Island; ASPA 105 Beaufort Island; ASPA 106 Cape Hallett; ASPA 107—Dion Islands; ASPA 108—Green Island; ASPA 109- Moa Island; ASPA 110—Lynch Island; ASPA 111—Southern Powell Island; ASPA 112—Coopermine Peninsula; ASPA 113—Litchfield Island; ASPA 114—North Coronation Island; ASPA 115—Lagotellerie Island; ASPA 116—New College Valley, Caughley Beach, Cape Bird; ASPA 117—Avian Island; ASPA 121—Cape Royds; ASPA 124—Cape Crozier; ASPA 125—Fildes Peninsula; ASPA 126—Byers Peninsula; ASPA 127—Haswell Island; ASPA 128—Western Shore of Admiralty Bay; ASPA 129—Rothera Point, Adelaide Island; ASPA 132—Potter Peninsula; ASPA 133—Harmony Point, Nelson Island; ASPA 134 Cierva Point, Danco Coast; SPA 135—Bailey Peninsula; ASPA 136—Clark Peninsula; ASPA 139—Biscoe Point, Anvers Island; ASPA 143—Marine Plain, Mule Peninsula; ASPA 149—Cape Shirreff; ASPA 150—Ardley Island; ASPA 158—Cape Adare; ASPA 160—Cape Geology; and, ASPA 171—Narebski Point. Access to these sites will be on an opportunistic basis. The applicant plans to conduct surveys and excavations of modern and abandoned penguin colonies. Ice-free areas will be surveyed on foot to locate evidence of breeding colony (pebbles and/or bone concentrations, rich vegetation). These sites will be sampled by placing a test pit, no more than 1 x 1m in size, and excavating in 5–10 cm levels until bedrock or non-ornithogenic are encountered. Upon completion of the excavation, test pits will be refilled and any vegetation disturbed on the surface will be replaced. Collected sediment will be taken to the laboratory for processing. These sediments will be washed through fine-mesh screens; all organic remains will be sorted and preserved for identification and analysis.

The applicant also plans to salvage whole or partial specimens, up to 10 of each species, of Antarctic seabirds and whole eggs that are found dead on beaches and at colonies. All of these specimens will be shipped to the home institution for identification and analysis.

Location

ASPA 102—Rookery Islands; ASPA 103—Ardery and Odbert Islands; ASPA 104—Sabrina Island; ASPA 105 Beaufort Island; ASPA 106 Cape Hallett; ASPA 107—Dion Islands; ASPA 108—Green Island; ASPA 109- Moa Island; ASPA 110—Lynch Island; ASPA 111—Southern Powell Island; ASPA 112—Coopermine Peninsula; ASPA 113—Litchfield Island; ASPA 114—North Coronation Island; ASPA 115—Lagotellerie Island; ASPA 116—New College Valley, Caughley Beach, Cape Bird; ASPA 117—Avian Island; ASPA 121—Cape Royds; ASPA 124—Cape Crozier; ASPA 125—Fildes Peninsula; ASPA 126—Byers Peninsula; ASPA 127—Haswell Island; ASPA 128—Western Shore of Admiralty Bay; ASPA 129—Rothera Point, Adelaide Island; ASPA 132—Potter Peninsula; ASPA 133—Harmony Point, Nelson Island; ASPA 134 Cierva Point, Danco Coast; SPA 135—Bailey Peninsula; ASPA 136—Clark Peninsula; ASPA 139—Biscoe Point, Anvers Island; ASPA 143—Marine Plain, Mule Peninsula; ASPA 149—Cape Shirreff; ASPA 150—Ardley Island; ASPA 158—Cape Adare; ASPA 160—Cape Geology; and, ASPA 171—Narebski Point.

DATES: October 1, 2012 to September 30, 2017.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2012–10490 Filed 5–1–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Reaching Zero: Actions to Eliminate Substance-Impaired Driving Forum

The National Transportation Safety Board (NTSB) will convene a Public Forum to address Substance-Impaired Driving which will begin at 8:30 a.m., Tuesday, May 15, 2012. NTSB Chairman Deborah A.P. Hersman will chair the two-day forum and all five Board Members will participate. The forum is open to all and free to attend (there is no registration).

Substance-impaired driving kills over ten thousand Americans every year and injures many more. Over 90 percent of all transportation deaths occur on our roads and one-third of these fatalities involve impairment from alcohol or drugs.

Since the invention of the automobile, policymakers, law enforcement, safety activists, and communities have struggled with how to stop substance-impaired driving; and it has been a major NTSB concern for more than 40 years. The agency has conducted special safety studies and produced dozens of accident reports generating over 100 safety recommendations on the issue. However, the Board has not made a new recommendation on substance-impaired driving in a decade. During that time, traffic deaths from all causes have dropped, but the percentage of those killed by a substance-impaired driver has remained unchanged.

The forum will identify the most effective, data-driven, science-based actions needed to ''reach zero'' accidents resulting from substance-impaired driving. This includes taking a fresh look at the Board's previous work and assessing the need for updated or new safety recommendations. Panels will critically examine the knowledge, interventions, and public policy considerations needed to address this national safety problem aggressively.

All of these areas will be explored through expert panelists including representatives of federal, state, and local governments; leading researchers, law enforcement, the judiciary, industry, treatment experts, and

advocacy groups. At the conclusion of all presentations for each topic area, presenters will take part in a question and answer discussion with Board Members and NTSB staff.

Below is the preliminary forum agenda:

Tuesday, May 15

—Welcome and Opening Remarks
—Session One: The Current State of Affairs
- Panel One: The Substance
- Panel Two: The Problem

—Session Two: Current Interventions
- Panel Three: Education and Outreach
- Panel Four: Enforcement
- Panel Five: Consequences

Wednesday, May 16

—Session Three: Further Intervention Opportunities
- Panel Six: Prevention
- Panel Seven: International Perspective

—Session Four: Next Steps
- Panel Eight: Actions Needed to Reach Zero

—Closing Remarks

A detailed agenda and list of participants will be released closer to the date of the event. The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza SW., Washington, DC The public can view the forum in person or by Webcast at *www.ntsb.gov*.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, May 11, 2012.

NTSB Media Contact: Peter Knudson, 202–314–6100 (Washington, DC), *Peter.Knudson@ntsb.gov*.

NTSB Forum Manager: Danielle Roeber, 202–314–6436 (Washington, DC), *roeberd@ntsb.gov*.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–10603 Filed 5–1–12; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0100]

Burnup Credit in the Criticality Safety Analyses of Pressurized Water Reactor Spent Fuel in Transportation and Storage Casks

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment Draft Spent Fuel Storage and Transportation Interim Staff Guidance (SFST–ISG), SFST–ISG–8, Revision 3, ''Burnup Credit in the Criticality Safety Analyses of PWR Spent Fuel in Transportation and Storage Casks.'' This SFST–ISG provides guidance for use by NRC staff when reviewing applications requesting burnup credit in the criticality safety analyses of pressurized water reactor spent nuclear fuel (SNF) in transportation packages and storage casks. The draft SFST–ISG proposes to revise the criticality safety review procedures and acceptance criteria contained in NUREG–1536, Revision 1, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility,'' NUREG–1567, ''Standard Review Plan for Spent Fuel Dry Storage Facilities,'' and NUREG–1617, ''Standard Review Plan for Transportation Packages for Spent Nuclear Fuel.''

DATES: Submit comments by June 1, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff 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, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0100. You may submit comments by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0100. 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: Mr. Andrew Barto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3336; email: *Andrew.Barto@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0100 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–2012–0100.
- *NRC's Interim Staff Guidance Web Site:* The SFST–ISG documents are also available online under the ''Spent Fuel Storage and Transportation'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*
- *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 SFST–ISG–8, Revision 3 is available electronically under ADAMS Accession No. ML12115A303.
- *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–2012–0100 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your

request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC issues SFST–ISGs to communicate insights and lessons learned and to address emergent issues not covered in SFST Standard Review Plans (SRPs). In this way, the NRC staff and stakeholders may use the guidance in an SFST–ISG document before it is incorporated into a formal SRP revision.

The NRC staff has developed draft SFST–ISG–8, Revision 3 to (a) incorporate the results of burnup credit criticality safety research performed since the last SFST–ISG–8 revision in 2002 into the limits for the licensing basis, (b) provide recommendations regarding advanced isotopic depletion and criticality code validation techniques, (c) provide recommendations regarding credit for fission product neutron absorbing nuclides in the criticality analysis for SNF systems, (d) add a recommendation for an optional misload analysis coupled with additional administrative SNF system loading procedures, in lieu of a direct burnup measurement, and (e) make miscellaneous and editorial changes.

Proposed Action

By this action, the NRC is requesting public comments on draft SFST–ISG–8, Revision 3. This SFST–ISG proposes certain revisions to NRC guidance on implementation of the requirements in Title 10, Parts 71 and 72, of the Code of Federal Regulations. The NRC staff will make a final determination regarding issuance of the SFST–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 19th day of April 2012.

For the Nuclear Regulatory Commission.

Brooke D. Poole,

Acting Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–10618 Filed 5–1–12; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before July 2, 2012.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The Peace Corps' Press Office uses the Hometown News Release Form to collect information about a Peace Corps invitee's decision to serve and their local newspapers.

Method: The Peace Corps currently emails the Hometown News Release Form to invitees. The respondent returns the form by email. The Hometown News Release Form will be available through the Peace Corps' new volunteer delivery and support system. The new method will replace sending the form by email.

Title: Hometown News Release Form.

OMB Control Number: 0420–pending.

Type of information collection: Existing collection in use without an OMB control number.

Affected public: Individuals or households.

Respondents' obligation to reply: Voluntary.

Burden to the public:

(a) Estimated number of respondents.	1,000
(b) Frequency of response	one time
(c) Estimated average burden per response.	15 minutes
(d) Estimated total reporting burden.	250 hours
(e) Estimated annual cost to respondents.	$0.00

General description of collection: This information is used to inform reporters from local and college newspapers, as well as radio and television stations about an invitee's decision to serve in the Peace Corps. It helps notify the community that their neighbor or classmate will be gone for two years and also helps Peace Corps recruit the next generation of Peace Corps volunteers.

Request For Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC on April 27, 2012.

Garry W. Stanberry,

Acting Associate Director, Management.

[FR Doc. 2012–10611 Filed 5–1–12; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, *copies available from:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Mutual Fund Interactive Data; SEC File No. 270–580; OMB Control No. 3235–0642.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Open-end management investment companies (''funds'') are required to submit to the Commission information included in their registration statements, or information included in or amended by post-effective amendments thereto, in response to Items 2, 3, and 4 (''risk/return summary information'') of Form N–1A (17 CFR 239.15A and 274.11A) in interactive data format and to post it on their Web sites, if any, in interactive data form. In addition, funds are required to submit an interactive data file to the Commission for any form of prospectus filed pursuant to rule 497(c) or (e) (17 CFR 230.497) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that

includes risk/return summary information that varies from the registration statement and to post the interactive data file on their Web sites, if any.

The title for the collection of information for submitting risk/return summary information in interactive data format is ''Mutual Fund Interactive Data.'' This collection of information relates to regulations and forms adopted under the Securities Act, the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that set forth disclosure requirements for funds and other issuers. The purpose of the Mutual Fund Interactive Data requirements is to make risk/return summary information easier for investors to analyze and to assist in automating regulatory filings and business information processing.

Funds are required to file an initial registration statement on Form N–1A and to update that registration statement annually. The Commission estimates that each fund will submit one interactive data document as an exhibit to a registration statement or a post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3 or 4 annually. In addition, based on a review by Commission staff of Mutual Fund Interactive Data submissions in calendar year 2011, the Commission estimates that 33% of funds will provide risk/return summary information as interactive data in additional filings submitted pursuant to rule 485(b) (17 CFR 230.485(b)) or rule 497 under the Securities Act annually.

The Commission estimates that the total annual hour burden associated with tagging risk/return summary information is approximately 11 hours. Based on estimates of 9,800 funds each submitting one interactive data document as an exhibit to a registration statement or post-effective amendment thereto and 3,200 funds submitting an additional interactive data document as an exhibit to a filing pursuant to rule 485(b) or rule 497, each incurring 11 hours per year on average, the Commission estimates that, in the aggregate, the tagging of risk/return summary information will result in approximately 143,000 annual burden hours. In addition, the Commission estimates that funds will require an average of approximately one burden hour to post interactive data to their Web sites. Based on estimates of 9,800 funds each posting one interactive data document as an exhibit to a registration statement or post-effective amendment thereto and 3,200 funds posting an additional interactive data document as an exhibit to a filing pursuant to rule 485(b) or rule 497, each incurring one burden hour per year on average, the Commission estimates that, in the aggregate, Mutual Fund Interactive Data Web site posting requirements will result in approximately 13,000 annual burden hours.

The Commission estimates that the average cost burden per fund is $841 per year. Based on the estimate of 9,800 funds using software and/or consulting services at an annual cost of $841, the Commission estimates that, in the aggregate, the total external costs to the industry will be approximately $8.2 million.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information under the Mutual Fund Interactive Data requirements is mandatory for all funds. Responses to the disclosure requirements will not be kept confidential. 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 public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 26, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10545 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30055; File No. 812–13927]

Invesco Total Property Market Income Fund, et al.; Notice of Application

April 26, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred shares that such investment companies may issue.

APPLICANTS: Invesco Total Property Market Income Fund (the ''Property Fund'') and Invesco Advisers, Inc. (together, the ''Applicants'').

DATES: *Filing Dates:* The application was filed on July 22, 2011 and amended on December 22, 2011.

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 May 21, 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, 1555 Peachtree Street NE., Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Mary Kay Frech, 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 for 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 Property Fund is a closed-end management investment company registered under the Act and is organized as a Delaware statutory trust.[1] The Property Fund's primary investment objective will be to provide a high level of current income. It is currently contemplated that the common shares of the Property Fund and the common shares of additional Funds will be listed on a national securities exchange as defined in section 2(a)(26) of the Act (each, an ''Exchange''). The Property Fund currently does not intend to issue any preferred shares, but may do so in the future. Applicants believe that investors in the common shares of the Property Fund may prefer an investment vehicle that provides regular/monthly distributions and a steady cash flow.

2. Invesco Advisers, Inc., a registered investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''), will serve as the Property Fund's investment adviser. Each Fund will be advised by investment advisers that are registered under the Advisers Act.

3. Applicants represent that, before any Fund implements a proposed distribution policy with respect to its common shares in reliance on the order, the Fund's board of trustees or directors (the ''Board''), including a majority of the members of the Board who are not ''interested persons'' of the respective Fund, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), will approve the Fund's adoption of the proposed distribution policy. Applicants represent that the Board will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Board should adopt and implement the proposed distribution policy. Applicants state that, in particular, the Board, including the Independent Trustees, will review information regarding the purpose and terms of the proposed distribution policy, any reasonably foreseeable material effect of such policy on the Fund's long-term total return (in relation to market price and net asset value per common share (''NAV'')), the relationship between such Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV), and whether the rate of distribution will exceed such Fund's expected total return (in relation to NAV). Applicants represent that the Independent Trustees also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of such policy. Applicants state that, after considering such information, the Board of the relevant Fund, including the Independent Trustees, will only approve a distribution policy with respect to the Fund's common shares (the ''Plan''), if the Board, including the Independent Trustees, determines that the Plan is consistent with the Fund's investment objective(s) and in the best interests of the Fund's common shareholders.

4. Applicants state that the purpose of any Plan will be to permit a Fund to provide its common shareholders with periodic distributions as nearly equal as practicable and any required special distributions over the course of each year. Applicants represent that, under the Plan of a Fund, such Fund will distribute to its respective common shareholders a fixed percentage of the market price of such Fund's common shares at a particular point in time, or a fixed percentage of NAV at a particular time or a fixed amount per common share, any of which may be adjusted from time to time. Applicants state that the minimum annual distribution rate with respect to such Fund's common shares would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar or taxable year and to enable the Fund to comply with the distribution requirements of Subchapter M and section 4982 of the Internal Revenue Code of 1986, as amended (the ''Code'') for the calendar or taxable year, each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that, in conjunction with approving a Plan, the Board of each Fund will also approve the Fund's adoption of compliance policies and procedures under rule 38a–1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to each Fund's shareholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 and by condition 2(a) below, and that all other written communications by the Fund or its agents described in condition 3(a) below about the distributions under the Plan include the disclosure required by condition 3(a) below, and (ii) require each such Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for the Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the 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.

3. Applicants state that the one of the concerns leading to the enactment of

[1] Applicants request that any order issued granting the relief requested in the application also apply to each registered closed-end investment company advised by Invesco Advisers, Inc. (including any successor in interest), or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with Invesco Advisers, Inc. (any such entity, including Invesco Advisers, Inc., the ''Adviser) that seeks in the future to rely on the order. The Property Fund is the only closed-end investment company that currently intends to rely on the order. Any closed-end investment company that relies on the order in the future will comply with the terms and conditions of the application (such investment companies, together with the Property Fund, the ''Funds''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

section 19(b) and adoption of rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to shareholders and IRS Form 1099–DIV, which is sent to each common and preferred shareholder who received distributions during a particular year (including shareholders who have sold shares during the year).

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them will adopt compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) of the Act and rule 19b–1 were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds often trade in the marketplace at a discount to the funds' NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1 and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and, accordingly, would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force the fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common shares and preferred shares outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred share dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred shares to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred shares issued by a closed-end fund. Applicants assert that such distributions are either fixed or are determined in periodic auctions or remarketings by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred shares, which entitle a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, are priced based upon their liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for and do not expect the liquidation value of their shares to change.

12. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from section

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares (if any).

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

1. *Compliance Review and Reporting.* The Fund's chief compliance officer will (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. *Disclosures to Fund Shareholders.*

(a) Each 19(a) Notice disseminated to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income;' '' [3] and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.'' Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

(i) Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) Include the disclosure required by condition 2(a)(ii)(1) above;

(iii) State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

(iv) Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

(c) Each report provided to shareholders under rule 30e–1 under the Act, and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. *Disclosure to Common Shareholders, Prospective Common Shareholders and Third Parties.*

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

4. *Delivery of 19(a) Notices to Beneficial Owners.* If a broker, dealer, bank or other person (''financial intermediary'') holds common shares issued by a Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice

[3] The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. *Additional Board Determinations for Funds Whose Common Shares Trade at a Premium.*

If:

(a) The Fund's common shares have traded on the Exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it including its consideration of the factors listed in condition 5(b)(i)(2) above and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. *Public Offerings.* The Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin off or reorganization of the Fund; or

(c) An offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[4] expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;[5] and

(ii) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares that such Fund may issue.

7. *Amendments to Rule 19b–1.*

The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10569 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

[4] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

LocatePlus Holdings Corporation; Order of Suspension of Trading

April 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LocatePlus Holdings Corporation (''LocatePlus'') because it has not filed any periodic reports since the period ended March 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer. Therefore, it is ordered, pursuant to Section 12(k) of the Exchange Act, that trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer, is suspended for the period from 9:30 a.m. EDT on April 30, 2012, through 11:59 p.m. EDT on May 11, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–10671 Filed 4–30–12; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66861; File No. SR–Phlx–2012–28]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of a Proposed Rule Change Relating to the Listing and Trading of MSCI EAFE Index Options

April 26, 2012.

I. Introduction

On March 1, 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 amend certain of its rules to provide for the listing and trading of options on the MSCI EAFE Index. The proposed rule change was published for comment in the **Federal Register** on March 15, 2012.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The proposed rule change would amend Phlx Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to permit the Exchange to list and trade P.M. cash-settled, European-style options, including FLEX [4] options and LEAPS,[5] on the MSCI EAFE (Europe, Australasia, and the Far East) Index, which is described below. The proposal would also create new Phlx Rule 1109A, entitled ''MSCI EAFE Index,'' which would provide additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc. (''MSCI''), which maintains the index.

As described by the Exchange, the MSCI EAFE Index is a free float-adjusted market capitalization index consisting of large and midcap components from countries classified by MSCI as developed (excluding the U.S. and Canada), and is designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). The index consists of component securities from markets in the following 22 areas: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

As further described by the Exchange, the MSCI EAFE Index is calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the close of the last market on which the components are traded. The level of the index reflects the free float-adjusted market value of the component stocks relative to a particular base date, and the methodology used to calculate the value of the index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.[6] As of December 31, 1969, when the MSCI EAFE Index was launched, its base index value was 100. On June 1, 2011, the index value was 1727.187.[7]

The MSCI EAFE Index is monitored and maintained by MSCI. According to the Exchange, adjustments to the MSCI EAFE Index are made on a daily basis with respect to corporate events and dividends. The index is generally updated on a quarterly basis to reflect amendments to shares outstanding and free float. Full index reviews are conducted on a semi-annual basis for purposes of rebalancing the index.

Options on the MSCI EAFE Index, as introduced by the proposed rule change, would be European-style and P.M. cash-settled. The settlement value for expiring options would be based on the closing prices of the component stocks on the last trading day prior to expiration. The expiration date would be the Saturday following the third Friday of the expiration month. The Options Clearing Corporation would be the issuer and guarantor.

Phlx Rule 1009A(d) provides that the Exchange may trade options on a broad-based index [8] pursuant to Rule 19b–4(e) under the Act, when certain conditions are satisfied.[9] The MSCI EAFE Index is a broad-based index. However, it does not meet all the conditions of Rule 1009A(d). The proposed rule change would establish listing standards that are specific to MSCI EAFE Index options, to be set forth in new Rule 1009A(h).

Specifically, proposed Rule 1009A(h)(i) would provide that the Exchange may trade options on the MSCI EAFE Index if each of the following conditions is satisfied:

(1) The index is broad-based;

(2) Options on the index are designated as P.M.-settled index options;

(3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;

(4) The index consists of 500 or more component securities;

(5) All the component securities of the index have a market capitalization of greater than $100 million;

(6) No single component security accounts for more than 15% of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than 50% of the weight of the index;

(7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index;

(8) The current index value is widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;

(9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and

(10) The Exchange has written procedures in place for the surveillance of trading of options on the index.

After the initial listing of options on the MSCI EAFE Index under the above conditions, the following maintenance standards, as set forth in proposed Rule 1009A(h)(ii), would apply: The requirements set forth in proposed Rule 1009A(h)(i)(1), (2), (3), (4), (7), (8), (9), and (10) must continue to be satisfied. The requirements set forth in proposed Rule 1009A(h)(i)(5) and (6) must be satisfied only as of the first day of January and July in each year. In addition, the total number of component securities in the index could not increase or decrease by more than 35% from the number of component securities in the index at the time of its initial listing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66569 (March 9, 2012), 77 FR 15409 (''Notice'').

[4] FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. *See* Exchange Rules 1079 and 1101A.

[5] LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

[6] Details regarding the methodology for calculating the MSCI EAFE Index can be found in the Notice, *supra* note 3, and at *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf.*

[7] According to the Exchange, static data regarding the MSCI EAFE Index is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (''Bloomberg''), FactSet Research Systems, Inc. (''FactSet'') and Thomson Reuters (''Reuters''). Real time data is distributed at least every 15 seconds, using MSCI's real-time calculation engine, to Reuters, Bloomberg, SIX Telekurs and FactSet.

[8] A broad-based index is defined in Exchange Rule 1000A(b)(11) as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[9] This provision is an exception to Exchange Rule 1009A(a), which provides generally that the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approved by the Commission under Section 19(b) of the Act.

The Exchange proposed to apply position limits of 25,000 contracts on the same side of the market to options on the MSCI EAFE Index.[10] All position limit hedge exemptions would apply. In addition, the Exchange proposed to amend Rule 1079(d)(1) to note that, with respect to FLEX options on the MSCI EAFE Index, the same number of contracts, 25,000, would apply with respect to the position limit. The Exchange also proposed to apply existing index option margin requirements for the purchase and sale of options on the MSCI EAFE Index.[11]

Further, as proposed, Exchange rules that apply to the trading of options on broad-based indexes also would apply to options on the MSCI EAFE Index.[12] The trading of these options would also be subject to, among other provisions, Exchange rules governing margin requirements and trading halt procedures for index options.[13]

Finally, the Exchange proposed to add Rule 1109A, entitled ''MSCI EAFE Index,'' to provide additional detailed information pertaining to the index as required by the licensor, including, but not limited to, liability and other representations on the part of MSCI.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of options on the MSCI EAFE Index will broaden trading and hedging opportunities for investors by creating a new options instrument based on an index designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). Because the MSCI EAFE Index is a broad-based index comprised of actively-traded, well-capitalized stocks, the trading of options on the MSCI EAFE Index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the MSCI EAFE Index, are consistent with the Act, for the reasons discussed below.

The Commission notes that proposed Rule 1009A(h) would require that the MSCI EAFE Index consist of 500 or more component securities. The component securities of the MSCI EAFE Index are listed and traded on 22 different markets. Further, for options on the MSCI EAFE Index to trade, each of the minimum of 500 component securities would need to have a market capitalization of greater than $100 million. Moreover, the Commission notes that, according to the Exchange, the MSCI EAFE Index is comprised of more than 900 components, all of which must meet the market capitalization requirement to permit an option on the index to begin trading.

The Commission notes that the proposed listing standards for options on the MSCI EAFE Index would not permit any single security to comprise more than 15% of the weight of the index, and would not permit a group of five securities to comprise more than 50% of the weight of the index. The Commission believes that, in view of the number of countries represented in the index and the requirement on the number of securities in the index and the market capitalization, this concentration standard is consistent with the Act. Further, the Exchange stated that, of the more than 900 components that comprise the MSCI EAFE Index, no single component comprises more than 5% of the index.

The Exchange has represented that it has an adequate surveillance program in place for options on the MSCI EAFE Index, and intends to apply the same procedures for surveillance that it applies to its other index options. The Exchange also is a member of the Intermarket Surveillance Group and an affiliate member of the International Organization of Securities Commissions, and has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. The Commission notes that, consistent with the Exchange's generic listing standards for broad-based index options, non-U.S. component securities of the MSCI EAFE Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 20% of the weight of the index.

In addition, the Commission notes that the proposed listing standards require the current value of the MSCI EAFE Index to be widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange. Further, the standards require that the Exchange reasonably believe it has adequate system capacity to support the trading of options on the MSCI EAFE Index. The Exchange stated that these requirements will be met.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that Exchange rules that apply to the trading of options on broad-based indexes would apply to options on the MSCI EAFE Index.[17] In addition, the Exchange has stated that options on the MSCI EAFE Index would be subject to the same rules that govern all Exchange index options, including rules that are designed to protect public customer trading.[18]

The Commission further believes that the Exchange's proposed position and exercise limits, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the

[10] The exercise limit would also be 25,000 contracts as per Exchange Rule 1002A.

[11] *See* Exchange Rule 721. For additional proposed requirements for options on the MSCI EAFE Index, including strike price intervals, minimum tick size, and series openings, *see* Notice, *supra* note 3.

[12] *See generally* Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[13] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[14] 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).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

[17] *See generally* Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[18] *See* Notice, *supra* note 3 and Exchange Rules 1024–1029. *See also supra* notes 12 and 13.

[19] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–Phlx–2012–28) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10538 Filed 5–1–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66863; File No. SR–EDGA–2012–15]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees Associated With Receipt of the EDGA Book Feed

April 26, 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 April 19, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule applicable to Members [3] and non-Members of the Exchange to assess market data fees for internal and external distribution of the EDGA book feed (''EDGA Book Feed''). The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–19,[4] the Exchange made available the EDGA Book Feed, a data feed that contains all orders for securities trading on the Exchange, including all displayed orders for listed securities trading on EDGA, order executions, order cancellations, order modifications, order identification numbers and administrative messages. The EDGA Book Feed offers real-time data, thereby allowing Member firms to more accurately price their orders based on EDGA's view of the depth of book information. It also provides Members an ability to track their own orders from order entry to execution. It is available in both unicast and multicast format. Upon the Exchange's initial offering of the EDGA Book Feed, such service was provided at no cost. In SR–EDGA–2011–19, the Exchange stated that ''[s]hould EDGA determine to charge fees associated with the EDGA Book Feed, EDGA will submit a proposed rule change to the Commission in order to implement those fees.'' [5] This proposal is designed to implement fees for the receipt of the EDGA Book Feed.

The proposed rule change to the EDGA fee schedule codifies such a fee associated with the receipt of the EDGA Book Feed. The Exchange, like other market centers and other data providers, intends to assess fees for entities that receive real-time market data directly or indirectly and act as either internal or external distributors, as discussed below. A ''Distributor'' of Exchange data is any entity that receives an EDGA Book Feed directly from the Exchange or indirectly through another entity and then distributes such data either internally (within that entity) (''Internal Distributor'') or externally (outside that entity) (''External Distributor''). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of the EDGA Exchange. The amount of the monthly fees would depend on whether the distributor is an ''Internal Distributor'' or ''External Distributor.'' Internal Distributors are proposed to be charged $500 per month and External Distributors are proposed to be charged $2,500 per month. The fee paid by an External Distributor includes the Internal Distributor Fee and thus allows an External Distributor to provide data both internally (i.e., to users within their own organization) and externally (to users outside their own organization).

Additionally, Distributors will only pay one distributor fee, regardless of the number of locations or users to which the feed is received or distributed. In addition, neither Distributors nor their end-users will be charged per-user device fees when used to receive the EDGA Book Feed nor will they be charged per-user display fees when used to present the EDGA Book Feed.

The Exchange proposes to implement this rule change on May 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act [6] in general and furthers the objectives of Section 6(b)(4) [7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients because the service is optional and fees charged for the EDGA Book Feed will be the same for both Members and non-Members. The fees are not unreasonably discriminatory and are equitably allocated. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[8] The Exchange proposes charging External Distributors more than Internal Distributors because of higher administrative costs associated with monitoring External Distributors ongoing reporting, as provided in the Direct Edge Data Vendor Agreement and

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] Securities Exchange Act Release No. 64792 (July 1, 2011), 76 FR 39959 (July 7, 2011) (SR–EDGA–2011–19).

[5] *Id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by NASDAQ Exchange (''NASDAQ''), NASDAQ OMX BX (''BX''), and NASDAQ OMX PSX (''PSX''). *See* Nasdaq Rule 7019(b). *See also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110). *See also* Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

market data requirements referenced therein. The Exchange believes that the fees established for the EDGA Book Feed are reasonable and fair in light of alternatives offered by other market centers.[9] For example, PSX charges its data recipients of its book feed, PSX TotalView, a $1,000 monthly fee to receive its data feed directly from the Exchange. If the data recipient then distributes the data, it pays an ''internal'' or ''external'' distributor fee depending on the method of distribution. These fees are on top of the $1,000 monthly fee and amount to an additional $500/month for internal distributors and $1250/month for external distributors. This would amount to total costs of $1,500 monthly for internal distributors and $2,250 monthly for external distributors that receive their feed directly from PSX. BX charges its data recipients and internal/external distributors the same fees for its book feed, BX TotalView. Finally, NASDAQ charges $1,000/month for internal distributors of NASDAQ listed-security depth entitlements and $500/month for internal distributors of non NASDAQ-listed security depth entitlements; for external distributors, NASDAQ charges $2,500/month for NASDAQ-listed security depth entitlements and $1,250/month for external distributors of non NASDAQ-listed security depth entitlements. These are on top of NASDAQ's direct access fees of $2,000/month for NASDAQ listed-security depth entitlements and $1,000/month for non NASDAQ-listed security depth entitlements.[10]

Revenue generated from such fees will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative service at a reasonable rate, structured in a manner comparable to and consistent with other market centers who provide similar market data products.[11]

The Exchange also believes that the proposed fees are consistent with Section 6(b)(5) of the Act,[12] as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. EDGA believes that this proposal is in keeping with those principles by promoting increased transparency through the codification of uniform fees for the EDGA Book Feed for all users and by clarifying the availability of the EDGA Book Feed to various market participants. In addition, EDGA has made a voluntary decision to make this Book Feed available. EDGA is not required by the Act in the first instance to make the data available. EDGA has chosen to make the Book Feed available to improve market quality, attract order flow, and increase transparency. It will continue to make such data available until such time as it changes its rule.

The Exchange also believes that the proposal is consistent with the goals of Regulation NMS,[13] namely facilitating efficiency and competition. Efficiency is promoted when Members who do not need the EDGA Book Feed data are not required to receive (and pay for) such data. The Exchange also believes that efficiency is promoted when Members may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data. Competition is promoted as the Exchange cannot set unreasonable fees without losing business to its competitors.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed fees for this service, the Exchange would be providing one similar to alternatives offered by other market centers.[15] The existence of such alternatives ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Thus, the EDGA Book Feed will promote competition if it succeeds in providing market participants with viable and cost-effective alternatives which drive the market to continually improve products and services to cater to customers' data needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–15 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–EDGA–2012–15. This file

[9] *Id.*

[10] *See* Nasdaq Rule 7019(b).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2006), 70 FR 37496 (June 29, 2005).

[14] *See* infra discussion in section II.B. ''Self-Regulatory Organization's Statement on Burden on Competition.''

[15] See Nasdaq Rule 7019(b). See also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110). *See also* Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 19b–4(f)(2).

number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2012–15, and should be submitted on or before May 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10540 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66865; File No. SR–MSRB–2012–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Establishment of a Subscription to Historical Information and Documents Submitted to the MSRB's Short-Term Obligation Rate Transparency System

April 26, 2012.

I. Introduction

On February 27, 2012, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a subscription to historical information and documents submitted to the MSRB's Short-Term Obligation Rate Transparency System. The proposed rule change was published for comment in the **Federal Register** on March 12, 2012.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Background and Description of Proposal

In January 2009, the MSRB implemented an electronic system to collect and disseminate information about securities bearing interest at short-term rates and making such information and documents publicly available through a dissemination service (''SHORT System''). In May 2011, MSRB enhanced the SHORT System to add documents to the information collected and disseminated. Information and documents collected by the SHORT System are made available for free on the MSRB's Electronic Municipal Market Access (EMMA®) Web site pursuant to the EMMA short-term obligation rate transparency service.[4] MSRB also makes the information and documents collected by the SHORT System available through a subscription service, which is available for an annual fee of $10,000. The proposed rule change would clarify that subscribers to the SHORT subscription service would be able to access historical data for the most recent six months on a daily rolling basis and establish purchase agreements for historical products consisting of twelve consecutive complete month data sets of the documents and related indexing information collected by the SHORT System (the ''SHORT Historical Data Product'') dating to January 30, 2009.[5] The purpose of the proposed rule change is to provide another avenue for obtaining the information and documents provided through the SHORT subscription service, which is currently only available on a current basis through the real-time data stream. A more complete description of the proposal is contained in the Commission's Notice.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.[6] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[7]

The proposed rule change is also consistent with Section 15B(b)(3)(B)(ii) of the Exchange Act, which provides that the MSRB shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under Section 19(b).[8]

The Commission believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would establish a subscription service that would make information collected by the SHORT System available to market participants as an additional avenue for obtaining information that is submitted to the EMMA short-term obligation rate transparency service. Broad access to the information collected by the SHORT

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66521 (March 6, 2012), 77 FR 14572 (the Commission's Notice'').

[4] *See* Securities Exchange Act Release No. 59212 (January 7, 2009).

[5] The SHORT Subscriber Manual provides a complete, up-to-date listing of all data elements made available through the SHORT Subscription Service. The information provided in the SHORT Historical Data Product are the same as those currently provided in the SHORT Subscription Service.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–4(b)(2)(C).

[8] 15 U.S.C. 78*o*–4(b)(3)(B)(ii).

System, in addition to the public access through the EMMA short-term obligation rate transparency service web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about SHORT System disclosure information. The proposed rule change also provides for commercially reasonable fees to partially offset costs associated with operating the SHORT System and producing and disseminating information products to purchasers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[9] that the proposed rule change (SR–MSRB–2012–03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10542 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66867; File No. SR–CME–2012–13]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add Reporting Requirements for FCM Clearing Members

April 26, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2012, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes including certain additional reporting requirements for futures commission merchant (''FCM'') clearing members. The enhanced reporting requirements are designed to further safeguard customer funds held at the FCM level. The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME wants to impose additional reporting requirements for FCM clearing members pursuant to CME Rule 970.D. The new reporting requirements will require all FCM clearing members to file daily, segregated, secured 30.7 and ''sequestered'' (or customer cleared swaps) statements, as applicable, on a daily basis. The proposed effective date for this new requirement is May 1, 2012.

As further described in CME-issued Audit Information Bulletin 12–04, the enhanced reporting requirements are designed to further safeguard customer funds held at the FCM level. The proposed daily reporting requirements comport with the CFTC's DCO Core Principle F (Treatment of Funds), which requires each DCO to ''have standards and procedures designed to ensure the safety of member and participant funds.''

CME Audit Information Bulletin 12–04 constitutes the CME's proposed changes. CME also made a filing, CME Submission 12–112, with its primary regulator, the CFTC, with respect to the proposed changes.

CME believes the proposed changes are consistent with the requirements of the Act. First, CME, a derivatives clearing organization, is implementing the proposed changes in furtherance with applicable CFTC regulations and Commodity Exchange Act (''CEA''), which contains a number of provisions that are comparable to the policies underlying the Act, including, for example, promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. Second, CME believes the proposed changes are specifically designed to protect investors and the public interest because the requirements help safeguard customer funds held at the FCM level.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited and does not intend to solicit comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2012–13 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2012–13. 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 CME. 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–CME–2012–13 and should be submitted on or before May 23, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to CME.[4] Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest because the proposed rule change should allow CME to better monitor the financial status and risk management procedures of its clearing members.[5]

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request CME's operation as a DCO, which is subject to regulation by the CFTC under the CEA. This rule change is being made to enhance CME's efforts to protect investors who utilize its clearinghouse services through its FCM clearing members.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because the proposed rule change allows CME to implement the additional clearing member surveillance designed specifically to protect investors and the public interest.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–13) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2012–10544 Filed 5–1–12; 8:45 am]

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[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66866; File No. SR–MSRB–2012–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Establishment of Historical Data Subscription From Submissions to the MSRB Electronic Municipal Market Access System (''EMMA'')

April 26, 2012.

I. Introduction

On February 27, 2012, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a subscription containing historical documents and data obtained from submissions to the MSRB Electronic Municipal Market Access System (''EMMA''). The proposed rule change was published for comment in the **Federal Register** on March 12, 2012.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66522 (March 6, 2012), 77 FR 14574 (the ''Commission's Notice'').

II. Background and Description of Proposal

In June 2009, the MSRB implemented an electronic system for free public access to primary market disclosure documents and related information for the municipal securities market through EMMA (the ''Primary Market Disclosure Service'').[4] In July 2009, the MSRB implemented a permanent continuing disclosure service to receive electronic submissions of, and make publicly available access to, continuing disclosure documents and related information through EMMA (the ''Continuing Disclosure Service'').[5] EMMA provides subscription services, including the Primary Market Disclosure Subscription Service [6] and the Continuing Disclosure Subscription Service, that make documents and related indexing information available on a current basis to subscribers through a real-time data stream.[7] The proposed rule change would clarify that subscribers to the Primary Market Disclosure Service and Continuing Disclosure Service would be able to access historical data for the most recent six months on a daily rolling basis and establish purchase agreements for historical products consisting of twelve consecutive complete month data sets of the documents and related indexing information obtained through submissions to the Primary Market Disclosure Service (the ''Primary Market Disclosure Historical Product'') received since June 1, 2009 [8] and submissions to the Continuing Disclosure Service (the ''Continuing Disclosure Historical Product'') received since July 1, 2009.[9]

[4] *See* Securities Exchange Act Release No. 59966 (May 21, 2009).

[5] *See* Securities Exchange Release No. 59061 (December 5, 2008).

[6] The Primary Market Disclosure Subscription Service provides subscribers all primary market disclosure documents, including official statements, preliminary official statements, advance refunding documents (''primary market disclosure documents''), and any amendments thereto, together with related indexing information, provided by submitters through EMMA, for an annual fee of $20,000.

[7] The Continuing Disclosure Subscription Service provides subscribers all continuing disclosure documents, together with related indexing information, provided by submitters through EMMA, for an annual fee of $45,000.

[8] The EMMA Primary Market Subscriber Manual provides a complete, up-to-date listing of all data elements made available through the EMMA Primary Market Disclosure Subscription Service. The primary market disclosure documents and data elements provided in the Primary Market Disclosure Historical Product are the same as those currently provided in the EMMA Primary Market Disclosure Subscription Service.

[9] The EMMA Continuing Disclosure Subscriber Manual provides a complete, up-to-date listing of all data elements made available through the

Continued

The purpose of the proposed rule change is to provide historical products for the Primary Market Disclosure and Continuing Disclosure Subscription Services, which are currently only available on a current basis through the real-time data stream. A more complete description of the proposal is contained in the Commission's Notice.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.[10] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[11]

The proposed rule change is also consistent with Section 15B(b)(3)(B)(ii) of the Exchange Act, which provides that the MSRB shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under Section 19(b).[12]

The Commission believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would establish a subscription service that would make information collected by EMMA's Primary Market Disclosure Service and the Continuing Disclosure Service available to market participants through an additional avenue. Broad access to the information collected by EMMA, in addition to the public access through the EMMA web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about primary market disclosure information and continuing disclosure information. The proposed rule change also provides for commercially reasonable fees to partially offset costs associated with operating the Primary Market and Continuing Disclosure Services of EMMA and producing and disseminating information products to purchasers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[13] that the proposed rule change (SR–MSRB–2012–02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10543 Filed 5–1–12; 8:45 am]

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EMMA Continuing Disclosure Subscriber Manual. The continuing disclosure documents and data elements provided in the Continuing Disclosure Historical Product are the same as those currently provided in the EMMA Continuing Disclosure Subscription Service.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–4(b)(2)(C).

[12] 15 U.S.C. 78*o*–4(b)(3)(B)(ii).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66864; File No. SR–EDGX–2012–14]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees Associated With Receipt of the EDGX Book Feed

April 26, 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 April 19, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule applicable to Members[3] and non-Members of the Exchange to assess market data fees for internal and external distribution of the EDGX book feed (''EDGX Book Feed''). The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2011–18,[4] the Exchange made available the EDGX Book Feed, a data feed that contains all orders for securities trading on the Exchange, including all displayed orders for listed securities trading on EDGX, order executions, order cancellations, order modifications, order identification numbers and administrative messages. The EDGX Book Feed offers real-time data, thereby allowing Member firms to more accurately price their orders based on EDGX's view of the depth of book information. It also provides Members an ability to track their own orders from order entry to execution. It is available in both unicast and multicast format. Upon the Exchange's initial offering of the EDGX Book Feed, such service was provided at no cost. In SR–EDGX–2011–18, the Exchange stated that ''[s]hould EDGX determine to charge fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] Securities Exchange Act Release No. 64791 (July 1, 2011), 76 FR 39944 (July 7, 2011) (SR–EDGX–2011–18).

associated with the EDGX Book Feed, EDGX will submit a proposed rule change to the Commission in order to implement those fees.'' [5] This proposal is designed to implement fees for the receipt of the EDGX Book Feed.

The proposed rule change to the EDGX fee schedule codifies such a fee associated with the receipt of the EDGX Book Feed. The Exchange, like other market centers and other data providers, intends to assess fees for entities that receive real-time market data directly or indirectly and act as either internal or external distributors, as discussed below. A ''Distributor'' of Exchange data is any entity that receives an EDGX Book Feed directly from the Exchange or indirectly through another entity and then distributes such data either internally (within that entity) (''Internal Distributor'') or externally (outside that entity) (''External Distributor''). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of the EDGX Exchange. The amount of the monthly fees would depend on whether the distributor is an ''Internal Distributor'' or ''External Distributor.'' Internal Distributors are proposed to be charged $500 per month and External Distributors are proposed to be charged $2,500 per month. The fee paid by an External Distributor includes the Internal Distributor Fee and thus allows an External Distributor to provide data both internally (i.e., to users within their own organization) and externally (to users outside their own organization).

Additionally, Distributors will only pay one distributor fee, regardless of the number of locations or users to which the feed is received or distributed. In addition, neither Distributors nor their end-users will be charged per-user device fees when used to receive the EDGX Book Feed nor will they be charged per-user display fees when used to present the EDGX Book Feed.

The Exchange proposes to implement this rule change on May 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act [6] in general and furthers the objectives of Section 6(b)(4) [7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients because the service is optional and fees charged for the EDGX Book Feed will be the same for both Members and non-Members. The fees are not unreasonably discriminatory and are equitably allocated. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[8] The Exchange proposes charging External Distributors more than Internal Distributors because of higher administrative costs associated with monitoring External Distributors ongoing reporting, as provided in the Direct Edge Data Vendor Agreement and market data requirements referenced therein. The Exchange believes that the fees established for the EDGX Book Feed are reasonable and fair in light of alternatives offered by other market centers.[9] For example, PSX charges its data recipients of its book feed, PSX TotalView, a $1,000 monthly fee to receive its data feed directly from the Exchange. If the data recipient then distributes the data, it pays an ''internal'' or ''external'' distributor fee depending on the method of distribution. These fees are on top of the $1,000 monthly fee and amount to an additional $500/month for internal distributors and $1250/month for external distributors. This would amount to total costs of $1,500 monthly for internal distributors and $2,250 monthly for external distributors that receive their feed directly from PSX. BX charges its data recipients and internal/external distributors the same fees for its book feed, BX TotalView. Finally, NASDAQ charges $1,000/month for internal distributors of NASDAQ listed-security depth entitlements and $500/month for internal distributors of non NASDAQ-listed security depth entitlements; for external distributors, NASDAQ charges $2,500/month for NASDAQ-listed security depth entitlements and $1,250/month for external distributors of non NASDAQ-listed security depth entitlements. These are on top of NASDAQ's direct access fees of $2,000/month for NASDAQ listed-security depth entitlements and $1,000/month for non NASDAQ-listed security depth entitlements.[10]

Revenue generated from such fees will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative service at a reasonable rate, structured in a manner comparable to and consistent with other market centers who provide similar market data products.[11]

The Exchange also believes that the proposed fees are consistent with Section 6(b)(5) of the Act,[12] as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. EDGX believes that this proposal is in keeping with those principles by promoting increased transparency through the codification of uniform fees for the EDGX Book Feed for all users and by clarifying the availability of the EDGX Book Feed to various market participants. In addition, EDGX has made a voluntary decision to make this Book Feed available. EDGX is not required by the Act in the first instance to make the data available. EDGX has chosen to make the Book Feed available to improve market quality, attract order flow, and increase transparency. It will continue to make such data available until such time as it changes its rule.

The Exchange also believes that the proposal is consistent with the goals of Regulation NMS,[13] namely facilitating efficiency and competition. Efficiency is promoted when Members who do not need the EDGX Book Feed data are not required to receive (and pay for) such data. The Exchange also believes that efficiency is promoted when Members may choose to receive (and pay for) additional market data based on their own internal analysis of the need for

[5] *Id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by NASDAQ Exchange (''NASDAQ''), NASDAQ OMX BX (''BX''), and NASDAQ OMX PSX (''PSX''). *See* Nasdaq Rule 7019(b). *See also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110). *See also* Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December10, 2010) (SR–BX–2010–081).

[9] *Id.*

[10] *See* Nasdaq Rule 7019(b).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2006), 70 FR 37496 (June 29, 2005).

such data. Competition is promoted as the Exchange cannot set unreasonable fees without losing business to its competitors.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed fees for this service, the Exchange would be providing one similar to alternatives offered by other market centers.[15] The existence of such alternatives ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Thus, the EDGX Book Feed will promote competition if it succeeds in providing market participants with viable and cost-effective alternatives which drive the market to continually improve products and services to cater to customers' data needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2012–14 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–EDGX–2012–14. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2012–14, and should be submitted on or before May 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10541 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* infra discussion in section II.B. "Self-Regulatory Organization's Statement on Burden on Competition."

[15] See Nasdaq Rule 7019(b). See also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110). *See also* Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66862; File No. SR–ICEEU–2012–04]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change to Provide for a T+1 Settlement of the Initial Payment Related to the CDS Contracts Cleared by ICE Clear Europe Limited

April 26, 2012.

I. Introduction

On March 6, 2012, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR–ICEEU–2012–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on March 19, 2012.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

ICE Clear Europe proposed rule amendments that were intended to modify the terms of each of the various CDS Contracts cleared by ICE Clear Europe (iTraxx Contracts, Standard European Corporate, and Sovereign Contracts) to make the Initial Payment[3] date the first business day immediately following the trade date, provided that with respect to CDS Contracts that are accepted for clearing after the trade date, the Initial Payment date will be the date that is the first business day following the date when the CDS Contract is accepted for clearing. The

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–66581 (March 13, 2012), 77 FR 16105 (March 19, 2012).

[3] Initial Payment means, in relation to a CDS Contract, the payment, if any, specified as the "Initial Payment Amount" (or, in relation to certain CDS Contracts relating to indices, as the "Additional Amount") under the Contract Terms for such CDS Contract and, in relation to a Bilateral CDS Transaction, the payment, usually described therein as the "Initial Payment Amount" or "Additional Amount," payable by one party thereto to the other on the third business day after the trade date of such Bilateral CDS Transaction. *See* ICE Clear Europe Clearing Rules, Section 1, Rule 101.

Initial Payment under a CDS Contract is established at the time the contract is executed and may be payable from either the protection buyer to the protection seller or vice versa. Under the current ICE Clear Europe Rules (by way of the incorporated ISDA Credit Derivatives Definitions), and consistent with practice in the market for uncleared credit default swaps, the Initial Payment is required to be made on the third business day following the trade date. ICE Clear Europe proposed to amend the definition of Initial Payment in its Clearing Rules to provide instead that the Initial Payment is to be made on the first business day following the trade date (or, if the transaction is accepted for clearing after the trade date, the Initial Payment is to be made on the first business day following the date of acceptance for clearing). ICE Clear Europe believes that this change from T+3 settlement to T+1 settlement will reduce settlement risk for the clearinghouse and clearing members and improve margin efficiency (as margin requirements will no longer need to take into account the additional risk from a T+3 as opposed to a T+1 settlement rule). ICE Clear Europe's CDS Risk Committee approved the proposed rule changes.

The other proposed changes in the ICE Clear Europe Rules reflect updates to cross-references and defined terms and similar drafting clarifications, and do not affect the substance of the ICE Clear Europe Rules or cleared products.

III. Discussion

Section 19(b)(2)(B) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.

By accelerating the Initial Payment date, the proposed rule change will reduce settlement risk for the clearinghouse and clearing members and improve margin efficiency (as margin requirements will no longer need to take into account the additional risk from a T+3 as opposed to a T+1 settlement rule), thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions, and assuring the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe. As a result, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ICEEU–2012–04) be, and hereby is, approved.[8]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–10539 Filed 5–1–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2)(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7866]

Culturally Significant Objects Imported for Exhibition Determinations: ''American Encounters: Thomas Cole and the American Landscape''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''American Encounters: Thomas Cole and the American Landscape,'' imported from abroad by the High Museum of Art for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Crystal Bridges Museum of American Art in Bentonville, Arkansas from on or about May 12 until on or about August 13, 2012; the High Museum of Art in Atlanta, Georgia from on or about September 22, 2012 until on or about January 6, 2013; and possible additional exhibitions or venues yet to be determined; is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 27, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–10598 Filed 5–1–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITS PAC) will hold a meeting on May 24, 2012, from 8:00 a.m. to 4:00 p.m. (EDT), in conference room #7 of the U.S. Department of Transportation (U.S. DOT) Conference Center on the lobby level of the U.S. DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590.

The ITS PAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-chartered on January 23, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office, the ITS PAC makes recommendations to the Secretary regarding ITS Program needs, objectives,

plans, approaches, content, and progress.

The following is a summary of the meeting tentative agenda: (1) Welcome by RITA Acting Administrator; (2) Meeting purpose and agenda review; (3) Introduction of committee members and background; (4) Committee expectations and individual goals; (5) Briefings on various aspects of Connected Vehicle research; (6) Network security discussion; (7) Key ITS Research Program Issues; and (8) Timeline for future committee work.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Since access to the U.S. DOT building is controlled, non-committee members who plan to attend the meeting must notify Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126 not later than May 17, 2012. Individuals attending the meeting must report to the 1200 New Jersey Avenue entrance of the U.S. DOT building for admission. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Glasscock not later than May 17, 2012.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS Joint Program Office requests that written comments be submitted prior to the meeting.

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Dated: Issued in Washington, DC, on the 26th day of April 2012.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2012–10586 Filed 5–1–12; 8:45 am]

BILLING CODE 4910–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notification provides the date, location, and agenda for the meeting.

DATE AND LOCATION: The NPOAG ARC will meet on May 16, 2012. The meeting will take place in the Garden Pavilion C room at the Hilton Garden Inn located on 815 E. Mall Drive in Rapid City, SD 57701. The phone number is 605–791–9000. The meeting will be held from 8:00 a.m. to 5:00 p.m. on May 16, 2012. This NPOAG meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, email: *Barry.Brayer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106–181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairperson of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on; implementation of Public Law 106–181; quiet aircraft technology; other measures that might accommodate interests to visitors of national parks; and at the request of the Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

Agenda for the May 16, 2012 NPOAG Meeting

The agenda for the meeting will include, but is not limited to, an update on ongoing Air Tour Management Program projects and discussion on implementing the new amendments to NPATMA that were included in the FAA Modernization and Reform Act of 2012.

Attendance at the Meeting and Submission of Written Comments

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend please contact the person listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may be made to accommodate all attendees. Written comments regarding the meeting will be accepted directly from attendees or may be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Record of the Meeting

If you cannot attend the NPOAG meeting, a summary record of the meeting will be made available under the NPOAG section of the FAA ATMP web site at: *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/parks_overflights_group/minutes.cfm* or through the Special Programs Staff, Western-Pacific Region, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808.

Issued in Hawthorne, CA, on April 23, 2012.

Keith Lusk,

Program Manager, Air Tour Management Program, Western-Pacific Region.

[FR Doc. 2012–10521 Filed 5–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 9, 2012 [77 FR 6688]. This is a request for an extension of an existing collection.

DATES: Comments must be submitted on or before June 1, 2012.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17 Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Hisham Mohamed, NHTSA, 1200 New Jersey Ave. SE., West Building, Room W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is (202) 366–0307.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Form Number: None.

Affected Public: Vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation part 575.103 Truck-camper loading and Part 575.105 Utility Vehicles. Part 575.103 requires that manufacturers of light trucks that are capable of accommodating slide-in campers, provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Part 575.105 requires that manufacturers of utility vehicles, affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Estimated Annual Burden: 300 hours.

Number of Respondents: 15.

Based on prior years' manufacturer submissions, the agency estimates that 15 responses will be submitted annually. Currently 12 light truck manufacturers comply with 49 CFR part 575. These manufacturers file one response annually and submit an additional response when they introduce a new model. Changes are rarely filed with the agency, but we estimate that three manufacturers will alter their information because of model changes. The light truck manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates that light truck manufacturers use a total of 20 hours. Specifically, manufacturers use 9 hours to gather and arrange the data in its proper format, 4 hours to distribute the information to its dealerships and attach labels to light trucks that are capable of accommodating slide-in campers and 7 hours to print the labels and utility vehicle information in the owner's manual or a separate document included with the owner's manual. The estimated annual burden hour is 300 hours. This number reflects the total responses (15) times the total hours (20). Prior years' manufacturer information indicates that it takes an average of $35.00 per hour for professional and clerical staff to gather data, distribute and print material. Therefore, the agency estimates that the cost associated with the burden hours is $10,500 ($35.00 per hour × 300 burden hours).

Estimated Annual Cost: $2,432,924.

The annual cost is based on light truck production. In model year 2011, light truck manufacturers produced about 6,951,210 units. By assuming that all light truck manufacturers (both large and small volume manufacturers) incur the same cost, the total annual cost to comply with statutory requirements, § 575.103 and § 575.105 = $2,432,924 (or $0.35 each unit).

Comments Are Invited On:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 26, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–10566 Filed 5–1–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on June 1–2, 2012, in room 900 at 1722 Eye Street NW., Washington, DC, from 1 p.m. to 4 p.m. on June 1 and from 8 a.m. to noon on June 2. The meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless Veterans. The Committee shall assemble and review information relating to the needs of homeless Veterans and provide on-going advice on the most appropriate means of providing assistance to homeless Veterans. The Committee will make recommendations to the Secretary regarding such activities.

On June 1, the Committee will receive briefings from VA and other officials on services for homeless Veterans. On June 2, the Committee will begin final preparation of its upcoming annual report and recommendations to the Secretary.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Pete Dougherty, Designated Federal Officer, Homeless Veterans Initiative Office (075D), Department of Veterans Affairs, 1722 Eye Street NW., Washington, DC 20006, or email to *Pete.Dougherty@va.gov.* Individuals who wish to attend the meeting should contact Mr. Dougherty at (202) 461–1857.

Dated: April 26, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–10524 Filed 5–1–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Notice of Meeting Amendment

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the meetings for the following three panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board have changed their meeting date or location as originally announced in the **Federal Register** on April 4, 2012. They are:

- Cellular and Molecular Medicine will meet on June 4, 2012, at the

Sheraton Suites Old Town Alexandria and not at VA Central Office.

• Gastroenterology will meet on June 4, 2012, at L'Enfant Plaza Hotel, and not on June 11–12, 2012.

• Clinical Research Program will meet on June 7–8, 2012, at *VA Central Office and not at Sheraton Suites—Old Town Alexandria.

The addresses of the hotel and VA Central Office are:

L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC.

Sheraton Suites—Old Town Virginia, 801 North Saint Asaph Street, Alexandria, Virginia.

*VA Central Office, 131 M Street NE., Washington, DC.

*Teleconference.

The purpose of the Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one-half hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B).

Those who plan to attend the general session or would like to obtain a copy of minutes of the panel meetings and rosters of the members of the panels should contact LeRoy G. Frey, Ph.D., Chief, Program Review (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or call (202) 443–5674 or by email at *Leroy.frey@va.gov.*

By Direction of the Secretary.

Dated: April 26, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–10525 Filed 5–1–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 85 May 2, 2012

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[Docket No. EPA–HQ–OW–2009–0090; FRL–9660–4]

RIN 2040–AF10

Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The 1996 amendments to the Safe Drinking Water Act (SDWA) require that the United States Environmental Protection Agency (EPA or the agency) establish criteria for a program to monitor unregulated contaminants and publish a list of up to 30 contaminants to be monitored every five years. This final rule meets the SDWA requirement by publishing the third Unregulated Contaminant Monitoring Regulation (*i.e.,* UCMR 3), listing the unregulated contaminants to be monitored and addressing the requirements for such monitoring. This final rule describes analytical methods to monitor for 28 chemical contaminants and describes the monitoring for two viruses. UCMR 3 provides EPA and other interested parties with scientifically valid data on the occurrence of these contaminants in drinking water, permitting the assessment of the number of people potentially being exposed and the levels of that exposure. These data are one of the primary sources of occurrence and exposure information the agency uses to develop regulatory decisions for these contaminants. In addition, as part of an Expedited Methods Update, this rule finalizes amendatory language for a drinking water inorganic analysis table (''Inorganic chemical sampling and analytical requirements'') in the Code of Federal Regulations (CFR). This minor editorial correction to the table does not affect the UCMR program.

DATES: This final rule is effective on June 1, 2012. For purposes of judicial review, this rule is promulgated as of 1 p.m. Eastern time on May 16, 2012 as provided in 40 CFR 23.7. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 1, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2009–0090. All documents in the docket are listed in the index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information, the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This 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 this Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Brenda D. Parris, Technical Support Center, Standards and Risk Management Division, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, Ohio 45268; telephone (513) 569–7961; or email at *parris.brenda@epa.gov*. For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding legal holidays, from 10:00 a.m. to 4:00 p.m., Eastern time. The Safe Drinking Water Hotline may also be found on the Internet at *http://water.epa.gov/drink/contact.cfm*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities regulated by this action are public water systems (PWSs). All large community and non-transient non-community water systems serving more than 10,000 people are required to monitor. A community water system (CWS) means a PWS, which has at least 15 service connections used by year-round residents or regularly serves an average of at least 25 year-round residents. A non-transient non-community water system (NTNCWS) means a PWS that is not a CWS and regularly serves at least 25 of the same people over six months per year. Only a nationally representative sample of ''small'' community and non-transient non-community systems serving 10,000 or fewer people are required to monitor for the chemical analytes (see USEPA, 2001 for a description of the statistical approach for the nationally representative sample). EPA will pay for the analysis of samples collected by these small systems. Transient non-community water systems (TNCWS) (*i.e.,* systems that do not regularly serve at least 25 of the same people over six months per year) are not required to monitor for the chemical analytes. However, transient ground water systems serving 1,000 or fewer people may be selected for virus monitoring. If selected, these systems are required to permit EPA to sample and analyze for List 3 contaminants and pathogen indicators. EPA will pay for all sampling and analysis costs associated with virus monitoring at these small systems. Exhibit 1 summarizes UCMR 3 applicability by system type and size.

EXHIBIT 1—APPLICABILITY OF UCMR 3 TO WATER UTILITIES BY SYSTEM TYPE AND SIZE

System type	System size [1]	
	Serving >10,000	Serving ≤10,000
UCMR 3 Assessment Monitoring		
CWS & NTNCWS	Requires all systems to monitor for List 1 chemicals	Requires 800 randomly selected systems to monitor for List 1 chemicals. EPA will pay for the analysis of samples.
TNCWS	No requirements	No requirements.

EXHIBIT 1—APPLICABILITY OF UCMR 3 TO WATER UTILITIES BY SYSTEM TYPE AND SIZE—Continued

System type	System size [1]	
	Serving >10,000	Serving ≤10,000
UCMR 3 Screening Survey		
CWS & NTNCWS	Requires all systems serving more than 100,000, and 320 randomly selected systems serving 10,001 to 100,000 to monitor for List 2 chemicals.	Requires 480 randomly selected systems to monitor for List 2 chemicals. EPA will pay for the analysis of samples.
TNCWS	No requirements	No requirements.
UCMR 3 Pre-Screen Testing		
CWS, TNCWS & NTNCWS	No requirements	Requires 800 randomly selected systems to permit EPA to sample and analyze List 3 microbes. The selected systems will be served by non-disinfecting ground water wells in vulnerable areas. EPA will pay for the analysis of samples.

[1] Based on the retail population, as indicated by SDWIS/Fed on December 31, 2010.

States, Territories, and Tribes with primary enforcement responsibility (primacy) to administer the regulatory program for PWSs under SDWA may participate in the implementation of UCMR 3 through Partnership Agreements (PAs). These primacy agencies may choose to perform the required analysis of samples collected for UCMR 3; however, the PWS remains responsible for compliance with this rule. Regulated categories and entities are identified in the following exhibit.

Category	Examples of potentially regulated entities	NAICS [a]
State, Local, & Tribal Governments.	States, local and Tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and Tribal governments that directly operate community, transient and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor	924110

[a] NAICS = North American Industry Classification System.

This exhibit is not exhaustive, but rather provides a guide for readers regarding entities that may be regulated by this action. This exhibit lists the types of entities that EPA is now aware may potentially be regulated by this action. Other types of entities not listed in the exhibit could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of Title 40 of the Code of Federal Regulations, and applicability criteria in § 141.40(a)(1) and (2) of this action. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

B. Copies of This Document and Other Related Information

This document is available for download at: *www.regulations.gov*. For other related information, see preceding discussion on docket.

Abbreviations and Acronyms

μg/L Microgram(s) per Liter
ASDWA Association of State Drinking Water Administrators
ATSDR Agency for Toxic Substances and Disease Registry
AGI Acute Gastrointestinal Illness
CCL Contaminant Candidate List
CFR Code of Federal Regulations
CWS Community Water System
DQO Data Quality Objectives
DSMRT Distribution System Maximum Residence Time
EO Executive Order
ELISA Enzyme-linked Immunosorbent Assay
EPA United States Environmental Protection Agency
EPTDS Entry Point to the Distribution System
FR **Federal Register**
GC/MS Gas Chromatography/Mass Spectrometry
GWUDI Ground Water Under the Direct Influence of Surface Water
HCF–22 Chlorodifluoromethane
HPLC/MS/MS High-Performance Liquid Chromatography/Tandem Mass Spectrometry
HRL Health Reference Level
IC/MS Ion Chromatography/Mass Spectrometry
ICR Information Collection Request
IDC Initial Demonstration of Capability
IHS Indian Health Service
LCMRL Lowest Concentration Minimum Reporting Level
LC/MS/MS Liquid Chromatography/Tandem Mass Spectrometry
LFSM Laboratory Fortified Sample Matrix
LFSMD Laboratory Fortified Sample Matrix Duplicate
MDL Method Detection Limit
MRL Minimum Reporting Level
NAICS North American Industry Classification System
NCOD National Drinking Water Contaminant Occurrence Database
ND Not Detected
NTNCWS Non-Transient Non-Community Water System
NTTAA National Technology Transfer and Advancement Act
NWQL National Water Quality Laboratory
OMB Office of Management and Budget
PA Partnership Agreement
PFBS Perfluorobutanesulfonic Acid
PFC Perfluorinated Compounds
PFHpA Perfluoroheptanoic Acid
PFHxS Perfluorohexanesulfonic Acid
PFNA Perfluorononanoic Acid
PFOA Perfluorooctanoic Acid
PFOS Perfluorooctanesulfonic Acid
PT Proficiency Testing
PWS Public Water System
qPCR Quantitative Polymerase Chain Reaction
RFA Regulatory Flexibility Act
RfD Reference Dose
SDWARS Safe Drinking Water Accession and Review System
SM Standard Methods
SRF State Revolving Fund
SBA Small Business Administration

SDWA Safe Drinking Water Act
SDWIS/Fed Federal Safe Drinking Water Information System
TNCWS Transient Non-Community Water System
TTHM Total Trihalomethanes
UCMR Unregulated Contaminant Monitoring Regulation
UMRA Unfunded Mandates Reform Act of 1995
VOC Volatile Organic Compound

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II. Statutory Authority and Background

A. What is the statutory authority for UCMR?

Section 1445(a)(2) of SDWA, as amended in 1996, requires that once every five years, the United States Environmental Protection Agency (EPA) issue a new list of no more than 30 unregulated contaminants to be monitored by public water systems (PWSs). It also requires that EPA enter the monitoring data into the Agency's National Drinking Water Contaminant Occurrence Database (NCOD). EPA must ensure that only a nationally representative sample of PWSs serving 10,000 or fewer people is required to monitor. EPA must also vary the frequency and schedule for monitoring based on the number of persons served, the source of supply, and the contaminants likely to be found.

Section 1445(a)(1)(A) of SDWA, as amended in 1996, requires that every person who is subject to any SDWA requirements establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing SDWA regulations. Pursuant to this authority, EPA is requiring the monitoring of total chromium under this final rule.

B. How does EPA meet these statutory requirements?

This final rule fulfills EPA's obligation under SDWA by identifying 29 unregulated contaminants for monitoring during the third UCMR, referred to as ''UCMR 3.'' These contaminants include: 27 chemicals measured using up to seven analytical methods and/or four equivalent consensus organization-developed methods, and two viruses measured using one sample collection and two detection methods. In conjunction with UCMR 3 Assessment Monitoring, monitoring for total chromium is also required. Total chromium monitoring is required under the authority provided in Section 1445(a)(1)(A) of SDWA. EPA has developed the contaminant list (Exhibit 2a and 2b) and sampling design for UCMR 3 (2012–2016) with input from both stakeholders and an EPA–State working group.

Exhibit 2a—UCMR 3 Final Contaminant Lists

List 1, Assessment Monitoring	
1,4-dioxane	vanadium.
molybdenum	strontium.
cobalt	chromium-6 (hexavalent chromium)[1].

1,2,3-trichloropropane	chlorate.
1,3-butadiene	perfluorooctanesulfonic acid (PFOS).
chloromethane (methyl chloride)	perfluorooctanoic acid (PFOA).
1,1-dichloroethane	perfluorononanoic acid (PFNA).
bromochloromethane (Halon 1011)	perfluorohexanesulfonic acid (PFHxS).
bromomethane (methyl bromide)	perfluoroheptanoic acid (PFHpA).
chlorodifluoromethane (HCFC–22)	perfluorobutanesulfonic acid (PFBS).
List 2, Screening Survey	
17-β-estradiol	estriol.
17-α-ethynylestradiol (ethinyl estradiol)	equilin.
estrone	testosterone.
4-androstene-3,17-dione.	
List 3, Pre-Screen Testing [2]	
enteroviruses	noroviruses.

Exhibit 2b—Total Chromium Monitoring [3]
total chromium

[1] Chromium-6 will be measured as soluble chromate (ion).
[2] Monitoring for microbial indicators—in conjunction with UCMR 3 Pre-Screen Testing—is also required. This monitoring includes sampling for pathogen indicators (*i.e.,* total coliforms, E. coli, bacteriophage, Enterococci and aerobic spores). It is not subject to the stipulation in Section 1445(a)(2)(B)(i) of SDWA that restricts UCMR contaminants to not more than 30. List 3 monitoring, including monitoring of microbial indicators, is only required at selected small systems. EPA will collect the samples from List 3 sampling locations, and will pay for all sampling and analysis costs associated with virus and indicator monitoring at these small systems.
[3] Monitoring for total chromium—in conjunction with UCMR 3 Assessment Monitoring—is required under the authority provided in Section 1445(a)(1)(A) of SDWA.

This list differs from that provided in the March 3, 2011, proposed rule (76 FR 11713, (USEPA, 2011a)) as follows: chromium-6 (hexavalent chromium) and total chromium have been added; *sec*-butylbenzene and *n*-propylbenzene have been deleted; and monitoring of hormones was moved from Assessment Monitoring (List 1) to Screening Survey (List 2).

III. Summary of This Rule

Public water systems (PWS) or EPA will conduct sampling and analysis for Assessment Monitoring (List 1), Screening Survey (List 2), and Pre-Screen Testing (List 3) contaminants, as applicable, at each PWS subject to this rule during a 12 month period within the 2013 to 2015 time frame. Preparations prior to 2013 include coordination of laboratory approval, selection of representative samples of small systems, development of State Monitoring Plans, establishment of monitoring schedules, and notification of participating PWSs. Exhibit 3 illustrates the major activities that will take place during implementation of UCMR 3.

Exhibit 3: Timeline of UCMR 3 Activities

2012	2013	2014	2015	2016
After proposed rule publication: Lab approval program begins *After applicability date:* EPA/State partnership agreements and State monitoring plans developed (inc. national representative sample) *After final rule publication*: Inform PWSs/establish monitoring plans	**Assessment Monitoring** List 1 Contaminants + Total Chromium All systems serving more than 10,000; 800 systems serving 10,000 or fewer			Complete reporting and analysis of data
	Screening Survey List 2 Contaminants All systems serving more than 100,000; 320 systems serving 10,001 through 100,000; 480 systems serving 10,000 or fewer			
	Pre-Screen Testing List 3 Contaminants + Indicator Organisms 800 non-disinfecting ground water systems in vulnerable areas serving 1,000 or fewer			

EPA generally divides unregulated contaminant monitoring into three types of monitoring, or ''lists.'' ''Assessment Monitoring'' is the largest in scope of the three UCMR monitoring lists or tiers. Under UCMR 3 Assessment Monitoring, 20 ''List 1'' contaminants will be monitored to assess national occurrence in drinking water; total chromium will be monitored in conjunction with Assessment Monitoring. These are the contaminants for which analytical method technologies are well established.

The second tier of UCMR is referred to as ''List 2'' or ''Screening Survey'' monitoring. List 2 contaminants are those with analytical methods that have generally been more recently developed and employ technologies that are not as widely used or laboratory capacity may be insufficient to conduct the larger scale Assessment Monitoring. Under the UCMR 3 Screening Survey, seven ''List 2'' contaminants will be monitored by certain systems (see Exhibit 3).

''Pre-Screen Testing,'' the third tier of UCMR monitoring is generally designed for ''List 3'' contaminants with very new or specialized analytical methods. Under UCMR 3, a selected set of 800 systems that serve fewer than 1,000 retail customers and that do not disinfect are required to assist EPA in sampling their system for two viruses on ''List 3'' and the associated pathogen indicators (*i.e.,* total coliforms, *E. coli,* bacteriophage, *Enterococci* and aerobic spores). This requirement includes community and non-transient, non-community water systems and transient systems.

EPA will pay for the sample kit preparation, sample shipping fees, and analysis costs to minimize the impact of the rule on small systems (those serving 10,000 or fewer people). In addition, no small system will be required to monitor for more than one ''List'' of contaminants. Large systems (those serving more than 10,000 people) will pay for the cost of shipping and laboratory testing for their List 1 and, as applicable, List 2 analyses.

The data collected through the UCMR program are being stored in NCOD to facilitate analysis and review of contaminant occurrence, guide the conduct of the Contaminant Candidate List (CCL) process and support the Administrator in making regulatory decisions for contaminants in the interest of protecting public health, as required under SDWA Section 1412(b)(1). Results of UCMR 1 and 2 monitoring can be viewed by the public at EPA's UCMR Web site: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/data.cfm.*

A. What are the major changes between the proposed and final UCMR 3 rule?

EPA published ''Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems;'' Proposed Rule, on March 3, 2011 (76 FR 11713, (USEPA, 2011a)). EPA received input from 53 public commenters. After considering the comments, EPA added chromium-6 to the list of unregulated contaminants to be monitored; removed *sec*-butylbenzene and *n*-propylbenzene; and moved monitoring of hormones from Assessment Monitoring to the Screening Survey. EPA is also requiring PWSs to monitor for total chromium concurrent with all chromium-6 monitoring. EPA revised or clarified requirements pertaining to UCMR applicability criteria, reporting, monitoring and quality control. Exhibit 4 provides a summary of these changes and a listing of the corresponding preamble section that provides a more detailed discussion of the revisions and related public comments. Sections III.B–G summarize the different aspects of this rule and the associated major comments received in response to the proposed rule. EPA has compiled a more detailed document containing all public comments and EPA's responses entitled: ''Response to Comments Document for the Unregulated Contaminant Monitoring Regulation (UCMR 3),'' (USEPA, 2012b), which can be obtained by going to *http://www.regulations.gov*, and searching for Docket ID No. EPA–HQ–OW–2009–0090.

EXHIBIT 4—CHANGES TO UCMR 3 BETWEEN PROPOSED AND FINAL RULE

Rule section		Description of change	Corresponding preamble section
Number	Title/description		
141.35(c)(1) and (d)(1)	Data elements	Revise zip code reporting to include only the zip codes for all customers served, rather than those associated with each sampling point.	III.G.2 Sample location and inventory information (zip codes).
141.35(c)(6)(ii) and 141.40(a)(5)(vi)	Reporting schedule	Change laboratory reporting time to 120 days, rather than 60 days; change PWS reporting time to 60 days after laboratory posting, rather than 30 days.	III.G.4 Reporting schedule.
141.40(a)(2)(i)(A) and (a)(2)(ii)(A); and 141.40(a)(3) Table 1.	Analytes to be monitored and related specifications.	Add chromium-6; remove requirement to monitor for *sec*-butylbenzene and *n*-propylbenzene; require total chromium monitoring under SDWA Section 1445 (a)(1)(A); move hormone monitoring to Screening Survey.	III.D.4 Chromium-6 and total chromium, and related methods. III.D.1 List compilation. III.D.2 Hormones and related methods.
141.35(c)(2)	Sample location and inventory information.	Large systems must provide sample location and inventory information to EPA by October 1, 2012.	III.G.4 Reporting schedule.
141.40(a)(3) Table 1, footnote c and 141.40 (a)(4)(i)(C).	Distribution system maximum residence time (DSMRT) sample location.	Revise definition of DSMRT sample required for specific List 1 contaminants.	III.C Where are samples collected? III.D.3 Metals, chlorate, and related methods.
141.35(c)(5)(i) and 141.40 (a)(4)(i)	General rescheduling notification	Large systems may independently change List 1 or List 2 monitoring schedule by October 1, 2012.	III.G.4 Reporting schedule.
141.35(c)(3)	Ground water representative sampling locations.	Large systems may submit representative sampling plan proposals or changes to existing plans by August 1, 2012.	III.C Where are samples collected? III.G.4 Reporting schedule.
141.40(a)(3) Table 1 footnote c	Representative intake	Systems that purchase water from the same wholesaler may sample from a representative intake.	III.C Where are samples collected?

B. Which Water Systems Must Monitor

1. Applicability Based on Population Served

a. This Rule

This rule requires that Assessment Monitoring (for List 1 contaminants) be conducted by all large community and non-transient non-community water systems serving more than 10,000 people, and a nationally representative sample of 800 small water systems serving 10,000 or fewer people; and that the Screening Survey (for List 2 contaminants) be conducted by all large community and non-transient non-community water systems serving more than 100,000 people, a nationally representative sample of 320 large systems serving 10,001 to 100,000 people, and a nationally representative sample of 480 small water systems serving 10,000 or fewer people (as indicated by Federal Safe Drinking Water Information System (SDWIS/Fed) on December 31, 2010). Transient non-community water systems are excluded from Assessment Monitoring and the Screening Survey. In contrast to implementation of UCMR 1 and 2 monitoring, those systems that purchase all of their finished water from another system are not excluded from the requirements of UCMR 3.

b. Summary of Major Comments

EPA received six (6) comments concerning UCMR monitoring based on retail population served. The commenters all agreed that applicability should be based on retail population, although some wanted to exclude those who purchase their water from that applicability. In UCMR 1 and 2, systems that purchased 100% of their water were excluded from monitoring, making estimates of exposure more difficult because many of these purchasing systems represented high-population areas. For UCMR 3, systems that purchase 100% of their water and serve greater than 10,000 people are subject to this rule. Wholesalers that serve a retail population of 10,000 or fewer customers are only required to monitor if they are selected as part of the nationally representative sample of small systems for any list of UCMR contaminants. This should greatly improve exposure estimates for UCMR 3 since exposure estimates will be based on the monitoring data collected from where the water is consumed rather than where it is sold. Between the wholesaler and the purchasing system, contaminant levels may increase (*e.g.,* DBPs or metals) or decrease (*e.g.,* through blending various sources or degradation/chemical reactions).

Some commenters also expressed concern that this applicability change could add an estimated 1,250 systems to the list of those that need to monitor and suggested that this would represent a substantial increase in burden to the drinking water industry. To help mitigate the burden, EPA is allowing those systems that purchase water with multiple connections from the same wholesaler to select a representative connection for sampling. See Section III.C.1.a for further discussion. In addition, EPA notes that approximately 450 wholesale systems will no longer be subject to monitoring; the net increase is approximately 800 systems.

2. Applicability for Transient Systems

a. This Rule

Under UCMR 1 and 2, transient non-community water systems were specifically exempted from monitoring. UCMR 3 now requires participation by transient systems that are selected for Pre-Screen Testing for List 3 contaminants. Under UCMR 3, EPA is conducting Pre-Screen Testing for enterovirus and norovirus, as well as related pathogen indicators, at selected undisinfected ground water systems that serve 1,000 or fewer customers. EPA is including transient systems among the candidate systems—and focusing on viruses at those systems—since viruses are acute pathogens and exposure through a one-time ingestion (*e.g.,* at a transient system) is of potential health concern.

Under 141.40(a)(1) and 141.40(a)(2)(ii)(C), if any system (including transient systems) is notified by EPA or its State that it has been selected for Pre-Screen Testing, the system must permit EPA (at EPA's expense) to sample and analyze for List 3 contaminants and pathogen indicators (*i.e.,* total coliforms, *E. coli,* bacteriophage, *Enterococci* and aerobic spores).

b. Summary of Major Comments

EPA received two (2) comments on including transient non-community systems for List 3 monitoring. One fully supported their inclusion, and the other expressed concern that EPA would not be able to adequately fund the collection and processing of these samples. EPA is confident that it has budgeted sufficient funds to support these activities. As the second commenter noted, transient systems represent a substantial number of the systems serving less than 1,000 customers; therefore, the sampling of these potentially vulnerable systems for these acute pathogens is considered important.

C. Where are samples collected?

1. Entry Point to the Distribution System

a. This Rule

As was the case under UCMR 2, UCMR 3 samples will be collected at entry points to the distribution system (EPTDS). PWSs may perform sampling at representative sampling locations in two cases:

- Demonstrating Representative Ground Water Sampling Locations: Under this rule, large systems that use ground water sources and have multiple EPTDSs can, with prior approval, conduct monitoring at representative sampling locations rather than at each EPTDS. To monitor at representative EPTDSs, large systems must meet the criteria specified in § 141.35(c)(3) and receive approval from EPA or the State. Changes to the rule language clarify that when identifying a representative well, the well must be representative of the highest producing (based on annual volume) and most consistently active wells. In addition, the representative well must be in use at the scheduled sampling time. An alternative location must be sampled if the representative EPTDS is not available at the time of scheduled sampling. This rule establishes a deadline of August 1, 2012 for submission of new proposals or updates to existing plans. See Section III.G.4 for further discussion.
- Representative Intakes from Wholesaler: As specified in § 141.40(a)(3) Table 1, footnote c, systems that purchase water with multiple connections from the same wholesaler may select one representative connection from that wholesaler for UCMR sampling. If a PWS chooses to select a representative intake, each representative intake must receive water from the same source. Additionally, if a PWS chooses to select a representative intake, it must choose a sampling location that represents the highest volume EPTDS connection and is in use at the time of scheduled sampling. If the connection initially selected as the representative EPTDS is not available at the time of scheduled sampling, an alternate representative connection must be sampled.

b. Summary of Major Comments

Five (5) commenters expressed support for EPA's proposal regarding representative sampling points, and representative intakes for PWSs with multiple connections from the same wholesaler; commenters cited cost savings as a benefit of this approach. One commenter also suggested that EPA's approach to representative sampling locations should provide additional flexibility in cases where multiple water systems are receiving water from the same wholesale provider. EPA acknowledges that there are many unique situations with the purchase and sale of drinking water at the wholesale level. In this final rule, EPA has provided clarifying language in § 141.40(a)(3) Table 1, footnote c, specifying that a PWS may select a representative intake from a given wholesaler. EPA is available to advise PWSs regarding choosing the most appropriate sampling site, based on their purchasing situation. However, EPA is requiring all systems that purchase 100% of their water to monitor, for the reasons described in Section III.B.1 of this preamble. Based on the experience of UCMR 1 and UCMR 2, EPA believes it is more appropriate to measure at each purchasing system to more accurately assess exposure. This approach relies on each purchasing system to monitor, thus ensuring the monitoring results reflect any potential water quality changes between the wholesaler and each purchasing system.

2. Distribution System Maximum Residence Time Location

a. This Rule

This rule requires systems that participate in Assessment Monitoring to also sample for total chromium, chromium-6, cobalt, molybdenum, strontium, vanadium, and chlorate both at EPTDSs and in the distribution system. This rule requires systems to collect the samples for these analytes at their distribution system maximum residence time (DSMRT) location(s), (§§ 141.40(a)(3) Table 1, footnote c and 141.40(a)(4)(i)(C)). For clarity, EPA deleted the UCMR reference to the DSMRT specifications under the Stage 1 Disinfection Byproducts Rule at § 141.132(b)(1)(i). EPA now defines DSMRT under UCMR as an active point (*i.e.,* a location that currently provides water to customers) in the distribution system where the water has been in the system the longest relative to the EPTDS. Systems that are subject to the Stage 2 Disinfection By-Products Rule should use their total trihalomethanes (TTHM) highest concentration sampling site(s) as their DSMRT sampling site(s) (USEPA, 2003).

b. Summary of Major Comments

As described in greater detail in Section III.D.3., ''Metals, chlorate, and related methods,'' several commenters suggested that EPA had provided insufficient rationale for requiring DSMRT sampling for cobalt, molybdenum, strontium, vanadium, and chlorate. As elements that may occur in water both naturally, or through industrial activities, cobalt, molybdenum, strontium, and vanadium are expected to be commonly detected in drinking water. EPA believes these metals may be incorporated into pipe deposits and subsequent erosion and/or dissolution may result in waterborne concentrations that differ between the DSMRT and the EPTDS. Regarding chlorate, the use of disinfectants, including use of hypochlorite, chloramines, chlorine dioxide, and ozone can result in chlorate formation. The presence of residual disinfectant in the distribution system and chlorine boosters within the distribution system may result in increases in chlorate concentrations at the DSMRT relative to the EPTDS.

D. What are the UCMR 3 contaminants and associated methods?

1. List Compilation

a. This Rule

EPA is maintaining the list of unregulated contaminants and methods proposed for monitoring with the exception of adding chromium-6, and removing *sec*-butylbenzene and *n*-propylbenzene (see Exhibit 5a). EPA is also requiring PWSs to monitor for total chromium concurrent with all chromium-6 monitoring (Exhibit 5b). The additional data generated by side-by-side measurements of chromium-6 and total chromium will provide valuable information on relative occurrence and the utility of monitoring for total chromium as a surrogate for chromium-6.

Exhibit 5a: 29 Unregulated Analytes and Associated Methods

Assessment Monitoring	
7 Volatile Organic Compounds (VOC) using EPA Method 524.3 (GC/MS): [1]	
1,2,3-trichloropropane	bromomethane (methyl bromide).
1,3-butadiene	bromochloromethane (Halon 1011).
chloromethane (methyl chloride)	chlorodifluoromethane (HCFC–22).
1,1-dichloroethane.	
Synthetic Organic Compound using EPA Method 522 (GC/MS): [2]	
1,4-dioxane.	
4 Metals using EPA Method 200.8 (ICP/MS) [3] **or alternate SM** [4] **or ASTM Methods:** [5]	
cobalt	strontium.
molybdenum	vanadium.
Oxyhalide Anion using EPA Method 300.1 (IC/Conductivity) [6] **or alternate SM** [7] **or ASTM Methods:** [8]	
chlorate.	
6 Perfluorinated Chemicals using EPA Method 537 (LC/MS/MS): [9]	
perfluorooctanesulfonic acid (PFOS)	perfluorohexanesulfonic acid (PFHxS).
perfluorooctanoic acid (PFOA)	perfluoroheptanoic acid (PFHpA).
perfluorononanoic acid (PFNA)	perfluorobutanesulfonic acid (PFBS).
Chromium-6 using EPA Method 218.7 (IC/UV–VIS): [10]	
chromium-6.	
Screening Survey	
7 Hormones using EPA Method 539 (LC/MS/MS): [11]	
17-β-estradiol	estrone.
17-α-ethynylestradiol (ethinyl estradiol)	testosterone.
estriol (16-α-hydroxy-17-β-estradiol)	4-androstene-3,17-dione.
equilin.	

Pre-Screen Testing	
2 Viruses (see Section III.D.5 for methods discussion): [12]	
enterovirus	norovirus.
Exhibit 5b—Total Chromium Monitoring	
Total Chromium using EPA Method 200.8 (ICP/MS) [4] **or alternate SM** [5] **or ASTM Methods:** [6]	
total chromium.	

[1] EPA Method 524.3 (GC/MS) (USEPA, 2009a).
[2] EPA Method 522 (GC/MS) (USEPA, 2008).
[3] EPA Method 200.8 (ICP/MS) (USEPA, 1994).
[4] SM 3125 (SM, 21st Ed., 2005).
[5] ASTM D5673–10 (ASTM, 2010).
[6] EPA Method 300.1 (IC/Conductivity) (USEPA, 1997).
[7] SM 4110D (SM, 21st Ed., 2005).
[8] ASTM D6581–08 (ASTM, 2008).
[9] EPA Method 537 (LC/MS/MS) (USEPA, 2009b).
[10] EPA Method 218.7 (IC/UV–VIS) (USEPA, 2011b).
[11] EPA Method 539 (LC/MS/MS) (USEPA, 2010e).
[12] Monitoring also includes sampling for pathogen indicators (*i.e.,* total coliforms, E. coli, bacteriophage, Enterococci and aerobic spores). EPA will pay for all sampling and analysis costs associated with monitoring at these small systems.

b. Summary of Major Comments

Commenters who expressed an opinion about the proposed UCMR 3 analytes were generally supportive. Several commenters suggested that cyanobacterial toxins be added to the list of analytes. EPA agrees that cyanobacterial toxins are of significant interest for future drinking water monitoring. However, EPA currently does not have an available drinking water method for analysis of cyanobacterial toxins. While enzyme-linked immunosorbent assays (ELISA) and high-performance liquid chromatography with UV detection (HPLC/UV) methods have been published (Howard and Boyer, 2007), they do not provide the level of specificity needed for UCMR monitoring. The high-performance liquid chromatography/tandem mass spectrometry (HPLC/MS/MS) methods for cyanobacterial toxins that have been published (Oehrle *et al.,* 2010), do not provide suitable accuracy and precision. EPA has conducted and will continue to conduct methods development research for cyanobacterial toxins both in-house and in cooperation with other laboratories.

2. Hormones and Related Methods

a. This Rule

EPA is revising the requirement for monitoring of the hormones (17-β-estradiol; 17-α-ethynylestradiol; estriol; equilin; estrone; testosterone; and, 4-androstene-3,17-dione), by moving the monitoring from Assessment Monitoring to the Screening Survey.

b. Summary of Major Comments

Three major issues concerning the hormones were raised by commenters. The first was a concern that other than 17-α-ethynylestradiol, the hormones all occur naturally. Based on the low minimum reporting levels (MRLs) specified in this rule, these commenters were concerned that there may be issues with false positives due to background levels of these compounds from samplers.

The ranges of blank results observed during the determination of MRLs are contained in Exhibit 6. In all cases the laboratories easily met the requirement that the concentration of the analytes observed in the blank must be less than one-third of the MRL. In the ''worst case'' the observed blank level equaled one-eighth the MRL. EPA is requiring the collection of field blank samples for UCMR 3 and, to minimize the potential issue of field blank and sample contamination, will provide instructions to both the samplers and the laboratory personnel to wear nitrile gloves when collecting or handling samples for the hormones. These details are specified in EPA's technical manual titled: ''UCMR 3 Laboratory Approval Requirements and Information Document'' (USEPA, 2012d).

EXHIBIT 6—OBSERVED BACKGROUND LEVELS DURING MRL DETERMINATION

Analyte	UCMR MRL (μg/L)	Laboratory 1 (μg/L)	Laboratory 2 (μg/L)	Laboratory 3 (μg/L)
17-β-estradiol	0.0004	ND—0.00006	ND	ND—0.00005
17-α-ethynylestradiol	0.0009	ND—0.00007	ND—0.00008	ND—0.0002
estriol	0.0008	ND—0.00007	ND	ND—0.00006
equilin	0.004	ND—0.00002	ND	ND—0.0005
estrone	0.002	ND—0.0001	0.00001—0.00003	0.02—0.0002
testosterone	0.0001	ND	ND	ND—0.00001
4-androstene-3,17-dione	0.0003	ND	ND	ND—0.000008

ND = Not Detected.

EPA also stipulated in the rule that it will evaluate the situation after six months of monitoring. If at that time, the data indicate that excessive resampling is occurring, EPA will establish alternative MRLs and will notify all affected PWSs and laboratories.

The second issue concerned whether all of the proposed hormones should be monitored (versus a subset of them). There was no consensus among the commenters as to what the ''subset'' should be. Some commenters suggested that monitoring be limited to the five (5)

proposed hormones that are also listed on the final CCL 3 (17-β-estradiol, 17-α-ethynylestradiol, estriol, equilin and estrone). EPA believes that monitoring for testosterone and 4-androstene-3,17-dione is also justified. A number of articles have been published that show the occurrence of testosterone and 4-androstene-3,17-dione in surface waters:

- National Surface Water Reconnaissance (1999–2000): detects of testosterone in 2 (2.8%) of 70 samples at a median concentration of 0.116 μg/L and a maximum concentration of 0.214 μg/L (Kolpin *et al.,* 2002).
- California, Rivers, Irrigation Canals, and Tile Drains (2003–2005): detects of testosterone in 2 (18%) of 11 river samples at a maximum concentration of 0.0006 μg/L; detects in 4 (27%) of 15 irrigation canal samples at a maximum concentration of 0.0019 μg/L; detects in 2 (33%) of 6 tile drain samples at a maximum concentration of <0.0003 μg/L (Kolodziej *et al.,* 2004).
- California Surface Waters (2005–2006): detects of 4-androstene-3,17-dione in 16 (18%) of 89 grazing rangeland surface water samples at a maximum concentration of 0.044 μg/L (Kolodziej and Sedlak, 2007).

In addition, testosterone and 4-androstene-3,17-dione have been shown to be relatively resistant to oxidation (Mash *et al.,* 2010).

The third issue concerned the potential for insufficient laboratory capacity for the monitoring of hormones. Since EPA has moved the hormone monitoring requirement from Assessment Monitoring (List 1) to Screening Survey (List 2), this will substantially reduce the number of PWSs required to monitor for hormones and mitigate any concerns regarding laboratory capacity.

3. Metals, Chlorate, and Related Methods

a. This Rule

This rule requires that samples for the metals—chromium-6, total chromium, cobalt, molybdenum, strontium, and vanadium—as well as chlorate, be collected at one distribution system sampling point per treatment plant (*i.e.,* at the DSMRT) in addition to sampling at the EPTDS. DSMRT samples must be collected at a location that represents the maximum residence time in the distribution system (§§ 141.40(a)(3) Table 1, footnote c and 141.40(a)(4)(i)(C)). (As noted in Section III.C.2.a of this preamble, EPA clarified the DSMRT specifications and deleted the direct DSMRT reference under the Stage 1 Disinfection Byproducts Rule at § 141.132(b)(1)(i).)

EPA is requiring that chlorate samples be collected at both the EPTDS and DSMRT locations to permit the agency to evaluate if chlorate occurs as an oxyhalide disinfection by-product.

b. Summary of Major Comments

Eight (8) commenters suggested that further justification was needed to support monitoring cobalt, molybdenum, strontium, and vanadium at the DSMRT. Three commenters also made similar comments regarding chlorate. Research indicates that vanadium can become incorporated in the corrosion products in iron pipes used for drinking water distribution. As a result, vanadium may be released via dissolution and/or erosion of the mineral deposits that form inside many iron distribution pipes. Gerke *et al.,* (2010) cite research that indicates that relatively minor scouring of these deposits can result in water concentrations of vanadium in excess of 15 μg/L. Similar findings were published by the Water Research Foundation (Friedman *et al.,* 2009). The authors reported vanadium in scaling from several different distribution systems. As a reference point, the Agency for Toxic Substances and Disease Registry (ATSDR) has established an Interim Minimal Risk Level of 0.003 mg/kg/day; a 70 kg adult drinking two liters of water per day would exceed the RfD through water consumption alone if the concentration in the water was greater than 21 μg/L (ATSDR, 2009).

Molybdenum has been identified as being among the heavy metals that can be mobilized from reservoir sediments containing iron and aluminum oxides and hydroxides. Fluctuations in pH of approximately 0.2 pH units were sufficient to considerably affect the release of previously adsorbed molybdenum (Friedman *et al.,* 2009).

Although such findings for cobalt and strontium are not available in the scientific literature, these two elements commonly occur in drinking water. As a result, EPA believes that incorporation of cobalt and/or strontium into pipe deposits within a distribution system could result in mobilization of these metals into drinking water within the distribution system via dissolution and/or erosion. Strontium has been found in greatest amounts in calcium-rich minerals and sediments due to similarities in atomic radii (Fairbridge, 1972). In addition, Friedman *et al.,* (2009) report calcium to be the fourth most concentrated element found in pipe deposit samples. Thus, erosion and/or dissolution of pipe deposits within the distribution system may affect human exposure levels for cobalt, molybdenum, strontium, and vanadium.

The presence of residual disinfectant in the distribution system may result in increases in chlorate concentrations at the DSMRT relative to the EPTDS. The following studies on chlorate formation have linked its presence in treated drinking water to the use of several disinfection processes:

- The generation of chlorine dioxide from chlorite and free chlorine (Gordon *et al.,* 1990; Bolyard *et al.,* 1993; Gallagher *et al.,* 1994);
- The generation of chlorine dioxide from chlorite and hypochlorite (Gallagher *et al.,* 1994);
- Chlorine dioxide oxidation by residual free chlorine (Gordon and Tachiyashiki, 1991; Bolyard *et al.,* 1993);
- Transition metal-catalyzed free chlorine decomposition during disinfection (Gordon *et al.,* 1995);
- Base-catalyzed disproportionation of chlorine dioxide (USEPA, 1999a; Gallagher *et al.,* 1994);
- Photodecomposition of chlorine dioxide (Rice and Gomez-Taylor, 1986; Bolyard *et al.,* 1993; Gallagher *et al.,* 1994; Bergmann and Koparal, 2005);
- Use of chlorate-contaminated hypochlorite solutions—chlorate can come from either the impurity of the original stock solution or decomposition during storage (Bolyard *et al.,* 1992; Bolyard *et al.,* 1993; Gordon *et al.,* 1993; Gordon *et al.,* 1995; Gordon *et al.,* 1997; USEPA, 1999a; WHO, 2005; Snyder *et al.,* 2009; Stanford *et al.,* 2011);
- Use of ozone with residual chlorine (Siddiqui, 1996; von Gunten, 2003); and
- Use of electrochemical disinfection processes (Czarnetzki and Janssen, 1992; Bergmann and Koparal, 2005).

4. Chromium-6 and Total Chromium, and Related Methods

a. This Rule

While EPA did not include chromium-6 in the proposed list of chemicals for UCMR 3 monitoring, EPA did request comment on whether the agency should include it in the final rule due to the concerns about its potential occurrence in public water supplies. EPA also requested comments on whether total chromium should be measured concurrent with chromium-6. Commenters strongly supported requiring monitoring for both chromium-6 and total chromium.

EPA agrees with these commenters and has added chromium-6 to the list of unregulated contaminants to be monitored. EPA is also requiring PWSs to monitor for total chromium concurrent with all chromium-6

monitoring. EPA completed the development and validation of a revised analytical method for the determination of chromium-6 in drinking water, *EPA Method 218.7: Determination of Hexavalent Chromium in Drinking Water by Ion Chromatography with Post-Column Derivatization and UV-Visible Spectroscopic Detection.* This revised method has been extensively studied both within EPA and ion chromatography manufacturers' laboratories as well as through external laboratory validation (USEPA, 2011b).

EPA is using the authority provided in SDWA Section 1445(a)(1)(A) to require monitoring for total chromium in conjunction with the UCMR 3 monitoring of chromium-6. EPA has removed *sec*-butylbenzene and *n*-propylbenzene from UCMR 3. More specifically, the agency has removed *sec*-butylbenzene and *n*-propylbenzene from the UCMR 3 Assessment Monitoring list.

b. Summary of Major Comments

EPA received 30 comments regarding the inclusion of chromium-6 in UCMR 3. Twenty-eight of the 30 commenters supported inclusion. The other two suggested that a health risk from drinking water exposure had not been conclusively established, that regional levels of total chromium in drinking water are very low and that speciation would not be beneficial. The agency believes that the ongoing studies of chromium-6 toxicity warrant UCMR monitoring at this time. EPA believes that collecting national occurrence data will provide beneficial information to the agency regarding how best to protect human health. EPA's second Six-Year Review of National Primary Drinking Water Regulations (USEPA, 2010d) indicated that the levels of total chromium warrant further investigation of chromium-6 occurrence. Chromium can enter the environment from both natural and industrial sources; thus the distribution of both total chromium and chromium-6 may vary based on regional geology and regional industrial activity. Part of the goal of UCMR is to assess the national distribution of the contaminants selected.

Commenters who supported the inclusion of chromium-6 cited two primary reasons for its inclusion in UCMR 3:

- Generating national occurrence data in UCMR 3 will avoid potential delays in any possible regulatory action;
- Monitoring for both total chromium and chromium-6 may allow for determining a relationship between the two species, allowing for possible use of total chromium monitoring, which is less costly and has better holding time requirements, as a surrogate for chromium-6 monitoring.

While generally supporting chromium-6 monitoring in UCMR 3, some commenters expressed concern about the current analytical method. The concerns included procedural issues (*e.g.,* field filtration, preservation and holding time compliance), interferences concerns (*e.g.,* sensitivity and species interconversion prior to sample analysis), the need for round-robin testing of the method laboratory capacity, and the need to determine a lowest concentration minimum reporting level (LCMRL) and MRL for chromium-6. Extensive research by EPA, with support from instrument manufacturers and commercial laboratories, addressed the issues of interferences, sensitivity and analyte preservation. EPA Method 218.7 has undergone peer review, and multi-laboratory LCMRL and MRL determinations have been completed (USEPA, 2011b; USEPA, 2006).

Because UCMR is limited by statute to 30 unregulated contaminants, commenters offered a variety of suggestions for which analyte to remove to accommodate chromium-6. Suggestions included dropping one of the metals, hormones, PFCs, or VOCs. Other suggestions included removing ''the contaminant with the least chance of being detected during monitoring.'' EPA selected *sec*-butylbenzene and *n*-propylbenzene, non-carcinogenic VOCs, for removal after considering data submitted by States that indicated very low occurrence rates. EPA also considered the fact that the currently available health reference levels, 10.3 μg/L and 5.83 μg/L, respectively, are well above the reported levels of occurrence in these data (USEPA, 2012c).

5. Viruses and Related Methods

a. This Rule

EPA is finalizing the requirement for monitoring of the viruses as proposed. This rule requires monitoring for enterovirus and norovirus in UCMR 3 via Pre-Screen Testing of selected undisinfected ground water systems located in karst or fractured bedrock. The monitoring will include 800 PWSs serving 1,000 or fewer customers, including CWSs, and non-transient and transient non-community water systems. Monitoring will also include sampling for pathogen indicators (*i.e.,* total coliforms, *E. coli,* bacteriophage, *Enterococci* and aerobic spores). This monitoring will obtain information concerning the occurrence of enterovirus and norovirus for further evaluation and provide EPA with a better understanding of the co-occurrence of pathogen indicators and viruses.

Enteroviruses will be monitored using one method that has two detection assays. The first is a cell culture assay also used in the Information Collection Rule survey conducted by EPA (61 FR 24353, May 14, 1996 (USEPA, 1996)), with one change; the Virosorb 1–MDS filter will be replaced by the NanoCeram® filter, which will significantly reduce sampling cost. The NanoCeram® filter has proven to be as effective as Virosorb 1–MDS filter for the recovery of enteroviruses (Karim *et al.,* 2009) and noroviruses (Gibbons *et al.,* 2010). The second assay is quantitative polymerase chain reaction (qPCR) based, and detects the viral nucleic acid. Noroviruses will only be monitored using qPCR, as there is no cell culture method available.

Both norovirus and enterovirus qPCR will be performed per the protocol in Lambertini *et al.,* (2008). The qPCR primers and probe for genogroup I norovirus will be as referenced in Jothikumar *et al.,* (2005), while genogroup II Norovirus primers and probe will be as referenced in Ando *et al.,* (1995). Primers and probe referenced in De Leon *et al.,* (1990) and Monpoeho *et al.,* (2000) will be used for enterovirus qPCR.

b. Summary of Major Comments

Several commenters expressed concern about using Method 1615 for monitoring viruses because it has not undergone multi-laboratory validation. EPA notes, however, that individual elements of the method have been used by many researchers worldwide, and the culture assay is, with the exception of a new filter, identical to the Information Collection Rule validated method (FR 24353, May 14, 1996 (USEPA, 1996)). The complete method is published and has undergone thorough peer review as per protocols established by EPA's National Exposure Research Laboratory and consistent with ''The Handbook for Preparing ORD Reports'' (USEPA, 1995). The method has undergone validation at EPA's laboratory, has built in quality controls for PCR inhibition and has positive and negative controls to identify false negative and positive assays. Results from the analysis of initial and ongoing positive and negative proficiency testing (PT) samples will ensure the ability of analysts to perform the method.

Several commenters questioned EPA's use of Borchardt's (2008) data as the basis for including viruses in UCMR 3,

since that work has not been published or undergone peer review. In his study, Borchardt sampled wells from 14 communities in Wisconsin for the presence of enteroviruses and noroviruses. The initial enteric virus RT-qPCR assay results are published in a peer reviewed journal (Hunt *et al.*, 2010). Borchardt's work showed a statistically significant correlation between viral qPCR and self-reported AGI (acute gastrointestinal illness) in the population served. Borchardt's work is also one of the very few studies to assess presence of enteric viruses in undisinfected ground water systems. EPA expects that complete results from Borchardt's work will be published in a peer reviewed journal in the near future. The study results have also been presented at numerous scientific conferences as well as in testimony to the Wisconsin State Senate. A project advisory committee comprised of epidemiologists from the University of California, Berkeley, Michigan State University and the University of Washington provided additional peer review comments during the study planning and data analysis stages.

A few commenters expressed concerns as to whether a survey of 800 undisinfected ground water systems in a sensitive hydrogeology would be nationally representative, noting that only specific geologic regions within the country would be included in the survey. While EPA acknowledges that the 800 undisinfected ground water systems are only a small subset of the total number of systems in the country, the selection of 800 PWSs was statistically derived to be nationally representative of those with sensitive hydrogeology.

EPA also received comments regarding how the agency would use data obtained from a focused and limited occurrence survey, at highly vulnerable and susceptible systems, to provide meaningful data to judge nationwide occurrence and to support regulatory determination. EPA notes that results will provide an understanding of the exposure risks in populations potentially served by a large number of undisinfected systems in karst aquifers nationally. Lastly, some comments addressed the current information on virus-indicator correlation, suggesting that the correlations are weak. EPA notes that most virus-indicator correlation studies have been performed in disinfected systems, not undisinfected ground water systems. EPA also notes that the use of multiple indicators in looking at the correlation will make this monitoring more useful.

6. Perfluorinated Compounds and Related Methods

a. This Rule

EPA is finalizing the requirement for monitoring the perfluorinated compounds (PFCs) as proposed: PFOS, PFOA, PFNA, PFHxS, PFHpA, and PFBS.

b. Summary of Major Comments

EPA received public comments related to several issues with EPA Method 537, used to measure PFCs. These included: The potential for laboratory contamination; concerns that the MRLs developed for the PFCs may be too low or too high; and concerns about the media used to extract the contaminants. EPA successfully tested this method via a multi-laboratory validation and conducted a thorough peer-review process prior to the UCMR 3 proposal. Since then, the method has also been effectively used at additional laboratories. Contamination was not an issue at these laboratories, and they were able to meet the proposed MRLs. While particular laboratories may be able to meet MRLs lower than those proposed, the selected MRLs reflect those achievable by the national array of laboratories that support the program. Regarding the extraction media, the method relies on a very common sorbent (styrene divinylbenzene) that is available from a number of vendors and yields high-quality data.

E. How are laboratories approved for UCMR 3 monitoring?

1. This Rule

All laboratories conducting analyses for UCMR 3 List 1 and List 2 contaminants must receive EPA approval to perform those analyses. Laboratories seeking approval are required to provide EPA with data that demonstrate their successful completion of an initial demonstration of capability (IDC) as outlined in each method, verify successful method performance at the MRLs as specified in this action, and successfully participate in an EPA Proficiency Testing (PT) program for the analytes of interest. On-site audits of candidate laboratories may be conducted. Details of the EPA laboratory approval program are contained in the technical manual titled: ''UCMR 3 Laboratory Approval Requirements and Information Document'' (USEPA, 2012d). This document will be available on the electronic docket at *www.regulations.gov* and will be provided to laboratories that register for the laboratory approval program. In addition, EPA may supply analytical reference standards of known concentrations for select analytes to participating/approved laboratories, where such standards are not readily available through commercial sources.

Pre-Screen Testing (List 3) analyses for viruses and related pathogen indicators (*i.e.,* total coliforms, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores) are organized and paid for by EPA through direct contracts with microbial laboratories. These laboratories are not required to go through the same formal laboratory approval process as the Assessment Monitoring and Screening Survey laboratories; however, they are subject to an analogous laboratory approval process as part of their direct contracts with EPA.

a. Laboratory Approval Process for UCMR 3

The UCMR 3 laboratory approval program is similar to the approval program under UCMR 1 and 2. It is designed to assess and confirm the capability of laboratories to perform analyses using the methods listed in § 141.40(a)(3), Table 1, of this final rule. It will assess whether laboratories meet the required equipment, laboratory performance and data reporting criteria described in this action. This evaluation program is voluntary in that it only applies to laboratories intending to analyze UCMR 3 samples. However, EPA requires water systems to use UCMR 3 approved laboratories when conducting monitoring for those analytes listed in Table 1 of § 141.40(a)(3) of this final rule. A list of laboratories approved for UCMR 3 monitoring is posted to EPA's UCMR Web site: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/laboratories.cfm.* Laboratories are encouraged to apply for UCMR 3 approvals as early as possible, as schedules for large PWS sampling will be completed soon after the final rule is promulgated. The steps for the laboratory approval process are listed in the following paragraphs, b through f.

b. Request To Participate

Laboratories must contact EPA and request to participate in the UCMR 3 laboratory approval program. Laboratories must send their request to: UCMR 3 Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or email at: *UCMR_Sampling_Coordinator@epa.gov.* EPA began accepting requests for registration for the List 1 (Assessment Monitoring) and List 2 (Screening Survey) methods on March 03, 2011.

The final opportunity for a laboratory to request the necessary registration forms is August 1, 2012.

c. Registration

Each laboratory that wishes to participate in UCMR 3 monitoring must complete a registration form. Registration information includes the following: laboratory name, mailing address, shipping address, contact name, phone number, email address and a list of the UCMR 3 methods for which the laboratory is seeking approval. The registration step provides EPA with the necessary contact information and ensures that each laboratory receives a customized application package of materials and instructions for the methods that it plans to use.

d. Application Package

When EPA receives the registration information, a customized application package will be emailed to the laboratory for completion. Information requested in the application includes the following: IDC data, including precision, accuracy and results of MRL studies; information regarding analytical equipment; proof of current drinking water laboratory certification (for any currently regulated chemical); and example chromatograms for each method under review.

The laboratory must post UCMR 3 monitoring results (on behalf of its PWS clients) to EPA's UCMR electronic data reporting system as a condition of maintaining EPA approval.

e. EPA Review of Application Package

EPA will review the application package and, if necessary, request follow-up information. The laboratory must satisfactorily complete this portion of the process before they can participate in the UCMR 3 PT program.

f. Proficiency Testing (PT)

A PT sample is a synthetic sample containing a concentration of an analyte that is known to EPA, but unknown to the laboratory being tested. To complete the initial laboratory approval process, a laboratory must meet specific acceptance criteria for the analysis of a UCMR 3 PT sample(s) for each method for which the laboratory is seeking approval. Initial laboratory approval is contingent upon successful completion of a PT study. EPA will offer two to four opportunities for a laboratory to successfully analyze UCMR 3 PT samples. Two of these studies were conducted prior to the publication of this final rule and at least one study will be conducted after publication of the final rule. Under this approach laboratories could complete their portion of the laboratory approval process prior to publication of this final rule, and therefore receive their approval immediately following the publication of this final rule. Alternatively, laboratories could wait until this final rule is published before completing the required laboratory approval analyses. A laboratory must pass one of the PT studies for each analytical method for which they are requesting approval. Laboratories applying for UCMR 3 approval and laboratories conducting UCMR 3 analyses may be subject to on-site laboratory audits. No PT studies will be conducted after the start of monitoring; however, laboratory audits will be ongoing throughout the entire monitoring period of 2013–2015. Continued laboratory approval is contingent upon successful participation in any audits conducted by EPA.

g. Written EPA Approval

After laboratories successfully complete steps ''b'' through ''f'' of the laboratory approval process, EPA will send the laboratory a letter listing the method(s) for which approval is granted.

2. Summary of Major Comments

Three (3) commenters suggested that EPA modify the requirements for PT samples in UCMR 3 by including a round of PT samples during the UCMR 3 monitoring period in addition to the initial round of PT samples conducted prior to monitoring. Instead of requiring laboratories to conduct ongoing PT samples, EPA will conduct ongoing laboratory audits similar to the process under UCMR 2. Ongoing laboratory audits will allow EPA to evaluate each laboratory's analytical processes for all aspects of sample receipt, storage, processing, analysis and reporting of routine samples. This will provide a better mechanism, compared to an additional PT study, for uncovering any potential data issues and ensuring that laboratories meet the quality requirements.

F. How were minimum reporting levels determined?

1. This Rule

Lowest Concentration Minimum Reporting Levels (LCMRLs) and Minimum Reporting Levels (MRLs) for each analyte were determined through an EPA LCMRL study assessing the data from multiple laboratories prior to publication of the UCMR 3 proposal. The LCMRL is defined as the lowest spiking concentration at which recovery of between 50 and 150% is expected 99% of the time by a single analyst.

The LCMRL is estimated using advanced statistical procedures that have been incorporated into an LCMRL calculator tool that is available on EPA's Web site (*http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*). The tool estimates a probability distribution for spike recovery as a function of spiking concentration.

MRL

EPA revised the definition of the MRL used in UCMR 2 (72 FR 367, January 4, 2007 (USEPA, 2007)). The revised definition reflects improvements in the statistical procedures for determining the LCMRL and MRL. These improvements were implemented by EPA to make the models more robust, *i.e.,* so that the models can accommodate a wider range of observed LCMRL data sets (USEPA, 2010f). The MRL for an analyte measured by a specified analytical method is designed to be an estimate of an LCMRL that is achievable, with 95% confidence, by a capable analyst/laboratory at least 75% of the time. Such a demonstration of ability to reliably make quality measurements at the MRL is intended to achieve high quality measurements across the nation's laboratories.

In UCMR 3, EPA estimated the MRL for an analyte/method by obtaining data from several laboratories performing corresponding LCMRL studies. These data were used to construct an approximation to the distribution that would result from picking at random a laboratory/analyst proficient in performing the analytical method and having them perform an LCMRL study and compute an LCMRL estimate. The strategy for computing the MRL is two-fold. First, for each LCMRL data set, a distribution for repeated LCMRL determinations by the same laboratory/analyst is estimated by generating a large number of simulated values. Second, these values are combined to create an estimated overall distribution. If a result from one of the laboratories is significantly higher than that of other laboratories, this value would be down-weighted using a robust weight function. The resulting weighted values are used to construct a probability distribution from which the MRL is computed as the 95th percentile.

2. Summary of Major Comments

Several commenters remarked on the complexity of the procedures for determining the LCMRL and the MRL. These commenters were concerned

about the amount of time and effort needed to calculate LCMRLs and MRLs. Some suggested that as an alternative, EPA use the procedure developed for consideration by the Clean Water Act as part of the Federal Advisory Committee on Detection and Quantitation. As a point of clarification, EPA notes that laboratories that participate in UCMR 3 do not need to use the LCMRL and MRL procedures. Instead, laboratories that participate in UCMR 3 will be required to demonstrate their ability to meet the already-established UCMR 3 analyte MRLs by analyzing reagent water samples spiked at or below the established UCMR 3 MRLs. This initial demonstration of capability (IDC) requirement, as described in EPA's ''UCMR 3 Laboratory Approval Requirements and Information Document,'' is no more complex than determining a Method Detection Limit (MDL) (USEPA, 2012d).

A diverse selection of laboratories representing different sizes, experience and business status were selected to participate in the EPA LCMRL studies (as described previously in this section). For transparency, EPA will provide summary tables showing all LCMRL results for UCMR 3 in the docket (USEPA, 2012d).

With regard to comments that the MRLs are being set well below health reference levels (HRLs) in certain cases, EPA believes that this is appropriate because new health effects data may become available in the future that result in lower HRLs.

G. What are the UCMR 3 reporting requirements?

1. General Reporting Requirements/ SDWARS

a. This Rule

Under this rule, EPA is committed to pre-populating the inventory and monitoring data in the reporting system (Safe Drinking Water Accession and Review System (SDWARS)), using data from UCMR 2 and SDWIS/Fed information. For PWSs subject to UCMR 3 that have data in SDWARS from UCMR 2, EPA will transfer data to ''SDWARS 3'' (*i.e.,* the SDWARS update associated with UCMR 3). For water systems that are new to UCMR, EPA will pull the available information from SDWIS/Fed and coordinate with States and EPA Regions for their input where possible. EPA has loaded the available information into SDWARS 3 prior to the publication of this final rule. PWSs will have until October 1, 2012, to update, edit, or change their information or monitoring schedule in SDWARS 3 (see Section III.G.4 for further discussion of reporting deadlines).

b. Summary of Major Comments

Several commenters expressed concern over possible inefficiencies related to data entry into SDWARS, including concern over duplication of past efforts (*e.g.,* having to re-enter information for each sample point for each sampling event) and time spent identifying representative sampling locations at both the EPTDS and DSMRT for UCMR 2. Commenters further noted it would be very helpful if elements that are duplicated for each sample would be automatically pre-filled in each field once the information was entered the first time. As noted, for UCMR 3, EPA plans to preload as much inventory to SDWARS as possible and is taking commenter suggestions into consideration in its design updates to SDWARS. The pre-loaded data will include representative sampling locations previously identified as the EPTDS and DSMRT locations. PWSs will be asked to verify their inventory in SDWARS and large systems may be required to revise this information once their ground water representative monitoring plan has been approved, depending on the level of their State's involvement. See Section III.G.4 for discussion of reporting deadlines.

2. Sample Location and Inventory Information (Zip Codes)

a. This Rule

This final rule establishes a requirement for reporting zip codes associated with all PWS customers. EPA had proposed the reporting of sampling point U.S. Postal Service Zip Codes and the zip codes of all customers served by a given sampling point (as part of the reporting associated with Data Element 4—Sampling Point Identification Code). Obtaining the zip code of the sampling point was intended to assist with future vulnerability assessments. Zip codes that tie populations served to each sampling point were intended to assist with future occurrence and exposure analyses. However, based on stakeholder concerns about the burden associated with reporting this information and concerns about the usefulness of having the zip code of the sampling point, EPA revised the rule language to establish a requirement of only reporting zip codes for customers served by the PWS. These reporting specifications are now established in §§ 141.35(c)(1) and (d)(1) for large and small systems, respectively. EPA believes that required reporting of customer zip codes will provide EPA with useful information for future occurrence analyses.

b. Summary of Major Comments

Eight (8) comments were received regarding the proposed zip code reporting requirements. Most commenters believed that reporting the zip code for each sampling point location would not provide EPA with the information necessary to make future correlations between water quality and the areas served by the water being distributed. After considering public comments, EPA has revised the reporting requirement to only include the zip codes served by the PWS.

3. Disinfectant Type Specifications

a. This Rule

EPA is changing Data Element 6, in Table 1 of 141.35(e). Under UCMR 2, this data element was established to provide information on ''Disinfectant Residual Type'' as it related to monitoring for nitrosamines (part of UCMR 2 Screening Survey monitoring). EPA is modifying the definition of this data element to account for changes to the analyte and monitoring specifications between UCMR 2 and UCMR 3. This revised definition lists additional disinfectant types to provide more specific information on the sources and types of disinfectant schemes that may lead to chlorate formation/occurrence in drinking water.

b. Summary of Major Comments

While commenters were supportive of the collection of these data, several commenters noted that the requirement for reporting this data element was unclear. Some commenters noted that PWSs frequently use multiple disinfectants and reporting only one of those would provide an inaccurate assessment of disinfectants being used. Others noted that EPA needed to make sure that PWSs indicate whether their hypochlorite solution was generated on or off site (onsite: Essentially no storage of stock solution will be needed; offsite: The storage of stock solution will be needed).

EPA agrees that the presentation of the requirements warranted clarification and has revised the list of disinfectants. EPA will clearly indicate in the data reporting system (SDWARS) that PWSs should identify all of the disinfectants used to treat the water.

4. Reporting Schedule

a. This Rule

To help ensure that monitoring and reporting are conducted as scheduled,

UCMR 3 specifies several deadlines related to initial reporting of inventory and scheduling information, as well as reporting of monitoring data. Several deadlines were newly proposed for UCMR 3 (*i.e.,* not used for UCMR 1 or UCMR 2) and finalized in this rule, and some are revised in this final rule to ensure that UCMR 3 is implemented as scheduled. These deadlines are being established to allow EPA enough time to review and process the information, and complete the planning process for UCMR 3 monitoring to begin on January 1, 2013. Changes in deadlines only affect large systems. There are no changes to small system reporting schedules. The schedule changes that are finalized in this rule include:

• Inventory and Scheduling: Large systems that are subject to UCMR 3 must report their inventory and sampling location information (141.35(c)(2)), and any proposed changes to their monitoring schedule (141.35(c)(5)(i) and 141.40(a)(4)(i)) no later than October 1, 2012. As noted, EPA has loaded existing information into SDWARS 3 prior to the publication of this final rule. PWSs will have until October 1, 2012, to update, edit or change their inventory and sample location information or monitoring schedule in SDWARS 3.

• Ground water representative monitoring plans: As described in 141.35(c)(3), large systems that use ground water sources and that have multiple EPTDSs can, with prior approval, conduct monitoring at representative sampling locations rather than at each EPTDS. For systems that have existing approved representative monitoring plans, their approved sampling location information will be pre-loaded into SDWARS and systems must review and confirm, or update this information by October 1, 2012. This rule establishes a deadline of August 1, 2012, for submitting a new ground water representative plan to be reviewed by the State or EPA.

• Monitoring data: This rule re-establishes two deadlines related to reporting of monitoring data: Large systems must require their laboratories to post data to SDWARS within 120 days of sample collection; and large systems must review, approve and submit the data to their State and EPA within 60 days of when the laboratory posts the data. These time frames are specified in 141.35(c)(6)(ii) and 141.40(a)(5)(vi).

b. Summary of Major Comments

Five (5) comments were received on the reduced laboratory reporting time frame. Most commenters did not support the 60-day proposed time frame for laboratories to post data to SDWARS and expressed several concerns: that laboratories may see increased workload due to additional monitoring; that UCMR 3 methods are not in common use and are very sensitive, so greater validation of results may be required; and that field blank analysis may be required for some methods, resulting in longer turnaround times for sampling results. Commenters did not believe that the reduced reporting time frame would increase compliance with monitoring schedules. Seven comments were also received regarding the 30-day proposed time frame for large PWSs to review and approve their data. The majority of the commenters requested the time frame be returned to the 60-day period used under UCMR 1 and 2. Commenters believe the shortened time frame would not give PWSs sufficient time to conduct a full data review and that schedule coordination among multiple staff would be difficult. After considering the public comments, EPA returned the laboratory reporting time frame to 120 days after sample collection (same as earlier UCMRs) and returned the PWS reporting time frame to 60 days after laboratory posting data (same as earlier UCMRs).

IV. State and Tribal Participation

A. Partnership Agreements

1. This Rule

Under UCMR 3, States may continue to have a role in rule implementation through Partnership Agreements (PAs). Because specific activities for individual States are identified and established through the PAs, not through rule language, this rule does not contain reference to PAs.

2. Summary of Major Comments

EPA received no comments regarding State participation in UCMR 3.

B. Governors' Petition and State-Wide Waivers

1. This Rule

This rule retains the UCMR 1 and 2 language that, consistent with SDWA, allows a minimum of seven State Governors to petition EPA to add contaminants to the UCMR Contaminant list. This rule also retains the UCMR 1 and 2 language that allows States to waive monitoring requirements with EPA approval and under very limited conditions.

2. Summary of Major Comments

EPA received no comments regarding the governor's petition or state-wide waiver allowances of UCMR 3.

V. Cost and Benefits of This Rule

In this rule, EPA finalizes a new set of contaminants for monitoring in the third five-year UCMR monitoring period. UCMR 3 also incorporates modifications to improve the rule design. UCMR 3 Assessment Monitoring (for List 1 contaminants) will be conducted from January 2013 through December 2015 by 800 systems serving 10,000 or fewer people, and by all systems serving more than 10,000 people. The 800 small systems will be randomly selected for List 1 monitoring. The UCMR 3 Screening Survey (for List 2 contaminants) will be conducted from January 2013 through December 2015 by all systems serving a population of greater than 100,000 people, a nationally representative set of 320 systems serving between 10,001 and 100,000 people, and a nationally representative set of 480 systems serving fewer than 10,000 people. The nationally representative sets of 320 and 480 systems will both be randomly selected for List 2 monitoring. The Pre-Screen Testing for List 3 contaminants will also be conducted from January 2013 through December 2015 in 800 undisinfected ground water systems serving 1,000 or fewer persons. No small system will be selected for more than one UCMR 3 monitoring list.

It is assumed for this cost estimate that one-third of systems will monitor during each of the three monitoring years. Labor costs pertain to systems, States, and EPA. They include activities such as reading the regulation, notifying systems selected to participate, training water system staff on sample collection procedures, sample collection, including travel time to collect samples, data review, reporting, and record keeping. Non-labor costs will be incurred primarily by EPA and by large PWSs. They include the cost of shipping samples to laboratories for testing and the cost of the actual laboratory analyses.

In this rule, EPA specifies seven EPA-developed analytical methods and four equivalent consensus organization developed methods to monitor for 27 unregulated chemical contaminants, two viruses, and total chromium. While this preamble also describes the analytical methods that will be used for virus monitoring, the rule does not address these methods. Laboratory approval for virus monitoring is not addressed since all of the analyses for the two viruses will be conducted in laboratories under EPA contract and at EPA's expense. Estimated system and EPA costs are based on the analytical costs for all UCMR 3 methods. With the

exception of Methods 200.8 and 300.1, these methods are comparatively new and will not coincide with other compliance monitoring (*i.e.,* no cost savings for concurrent monitoring can be realized).

Laboratory analysis and shipping of samples account for approximately 82% of the total national cost for UCMR 3 implementation. These costs are calculated as follows: the number of systems, multiplied by the number of sampling locations, multiplied by the sampling frequency, multiplied by the unit cost of laboratory analysis. Under UCMR 3, for List 1 Assessment Monitoring and List 2 Screening Survey, surface water (and ground water under the direct influence of surface water (GWUDI)) sampling points will be monitored four times during the applicable year of monitoring, and ground water sample points will be monitored twice during the applicable year of monitoring. Systems will monitor for the metals—cobalt, molybdenum, vanadium, strontium, chromium-6, and total chromium—as well as chlorate, at their EPTDS sampling locations and at one distribution system sampling point per treatment plant (*i.e.,* at the DSMRT). Pre-Screen Testing systems will monitor two times during the three year monitoring period (2013 through 2015) at their EPTDS.

Following publication of the proposed rule and EPA's initial cost and burden estimates, EPA received several cost-related public comments. Several suggested that EPA's estimates of cost and burden (*e.g.,* laboratory and estimated labor burden) to PWSs were too low. EPA estimates of laboratory fees are based on consultations with commercial drinking water laboratories and a review of the costs of similar analytical methods. In response to comments, EPA revisited the analytical method cost estimates. EPA approached four commercial drinking water laboratories and requested pricing estimates for UCMR 3 methods, including the cost of field blanks for methods 524.3 (VOCs), 537 (PFCs), and 539 (hormones). EPA averaged the estimates from the four laboratories and updated the cost figures, which resulted in increased cost estimates for some methods.

With respect to per-system burden estimates, EPA notes that all estimates represent average burden hours, which include surface water systems that may have very few sampling points, and thus lower sampling burden, as well as those systems with higher numbers of sampling points that would have greater labor burden. Moreover, a system's burden is primarily incurred during its one year of required UCMR monitoring (between January 2013 and December 2015). However, in compliance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), these cost and burden estimates are presented as an average over the applicable three-year information collection request (ICR) period (2012–2014). Small systems (those serving 10,000 or fewer people) will have the lowest burden not only because they generally have fewer sampling locations, but also because these systems will receive substantial direct assistance from EPA and/or their State.

The total cost of Assessment Monitoring analyses is estimated at $1,085 per sample set. The total cost of the single Screening Survey method is estimated at $418 per sample set. Field blank analyses costs are further described in ''Information Collection Request for the Unregulated Contaminant Monitoring Regulation (UCMR 3)'' (USEPA, 2012a). The cost to EPA of the Pre-Screen analyses for viruses and related pathogen indicators (*i.e.,* total coliforms, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores) is estimated at $1,880 per sample set. Shipping estimates are added to the calculated costs to derive the total direct analytical non-labor costs. Estimated shipping costs were based on the average cost of shipping a 25-pound package.

In preparing the UCMR 3 ICR, EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the PWS inventory, number of sampling points per system, and labor rates. EPA expects that States will incur only labor costs associated with voluntary assistance with UCMR 3 implementation. State costs were estimated using the relevant modules of the State Resource Model that was developed by the Association of State Drinking Water Administrators (ASDWA) in conjunction with EPA (ASDWA, 2003) to help States forecast resource needs. Model estimates were adjusted to account for actual levels of State participation under UCMR. Because State participation is voluntary, level of effort will vary across States and depend on their individual agreements with EPA.

Over the UCMR implementation period of 2012–2016, EPA estimates that nationwide, the annual cost of UCMR 3 is approximately $17.45 million, of which water systems and States will pay approximately $13.3 million; and EPA will pay $4.14 million (most of which is associated with small system monitoring). These total estimated annual costs (labor and non-labor) are incurred as follows:

Respondent	Avg. annual cost. all respondents (2012–2016)
Small Systems (25–10,000), including labor only, non-labor costs paid for by EPA	$0.066 m
Large Systems (10,001–100,000), including labor and non-labor costs	9.55 m
Very Large Systems (100,001 and greater), including labor and non-labor costs	2.94 m
States, including labor costs related to implementation coordination	0.75 m
EPA, including labor for implementation, non-labor for small system testing	4.14 m
Average Annual National Total [1]	17.45 m

[1] Average Annual National Total of $17.45 million is based on rounding.

Over the period of 2012–2016, EPA estimates that nationwide, the total cost of UCMR 3 is approximately $87 million, of which water systems and States will pay approximately $66 million and EPA will pay $21 million.

Additional details regarding EPA's cost assumptions and estimates can be found in the ICR amendment prepared for this final rule (Office of Management and Budget (OMB) number 2040—NEW), which presents estimated cost and burden for the 2012–2014 period (USEPA, 2012a). Estimates of costs over the entire five-year UCMR 3 period of 2012–2016 are attached as an appendix to the ICR. Copies of the ICR and its amendment may be obtained from the EPA public docket for this final rule

under Docket ID Number EPA–HQ–OW–2009–0090.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR. 3821, January 21, 2011, this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the ''Information Collection Request for the Unregulated Contaminant Monitoring Regulation (UCMR 3)'' (USEPA, 2012a). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in Section V of the preamble of this final rule.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collected under this final rule fulfills the statutory requirements of Section 1445(a)(2) of SDWA, as amended in 1996. The data collected will describe the source of the water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants will be evaluated in conjunction with health effects information and will be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

The annual burden and cost estimates described in this section are for the implementation assumptions described in Section V. Cost and Benefits of the Rule. Respondents to the UCMR 3 will include 2,080 small water systems (800 for Assessment Monitoring, 480 for Screening Survey, and 800 for Pre-Screen Testing), the 4,215 large PWSs (those serving more than 10,000 people), and the 56 States and Primacy agencies (6,351 total respondents). The frequency of response varies across respondents and years. System costs (particularly laboratory analytical costs) vary depending on the number of sampling locations. For cost estimates, it is assumed that systems will conduct sampling evenly across January 2013 through December 2015 (*i.e.,* one-third of systems in each of the 3 consecutive 12-month periods). Because the applicable ICR period is 2012–2014, the third year of monitoring activity (*i.e.,* January through December of 2015) is not captured in the current ICR estimates.

The burden and cost estimates presented in this section represent average costs. In some cases, the costs are presented as an annual average. Average burden or cost per system was derived by calculating total costs, and dividing by the total number of systems expected to monitor during the ICR years of 2012–2014. Average annual burden or cost per system was derived by summing total costs (or burden), dividing by the number of systems expected to monitor during the ICR years of 2012–2014, and then dividing by three years. The total costs and the annual average costs over the ICR years of 2012–2014 are presented in Exhibit 7. Total and annual average costs for the entire 5-year UCMR 3 period can be found in the ICR for UCMR 3, available in the docket for this final rule.

Small systems (those serving 10,000 or fewer) that are selected for UCMR 3 monitoring will sample an average of 1.8 times per system (*i.e.,* number of responses per system) across the three-year ICR period of 2012–2014. The average burden per response for small systems is estimated to be 3.8 hours. Large systems (those serving 10,001 to 100,000 people) and very large systems (those serving more than 100,000 people) will sample and report an average of 2.7 and 3.7 times per system, respectively, across the three-year ICR period of 2012–2014. The average burden per response for large and very large systems is estimated to be 9.2 and 10.2 hours, respectively. States are assumed to have an average of 1.0 response per year (3.0 responses per State across the three-year ICR period of 2012–2014), related to coordination with EPA and systems, with an average burden per response of 233 hours. In aggregate, during the ICR period of 2012–2014, the average response (*e.g.,* responses from systems and States) is associated with a burden of 11.6 hours, with a labor plus non-labor cost of $4,218 per response. Exhibit 7 presents respondent burden and cost estimates for the ICR period of 2012–2014.

EXHIBIT 7—UCMR 3 PER RESPONDENT BURDEN AND COST SUMMARY FOR THE ICR PERIOD

[2012–2014]

Burden (hours)/cost (dollars)	Small systems	Large systems	Very large systems	States	National average
Three-Year Total per Respondent					
Total # of Responses per Respondent	1.8	2.7	3.7	3.0	2.5
Labor Cost per Respondent	$160	$775	$1,437	$41,975	$1,160
Non-Labor Cost per Respondent	$0	$11,785	$34,181	$0	$9,237
Total Cost (Labor plus Non-Labor)	$160	$12,560	$35,619	$41,975	$10,397
Total Cost per Response	$89	$4,677	$9,704	$13,992	$4,218
Total Burden per Respondent (hr)	6.9	24.8	37.5	700.1	28.7
Total Burden per Response (hr)	3.8	9.24	10.2	233.4	11.6
Average Annual per Respondent					
Avg. # of Responses per Respondent	0.6	0.9	1.2	1.0	0.8
Labor Cost per Respondent	$53	$258	$479	$13,992	$387
Non-Labor Cost per Respondent	$0	$3,928	$11,394	$0	$3,079
Avg. Cost (Labor plus Non-Labor)	$53	$4,187	$11,873	$13,992	$3,466
Avg. Cost per Response	$30	$1,559	$3,235	$4,664	$1,406
Avg. Burden per Respondent (hr)	2.3	8.3	12.5	233.4	9.6

EXHIBIT 7—UCMR 3 PER RESPONDENT BURDEN AND COST SUMMARY FOR THE ICR PERIOD—Continued

[2012–2014]

Burden (hours)/cost (dollars)	Small systems	Large systems	Very large systems	States	National average
Avg. Burden per Response (hr)	1.3	3.1	3.4	61.3	3.9

The average per respondent burden hours and costs per year for the ICR period of 2012–2014 are: small systems—2.3 hour burden at $53 for labor; large systems—8.3 hours at $258 for labor, and $3,928 for analytical costs; very large systems—12.5 hours at $479 for labor, and $11,394 for analytical costs; and States—233.4 hours at $13,992 for labor. Burden is defined at 5 CFR 1320.3(b).

Exhibit 8 shows the annual and total national cost and burden for UCMR 3 implementation over the ICR period of 2012–2014.

EXHIBIT 8—UCMR 3 ANNUAL NATIONAL COST AND BURDEN

[2012–2014]

Cost (in millions)	2012	2013	2014	Total
Small System Costs	$0	$0.11	$0.11	$0.22
Large System Costs	0	15.92	15.92	31.84
Very Large System Costs	0	4.90	4.90	9.81
State Costs	0.33	1.0	1.0	2.4
EPA Costs	0.92	6.63	6.57	14.12
Total Cost	1.26	28.55	28.53	58.34

Total Burden (thousands of hours) for All Responses	2012	2013	2014	Total
Small Systems	0	4.8	4.8	9.5
Large Systems	0	31.5	31.5	62.9
Very Large Systems	0	5.2	5.2	10.3
States	13.3	13.6	12.2	39.2
EPA	5.7	11.4	11.4	28.6
Total Burden	19.1	66.5	65.1	150.6

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 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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.

The RFA provides default definitions for each type of small entity. Small entities are 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.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5)). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of this rule on small entities, EPA considered small entities to be PWSs serving 10,000 or fewer people, because this is the system size specified in SDWA as requiring special consideration with respect to small system flexibility. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7606, February 13, 1998 (USEPA, 1998a)), requested public comment, consulted with the SBA, and finalized the alternative definition in the Consumer Confidence Reports rulemaking (63 FR 44512, August 19, 1998 (USEPA, 1998b)). Consistent with that Final Rule, the alternative definition has been applied to this regulation.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are PWSs serving 10,000 or fewer people. EPA has determined that the small entities subject to the requirements of this rule are a subset of the small PWSs (those serving 10,000 or fewer people). The agency has determined that 2,080 small PWSs (across Assessment Monitoring, Screening Survey, and Pre-Screen

Testing), or approximately 3% of small systems, will experience an impact of no more than 0.4% of revenues; the remainder of small systems will not be impacted.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this rule on small entities. To ensure that this rule will not have a significant economic impact on a substantial number of small entities, EPA will assume all costs for analyses of the samples and for shipping the samples from these systems to the laboratories contracted by EPA to analyze UCMR 3 samples. EPA has set aside $2.0 million each year from the State Revolving Fund (SRF) with its authority to use SRF monies for the purposes of implementing this provision of SDWA. Thus, the costs to these small systems will be limited to the labor hours associated with 2,080 small systems assisting EPA in collecting UCMR samples and preparing them for shipping.

The evaluation of the overall impact on small systems, summarized in the preceding discussion, is further described as follows. EPA analyzed the impacts for privately-owned and publicly-owned water systems separately due to the different economic characteristics of these ownership types, such as different rate structures and profit goals. For both publicly- and privately-owned systems, EPA used the ''revenue test,'' which compares annual system costs attributed to the rule to the system's annual revenues. Median revenue data from the 2006 Community Water System Survey Volume II: Detailed Tables and Survey Methodology (*http://water.epa.gov/aboutow/ogwdw/upload/cwssreportvolumeII2006.pdf*) were used for public and private water systems. EPA assumes that the distribution of the sample of participating small systems will reflect the proportions of publicly- and privately-owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented in Exhibit 9.

EXHIBIT 9—NUMBER OF PUBLICLY- AND PRIVATELY-OWNED SMALL SYSTEMS SUBJECT TO UCMR 3

System size (number of people served)	Publicly-owned	Privately-owned	Total
Ground Water			
500 and under	134	402	536
501 to 3,300	548	208	757
3,301 to 10,000	286	66	352
Subtotal GW	968	677	1,645
Surface Water (and GWUDI)			
500 and under	7	9	16
501 to 3,300	98	35	133
3,301 to 10,000	222	64	286
Subtotal SW	327	108	435
Total of Small Water Systems	1,295	785	2,080

The basis for the UCMR 3 RFA certification for this final rule is as follows: for the 2,080 small water systems that will be affected, the average annual costs for complying with this rule represent 0.4% of system revenues (the highest estimated percentage is for ground water systems serving 500 or fewer people, at 0.40% of its median revenue). Exhibit 10 presents the annual costs to small systems and to EPA for the small system sampling program, along with an illustration of system participation for each year of the UCMR 3 program.

EXHIBIT 10—EPA AND SYSTEMS COSTS FOR IMPLEMENTATION OF UCMR 3 AT SMALL SYSTEMS

Cost description	2012	2013	2014	2015	2016	Total
Costs to EPA for Small System Program (including Assessment Monitoring, Screening Survey, and Pre-Screen Testing).	$0	$5,407,233	$5,407,233	$5,407,233	$0	$16,221,698
Costs to Small Systems including Assessment Monitoring, Screening Survey, and Pre-Screen Testing.	0	$110,720	110,720	110,720	0	332,160
Total Costs to EPA and Small Systems for UCMR 3:.	0	$5,517,953	5,517,953	5,517,953	0	16,553,858
System Monitoring Activity Timeline: [1]						
Assessment Monitoring		⅓ PWSs Sample.	⅓ PWSs Sample.	⅓ PWSs Sample.		800
Screening Survey		⅓ PWSs Sample.	⅓ PWSs Sample.	⅓ PWSs Sample.		480

EXHIBIT 10—EPA AND SYSTEMS COSTS FOR IMPLEMENTATION OF UCMR 3 AT SMALL SYSTEMS—Continued

Cost description	2012	2013	2014	2015	2016	Total
Pre-Screen Testing		⅓ PWSs Sample.	⅓ PWSs Sample.	⅓ PWSs Sample.		800

[1] Total number of systems is 2,080. No small system conducts more than one type of monitoring study.

System costs are attributed to the labor required for reading about their requirements, training staff on requirements, monitoring, including travel time needed to collect samples, reporting, and record keeping. The estimated average annual burden across the five-year UCMR 3 implementation period of 2012–2016 is estimated to be 1.4 hours at $32 per small system. Average annual cost, in all cases, is less than or equal to 0.40% of system revenues. As required by SDWA, the agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities. As a result, EPA incurs the entirety of the non-labor costs associated with UCMR 3 small system monitoring, or 98% of total small system testing costs. Exhibits 11 and 12 present the estimated economic impacts in the form of a revenue test for publicly- and privately-owned systems.

EXHIBIT 11—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PUBLICLY-OWNED SYSTEMS (2012–2016)

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue test [1] (%)
Ground Water Systems				
500 and under	27	1.14	$24.16	0.08
501 to 3,300	110	1.24	27.67	0.02
3,301 to 10,000	57	1.57	39.71	0.01
Surface Water (and GWUDI) Systems				
500 and under	1	1.63	34.71	0.06
501 to 3,300	20	1.69	37.74	0.02
3,301 to 10,000	44	1.79	45.35	0.005

[1] The "Revenue Test" was used to evaluate the economic impact of an information collection on small government entities (*e.g.,* publicly-owned systems); costs are presented as a percentage of median annual revenue in each size category.

EXHIBIT 12—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PRIVATELY-OWNED SYSTEMS (2012–2016)

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue Test[1] (%)
Ground Water Systems				
500 and under	80	1.14	$24.16	0.40
501 to 3,300	42	1.24	27.67	0.02
3,301 to 10,000	13	1.57	39.74	0.004
Surface Water (and GWUDI) Systems				
500 and under	2	1.63	34.71	0.10
501 to 3,300	7	1.69	37.74	0.01
3,301 to 10,000	13	1.79	45.35	0.005

[1] The "Revenue Test" was used to evaluate the economic impact of an information collection on small private entities (*e.g.,* privately-owned systems); costs are presented as a percentage of median annual revenue in each size category.

EPA specifically solicited additional comment on the proposed action on small systems. No comments were received.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Total annual costs of this final rule (across the implementation period of 2012–2016), for State, local, and Tribal governments and the private sector, are estimated to be $17.45 million, of which EPA will pay $4.14 million, or approximately 24%. Thus, this rule is not subject to the requirements of Sections 202 or 205 of UMRA.

This rule 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. As noted previously, the agency expects to pay for the reasonable costs of sample analysis for the small PWSs required to monitor for unregulated contaminants under this final rule, including those owned and operated by small governments. The only costs that small systems will incur are labor costs attributed to collecting the UCMR samples and packing them for shipment

to the laboratory (EPA will pay for shipping). These costs are minimal. They are not significant or unique. Thus, this rule is not subject to the requirements of UMRA Section 203.

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. The cost to State and local governments is minimal and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. As described previously, this final rule requires monitoring by all large systems (*i.e.,* those serving 10,001 to 100,000 people) and all very large systems (*i.e.,* those serving greater than 100,000 people); 17 Tribal water systems have been identified as large systems based on information in the SDWIS/Fed water system inventory. EPA estimates the average annual cost to each of these large systems, over the five-year rule period, to be less than $2,512 (total cost of about $12,560 per system during the five-year rule period). This cost is based on a labor component (associated with the collection of samples) and a non-labor component (associated with shipping and laboratory fees) and represents less than 0.09% of average revenue/sales for large systems. UCMR also requires monitoring by a nationally representative sample of small systems (*i.e.,* those serving 10,000 or fewer people). EPA estimates that approximately one percent of small Tribal systems will be selected as part of a nationally representative sample for Assessment Monitoring, Screening Survey or Pre-Screen Testing. EPA estimates the average annual cost to the small Tribal systems, over the five year rule period to be $32 (total cost of about $160 per system over the five-year rule period). Such cost is based on the labor associated with collecting a sample and preparing it for shipping and represents 0.4% or less of average revenue/sales for small systems. All other small system expenses (associated with shipping and laboratory fees) are paid by EPA.

EPA consulted with tribal officials early in the process of developing UCMR to permit them to have meaningful and timely input into its development. In developing the original UCMR rule, EPA held stakeholder meetings and prepared background information for stakeholder review. EPA sent requests for review of stakeholder documents to nearly 400 Tribes, Tribal organizations, and small systems organizations to obtain their input. Representatives from the Indian Health Service (IHS) Sanitary Deficiency System and Tribes were consulted regarding decisions on rule design, the design for the statistical selection of small systems, and potential costs. Tribes raised issues concerning the selection of the nationally representative sample of small systems, particularly the manner in which Tribal systems would be considered under the sample selection process. EPA developed the sample frame for Tribal systems and Alaska Native water systems in response to those concerns. EPA worked with the Tribes, Alaska Natives, the IHS, and the States to determine how to classify each Tribal system for consideration in the statistically-based selection of the nationally representative sample of small systems. As a result of those discussions, small PWSs located in Indian country in each of the EPA Regions containing Indian country were evaluated as part of a Tribal category that receives selection consideration comparable to that of small systems outside of Indian country. Thus, Tribal systems have the same probability of being selected as other water systems in the stratified selection process that weighs systems by water source and size class by population served. This final rule maintains the basic program design of UCMR 1 and 2, and continues to build upon the structure of this cyclical program. As part of the development of this rule, EPA held a public stakeholder meeting on April 7, 2010. This meeting was announced to the public in a **Federal Register** notice dated February 23, 2010 (75 FR 8063 (USEPA, 2010a)). Prior to the meeting, background materials and rule development information were sent to specific stakeholders, including representatives from the IHS and the Native American Water Association.

EPA specifically solicited additional comment on the proposed action from tribal officials. EPA received no comments.

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

This action is not subject to EO 13045 because it is not an economically significant regulation pursuant to EO 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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. None of the final UCMR requirements involve actions that use a significant amount of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA has decided to use the methods developed by the agency as well as voluntary consensus standards for the analysis of UCMR 3 contaminants. The agency conducted a search of potentially applicable voluntary consensus standards and identified two major organizations

whose methods are acceptable for determinations under UCMR. These organizations are Standard Methods (SM) and ASTM International. For many of the parameters included in this final action, EPA was unable to identify methods from voluntary consensus method organizations that were appropriate for the monitoring required. However, EPA identified acceptable consensus method organization standards for the analysis of total chromium, vanadium, molybdenum, cobalt, strontium and chlorate. Therefore, EPA is approving analytical methods published by EPA, SM, and ASTM International for these analytes.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, UCMR furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies. UCMR uses a statistically-derived set of systems for the nationally representative sample that is population-weighted within each system size and source water category so that any PWS within a category has an equivalent likelihood of selection. Additionally, EPA is requiring that PWSs report all U.S. Postal Service Zip Codes in their service area. This additional data element will be used in the evaluation of UCMR 3 occurrence data and could potentially identify areas that have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

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 June 1, 2012.

VII. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water routinely engages stakeholders in its regulatory activities for the purpose of providing early input to regulation development. When designing and developing the UCMR program in the late 1990s, EPA held meetings for developing the CCL, establishing the information requirements of the NCOD, and selecting priority contaminants for UCMR monitoring. During the initial development of the UCMR program, stakeholders including PWSs, States, industry, and other organizations attended meetings to discuss the UCMR. Seventeen other meetings were held specifically concerning UCMR development. For a description of public involvement activities related to the first UCMR (UCMR 1), please see the discussion in the September 17, 1999 UCMR Final Rule **Federal Register** at 64 FR 50556 (USEPA, 1999b).

Specific to the development of UCMR 3, a stakeholder meeting was held on April 7, 2010, in Washington, DC. There were 22 attendees, representing State agencies, laboratories, PWSs, environmental groups, and drinking water associations. The topics of presentations and discussions included: Status of UCMR 2; rationale for developing the new list of potential contaminants; analytical methods that could be used in measuring these contaminants; sampling design; procedure for determining LCMRLs; laboratory approval; and other potential revisions based on lessons learned during implementation of UCMR 1 and UCMR 2 (see USEPA, 2010b for presentation materials, and USEPA, 2010c for meeting notes).

EPA requested public comment on the proposed rule (76 FR 11713, March 3, 2011 (USEPA, 2011a)), and established a public docket, under Docket ID No. EPA–HQ–OW–2009–0090. Each set of comments received in response to this request was assigned an EPA Document ID (EPA–HQ–OW–2009–0090+unique four digit extension) and posted for public access on regulations.gov. To view comments, search for the docket ID on the regulations.gov homepage, then click the link to public submissions.

EPA received feedback on UCMR 3 from 53 commenters. Commenters included: private citizens; local and State governments as well as U.S. territories; industry and industry groups; drinking water systems and organizations; and, non-governmental organizations, such as environmental and health advocacy groups. An overview of key comments received is included in Section III of this rule, and the complete report of comments and full EPA responses can be found in the docket on regulations.gov (USEPA, 2012b).

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practices and procedures, Chemicals, Indian lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: April 16, 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 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart C—Monitoring and Analytical Requirements

■ 2. Section 141.23 is amended in the table to paragraph (k)(1) by revising entries 18, 19, and 20; by revising footnotes 3, 4, 5, 6, 7, 8, 13, 19, and 22; and by removing footnote 23.

The revisions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(1) * * *

Contaminant	Methodology [13]	EPA method	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM online [22]	Other
*	*	*	*	*	*	*	
18. Nitrate	Ion Chromatography	300.0 [6], 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction	353.2 [6]	D3867–90 A	4500–NO_3 F	4500–NO_3 F	4500–NO_3 F–00	
	Ion Selective Electrode			4500–NO_3 D	4500–NO_3 D	4500–NO_3 D–00	601 [7]
	Manual Cadmium Reduction		D3867–90 B	4500–NO_3 E	4500–NO_3 E	4500–NO_3 E–00	
	Capillary Ion Electrophoresis		D6508–00.				
19. Nitrite	Ion Chromatography	300.0 [6], 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction	353.2 [6]	D3867–90 A	4500–NO_3 F	4500–NO_3 F	4500–NO_3 F–00	
	Manual Cadmium Reduction		D3867–90 B	4500–NO_3 E	4500–NO_3 E	4500–NO_3 E–00	
	Spectrophotometric			4500–NO_2 B	4500–NO_2 B	4500–NO_2 B–00	
	Capillary Ion Electrophoresis		D6508–00				

Contaminant	Methodology [13]	EPA method	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM online [22]	Other
20. Ortho-phosphate	Colorimetric, Automated, Ascorbic Acid	365.1 [6]		4500–P F	4500–P F		
	Colorimetric, ascorbic acid, single reagent.		D515–88 A	4500–P E	4500–P E		
	Colorimetric Phosphomolybdate; Automated-segmented flow; Automated Discrete.						I–1601–85 [5] I–2601–90 [5] I–2598–85 [5]
	Ion Chromatography	300.0 [6], 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00	
	Capillary Ion Electrophoresis		D6508–00				
*	*	*	*	*	*	*	

* * * * *

[3] *Annual Book of ASTM Standards,* ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, *http://www.astm.org.;* Annual Book of ASTM Standards 1994, Vols. 11.01 and 11.02; Annual Book of ASTM Standards 1996, Vols. 11.01 and 11.02; Annual Book of ASTM Standards 1999, Vols. 11.01 and 11.02; Annual Book of ASTM Standards 2003, Vols. 11.01 and 11.02.

[4] *Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 800 I Street NW., Washington, DC 20001–3710; *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992); *Standard Methods for the Examination of Water and Wastewater,* 19th edition (1995); *Standard Methods for the Examination of Water and Wastewater,* 20th edition (1998).The following methods from this edition cannot be used: 3111 B, 3111 D, 3113 B, and 3114 B.

[4] *Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 800 I Street NW., Washington, DC 20001–3710; *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992); *Standard Methods for the Examination of Water and Wastewater,* 19th edition (1995); *Standard Methods for the Examination of Water and Wastewater,* 20th edition (1998).The following methods from this edition cannot be used: 3111 B, 3111 D, 3113 B, and 3114 B.

[5] U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425; Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd edition, 1989.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' EPA/600/R–93/100, August 1993. Available as Technical Report PB94–120821 at National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312. *http://www.ntis.gov.*

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water,'' July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011. ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,'' August, 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757, Telephone: 508/482–2963, Fax: 508/482–4056.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2x preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.,* no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

* * * * *

[19] ''Methods for the Determination of Organic and Inorganic Compounds in Drinking Water,'' Vol. 1, EPA 815–R–00–014, August 2000. Available as Technical Report PB2000–106981 at National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312. *http://www.ntis.gov.*

* * * * *

[22] Standard Methods Online, American Public Health Association, 800 I Street NW., Washington, DC 20001, available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

■ 3. Section 141.35 is amended as follows:

■ a. In paragraph (a) by revising the third sentence,

■ b. By revising paragraph (b) introductory text,

■ c. By revising paragraph (b)(1),

■ d. In paragraph (b)(2) by revising the first sentence,

■ e. By revising paragraph (c)(1),

■ f. By revising paragraph (c)(2),

■ g. In paragraph (c)(3)(i) by removing ''May 4, 2007'' and adding in its place, ''August 1, 2012,''

■ h. In paragraph (c)(3)(ii) by adding a new second and third sentence,

■ i. In paragraph (c)(4) by removing ''June 4, 2007'' and adding in its place, ''October 1, 2012,''

■ j. By revising paragraph (c)(5)(i),

■ k. By revising paragraph (c)(6) introductory text,

■ l. By revising paragraph (c)(6)(ii),

■ m. By revising paragraph (d)(1),

■ n. By revising paragraph (d)(2), and

■ o. In the table to paragraph (e) by revising entry 6.

The revisions and additions read as follows:

§ 141.35 Reporting for unregulated contaminant monitoring results.

(a) * * * For the purposes of this section, PWS ''population served'' is the retail population served directly by the PWS as reported to the Federal Safe Drinking Water Information System (SDWIS/Fed); wholesale or consecutive populations are not included. * * *

(b) *Reporting by all systems.* You must meet the reporting requirements of this paragraph if you meet the applicability criteria in § 141.40(a)(1) and (2).

(1) *Where to submit UCMR reporting requirement information.* Some of your reporting requirements are to be fulfilled electronically and others by mail. Information that must be submitted using EPA's electronic data reporting system must be submitted through: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm.* Documentation that is required to be mailed can be submitted either: To UCMR Sampling Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or by email at *UCMR_Sampling_Coordinator@epa.gov.* In addition, you must notify the public of the availability of unregulated contaminant monitoring data as provided in Subpart Q (Public Notification) of this part (40 CFR 141.207). Community Water Systems that detect unregulated contaminants under this monitoring must also address such detections as part of their Consumer Confidence Reports, as provided in Subpart O of this part (40 CFR 141.151).

(2) * * * If you have received a letter from EPA concerning your required monitoring and your system does not meet the applicability criteria for UCMR established in § 141.40(a)(1) or (2), or if a change occurs at your system that may affect your requirements under UCMR as defined in § 141.40(a)(3) through (5), you must mail or email a letter to EPA, as specified in paragraph (b)(1) of this section. * * *

* * * * *

(c) * * *

(1) *Contact and zip code information.* You must provide contact information by October 1, 2012, and provide updates within 30 days if this information changes. The contact information must be submitted using EPA's electronic data reporting system, as specified in paragraph (b)(1) of this section, and include the name, affiliation, mailing address, phone number, and email address for your PWS Technical Contact and your PWS Official. In addition, as a one-time reporting requirement, you must report the U.S. Postal Service Zip Code(s) for all areas being served water by your PWS.

(2) *Sampling location and inventory information.* You must provide your sampling location and inventory information by October 1, 2012, using EPA's electronic data reporting system. You must submit, verify or update the following information for each sampling location, or for each approved representative sampling location (as specified in paragraph (c)(3) of this section regarding representative sampling locations): PWS identification (PWSID) code; PWS facility identification code; water source type, sampling point identification code; and

sampling point type code; (as defined in Table 1 of paragraph (e) of this section). If this information changes, you must report updates, including new sources and sampling locations that are put in use before or during the PWS' UCMR sampling period, to EPA's electronic data reporting system within 30 days of the change.

* * * * *

(3) * * *

(ii) * * * The proposed well must be representative of the highest annual volume producing and most consistently active wells in the representative array. If that representative well is not in use at the scheduled sampling time, you must select and sample an alternative representative well. * * *

* * * * *

(5) * * *

(i) *General rescheduling notification requirements.* Large systems may change their Assessment Monitoring (List 1) or Screening Survey (List 2) schedules up to October 1, 2012, using EPA's electronic data reporting system, as specified in paragraph (b)(1) of this section. After these dates have passed, if your PWS cannot sample according to your assigned sampling schedule (*e.g.,* because of budget constraints, or if a sampling location will be closed during the scheduled month of monitoring), you must mail or email a letter to EPA, as specified in paragraph (b)(1) of this section, prior to the scheduled sampling date. You must include an explanation of why the samples cannot be taken according to the assigned schedule, and you must provide the alternative schedule you are requesting. You are subject to your assigned UCMR sampling schedule or the schedule that you revised on or before October 1, 2012, unless and until you receive a letter from EPA specifying a new schedule.

* * * * *

(6) *Reporting monitoring results.* For each sample, you must report all data elements specified in Table 1 of paragraph (e) of this section, using EPA's electronic data reporting system. You also must report any changes, relative to what is currently posted, made to data elements 1 through 6 to EPA, in writing, explaining the nature and purpose of the proposed change, as specified in paragraph (b)(1) of this section.

* * * * *

(ii) *Reporting schedule.* You must ensure that your laboratory posts the data to EPA's electronic data reporting system within 120 days from the sample collection date (sample collection must occur as specified in § 141.40(a)(4)). You have 60 days from when the laboratory posts the data in EPA's electronic data reporting system to review, approve, and submit the data to the State and EPA, at the Web address specified in paragraph (b)(1) of this section. If you do not electronically approve and submit the laboratory data to EPA within 60 days of the laboratory's posting data to EPA's electronic reporting system, the data will be considered approved by you and available for State and EPA review.

* * * * *

(d) * * *

(1) *Contact and zip code information.* EPA will send you a notice requesting contact information for key individuals at your system, including name, affiliation, mailing address, phone number and email address. These individuals include your PWS Technical Contact and your PWS Official. You are required to provide this contact information within 90 days of receiving the notice from EPA as specified in paragraph (b)(1) of this section. If this contact information changes, you also must provide updates within 30 days of the change, as specified in paragraph (b)(1) of this section. In addition, as a one-time reporting requirement, you must report the U.S. Postal Service Zip Code(s) for all areas being served water by your PWS.

(2) *Reporting sampling information.* You must record all data elements listed in Table 1 of paragraph (e) of this section on each sample form and sample bottle provided to you by the UCMR Sampling Coordinator. You must send this information as specified in the instructions of your sampling kit, which will include the due date and return address. You must report any changes made in data elements 1 through 6 by mailing or emailing an explanation of the nature and purpose of the proposed change to EPA, as specified in paragraph (b)(1) of this section.

(e) * * *

TABLE 1—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS

Data Element	Definition
*	* * * * * *
6. Disinfectant Type	All of the disinfectants that have been added to the water being sampled. To be reported by systems for each sampling point, with possible choices being: CLGA= Gaseous chlorine. CLOF = Offsite Generated Hypochlorite (stored as a liquid form). CLON = Onsite Generated Hypochlorite (no storage). CAGC = Chloramine (formed from gaseous chlorine). CAOF = Chloramine (formed from offsite hypochlorite). CAON = Chloramine (formed from onsite hypochlorite). CLDO = Chlorine dioxide. OZON = Ozone. ULVL = Ultraviolet Light. OTHD = All Other Types of Disinfectant. NODU = No Disinfectant Used.
*	* * * * * *

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

■ 4. Section 141.40 is amended as follows:
■ a. By revising paragraph (a) introductory text,
■ b. By revising paragraph (a)(1),
■ c. By revising paragraph (a)(2)(i) introductory text,
■ d. By revising the first sentence of paragraph (a)(2)(i)(A),
■ e. By revising paragraph (a)(2)(ii) introductory text,
■ f. By revising paragraph (a)(2)(ii)(A),
■ g. By revising paragraph (a)(2)(ii)(C),
■ h. By revising paragraph (a)(3),
■ i. In paragraph (a)(4)(i) introductory text by removing ''August 2, 2007'' and adding in its place, ''October 1, 2012'',
■ j. By revising paragraph (a)(4)(i)(B),
■ k. By revising paragraph (a)(4)(i)(C),
■ l. In paragraph (a)(4)(i)(D) by removing the last sentence,
■ m. By revising paragraph (a)(4)(ii)(G),
■ n. In paragraph (a)(5)(ii) by removing ''April 4, 2007'' and adding in its place, ''August 1, 2012'' and by revising the last sentence,
■ o. By revising paragraph (a)(5)(iii) introductory text,
■ p. By revising paragraph (a)(5)(iii)(A)(*1*),
■ q. By revising paragraph (a)(5)(iv),
■ r. By revising paragraph (a)(5)(vi), and
■ s. By adding paragraph (c).

The revisions and addition read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) *General applicability.* This section specifies the monitoring and quality control requirements that must be followed if you own or operate a public water system (PWS) that is subject to the Unregulated Contaminant Monitoring Regulation (UCMR), as specified in paragraphs (a)(1) and (2) of this section. In addition, this section specifies the UCMR requirements for State and Tribal participation. For the purposes of this section, PWS ''population served,'' ''State,'' '' PWS Official,'' ''PWS Technical Contact,'' and ''finished water'' apply as defined in § 141.35(a). The determination of whether a PWS is required to monitor under this rule is based on the type of system (*e.g.,* community water system, non-transient non-community water system, etc.), and its retail population, as indicated by SDWIS/Fed on December 31, 2010.

(1) *Applicability to transient non-community systems.* If you own or operate a transient non-community water system, and you are notified by your State or EPA, you must permit the State, EPA or their contractors to collect samples for the contaminants specified on List 3 of Table 1, in paragraph (a)(3) of this section.

(2) * * *

(i) *Large systems.* If you own or operate a retail PWS (other than a transient non-community system) that serves more than 10,000 people, you must monitor according to the specifications in this paragraph (a)(2)(i). If you believe that your applicability status is different than EPA has specified in the notification letter that you received, or if you are subject to UCMR requirements and you have not been notified by either EPA or your State, you must report to EPA, as specified in § 141.35(b)(2) or (c)(4).

(A) * * * You must monitor for the unregulated contaminants on List 1 and Total Chromium per Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. * * *

* * * * *

(ii) *Small systems.* Small PWSs, as defined in this paragraph, will not be selected to monitor for any more than one of the three monitoring lists provided in Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. EPA will provide sample containers, provide pre-paid air bills for shipping the sampling materials, conduct the laboratory analysis, and report and review monitoring results for all small systems selected to conduct monitoring under paragraphs (a)(2)(ii)(A) through (C) of this section. If you own or operate a PWS that serves 10,000 or fewer people you must monitor as follows:

(A) *Assessment Monitoring.* You must monitor for the unregulated contaminants on List 1 and Total Chromium per Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring Plan for Assessment Monitoring.

* * * * *

(C) *Pre-Screen Testing.* You must allow EPA or its representative to collect samples to support monitoring for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring plan for Pre-Screen Testing. In addition, you must permit the collection of samples as necessary for EPA to perform analysis for total coliforms, *E. coli,* bacteriophage, *Enterococci* and aerobic spores.

(3) *Analytes to be monitored.* Lists 1, 2, and 3 of unregulated contaminants and total chromium monitoring are provided in the following table:

TABLE 1—UCMR CONTAMINANT LIST

1-Contaminant	2-CAS Registry No.	3-Analytical methods [a]	4-Minimum reporting level [b]	5-Sampling location [c]	6-Period during which monitoring to be completed
List 1: Assessment Monitoring Chemical Contaminants					
Volatile Organic Compounds					
1,2,3-trichloropropane	96–18–4	EPA 524.3	0.03 µg/L	EPTDS	1/1/2013–12/31/2015
1,3-butadiene	106–99–0	EPA 524.3	0.1 µg/L	EPTDS	1/1/2013–12/31/2015
chloromethane	74–87–3	EPA 524.3	0.2 µg/L	EPTDS	1/1/2013–12/31/2015
1,1-dichloroethane	75–34–3	EPA 524.3	0.03 µg/L	EPTDS	1/1/2013–12/31/2015
bromomethane	74–83–9	EPA 524.3	0.2 µg/L	EPTDS	1/1/2013–12/31/2015
chlorodifluoromethane (HCFC–22).	75–45–6	EPA 524.3	0.08 µg/L	EPTDS	1/1/2013–12/31/2015
bromochloromethane (Halon 1011).	74–97–5	EPA 524.3	0.06 µg/L	EPTDS	1/1/2013–12/31/2015

TABLE 1—UCMR CONTAMINANT LIST—Continued

1-Contaminant	2-CAS Registry No.	3-Analytical methods [a]	4-Minimum reporting level [b]	5-Sampling location [c]	6-Period during which monitoring to be completed
Synthetic Organic Compound					
1,4-dioxane	123–91–1	EPA 522	0.07 μg/L	EPTDS	1/1/2013–12/31/2015
Metals					
vanadium	7440–62–2	EPA 200.8, ASTM D5673–10, SM 3125.	0.2 μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
molybdenum	7439–98–7	EPA 200.8, ASTM D5673–10, SM 3125.	1. μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
cobalt	7440–48–4	EPA 200.8, ASTM D5673–10, SM 3125.	1. μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
strontium	7440–24–6	EPA 200.8, ASTM D5673–10, SM 3125.	0.3 μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
Chromium-6					
chromium-6 [d]	18540–29–9	EPA 218.7	0.03 μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
Oxyhalide Anion					
chlorate	14866–68–3	EPA 300.1, ASTM D 6581–08, SM 4110D.	20 μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015
Perfluorinated Compounds					
perfluorooctanesulfonic acid (PFOS).	1763–23–1	EPA 537	0.04 μg/L	EPTDS	1/1/2013–12/31/2015
perfluorooctanoic acid (PFOA).	335–67–1	EPA 537	0.02 μg/L	EPTDS	1/1/2013–12/31/2015
perfluorononanoic acid (PFNA).	375–95–1	EPA 537	0.02 μg/L	EPTDS	1/1/2013–12/31/2015
perfluorohexanesulfonic acid (PFHxS).	355–46–4	EPA 537	0.03 μg/L	EPTDS	1/1/2013–12/31/2015
perfluoroheptanoic acid (PFHpA).	375–85–9	EPA 537	0.01 μg/L	EPTDS	1/1/2013–12/31/2015
perfluorobutanesulfonic acid (PFBS).	375–73–5	EPA 537	0.09 μg/L	EPTDS	1/1/2013–12/31/2015
List 2: Screening Survey					
Hormones					
17-β-estradiol	50–28–2	EPA 539	0.0004 μg/L	EPTDS	1/1/2013–12/31/2015
17-α-ethynylestradiol	57–63–6	EPA 539	0.0009 μg/L	EPTDS	1/1/2013–12/31/2015
estriol	50–27–1	EPA 539	0.0008 μg/L	EPTDS	1/1/2013–12/31/2015
equilin	474–86–2	EPA 539	0.004 μg/L	EPTDS	1/1/2013–12/31/2015
estrone	53–16–7	EPA 539	0.002 μg/L	EPTDS	1/1/2013–12/31/2015
testosterone	58–22–0	EPA 539	0.0001 μg/L	EPTDS	1/1/2013–12/31/2015
4-androstene-3,17-dione	63–05–8	EPA 539	0.0003 μg/L	EPTDS	1/1/2013–12/31/2015
List 3: Pre-Screen Testing [e] Microbiological Contaminants					
enteroviruses	N/A	N/A	N/A	EPTDS	1/1/2013–12/31/2015
noroviruses	N/A	N/A	N/A	EPTDS	1/1/2013–12/31/2015
Total Chromium Monitoring					
total chromium	N/A	EPA 200.8, ASTM D5673–10, SM 3125.	0.2 μg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015

Column headings are:

1—Contaminant: The name of the contaminant to be analyzed.

2—CAS (Chemical Abstract Service) Registry Number or Identification Number: A unique number identifying the chemical contaminants.

3—Analytical Methods: Method numbers identifying the methods that must be used to test the contaminants. For List 3, analyses will only be performed by laboratories under contract to EPA.

4—Minimum Reporting Level: The value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods. If EPA determines, after the first six months of monitoring, that the MRLs specified in UCMR 3 result in excessive resampling, EPA will establish alternate MRLs and will notify affected PWSs and laboratories of the new MRLs. For List 3, minimum reporting level is based on volume of water filtered and PCR amplification level.

5—Sampling Location: The locations within a PWS at which samples must be collected.
6—Period During Which Monitoring to be Completed: The time period during which the sampling and testing will occur for the indicated contaminant.
[a] The analytical procedures shall be performed in accordance with the documents associated with each method, see paragraph (c) of this section.
[b] The minimum reporting level (MRL) is the minimum concentration of each analyte that must be reported to EPA.
[c] Sampling must occur at entry points to the distribution system (EPTDSs) after treatment is applied that represent each non-emergency water source in routine use over the 12-month period of monitoring. Systems that purchase water with multiple connections from the same wholesaler may select one representative connection from that wholesaler. This EPTDS sampling location must be representative of the highest annual volume connections. If the connection selected as the representative EPTDS is not available for sampling, an alternate highest volume representative connection must be sampled. See 40 CFR 141.35(c)(3) for an explanation of the requirements related to use of representative ground water EPTDSs. Sampling for total chromium, chromium-6, cobalt, molybdenum, strontium, vanadium, and chlorate must be conducted at distribution system maximum residence time (DSMRT) sampling locations. DSMRT is defined as an active point (*i.e.,* a location that currently provides water to customers) in the distribution system where the water has been in the system the longest relative to the EPTDS.
[d] Chromium-6 will be measured as soluble chromate ion (CAS Registry Number 13907–45–4).
[e] EPA will collect the samples from List 3 Pre-Screen Testing sampling locations.

* * * * *

(4) * * *

(i) * * *

(B) *Frequency.* You must collect the samples within the time frame and according to the frequency specified by contaminant type and water source type for each sampling location, as specified in Table 2, in this paragraph. For the second or subsequent round of sampling, if a sample location is non-operational for more than one month before and one month after the scheduled sampling month (*i.e.,* it is not possible for you to sample within the window specified in Table 2, in this paragraph), you must notify EPA as specified in § 141.35(c)(5) to reschedule your sampling.

TABLE 2—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Time frame	Frequency
Chemical	Surface water or ground water under the direct influence of surface water (GWUDI) (includes all sampling locations for which some or all of the water comes from a surface water or GWUDI source at any time during the 12 month monitoring period).	12 months	You must monitor for 4 consecutive quarters. Sample events must occur 3 months apart. (Example: If first monitoring is in January, the second monitoring must occur any time in April, the third any time in July and the fourth any time in October.)
	Ground water	12 months	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.
Microbiological	Ground water	12 months	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.

(C) *Location.* You must collect samples for each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, as specified in Table 1, in paragraph (a)(3) of this section. Samples must be collected at each sample point that is specified in column 5 and footnote c of Table 1, in paragraph (a)(3) of this section. If you are a ground water system with multiple EPTDSs, and you request and receive approval from EPA or the State for sampling at representative EPTDS(s), as specified in § 141.35(c)(3), you must collect your samples from the approved representative sampling location(s). Systems conducting Assessment Monitoring must also sample for total chromium, chromium-6, cobalt, molybdenum, strontium, vanadium, and chlorate at the location that represents the maximum residence time in the distribution system (DSMRT). DSMRT is defined as an active point (*i.e.,* a location that currently provides water to customers) in the distribution system where the water has been in the system the longest relative to the EPTDS.

(ii) * * *

(G) *Sampling forms.* You must completely fill out each of the sampling forms and bottles sent to you by the UCMR Sampling Coordinator, including data elements listed in § 141.35(e) for each sample, as specified in § 141.35(d)(2). You must sign and date the sampling forms.

* * * * *

(5) * * *

(ii) * * * Correspondence must be addressed to: UCMR Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive, (MS 140), Cincinnati, OH 45268; or emailed to EPA at: *UCMR_Sampling_Coordinator@epa.gov*.

(iii) *Minimum Reporting Level.* The MRL is an estimate of the quantitation limit. Assuming good instrumentation and experienced analysts, an MRL is achievable, with 95% confidence, by 75% of laboratories nationwide.

(A) * * *

(*1*) All laboratories performing analysis under UCMR must demonstrate that they are capable of meeting data quality objectives at or below the MRL listed in Table 1, column 4, in paragraph (a)(3) of this section.

* * * * *

(iv) *Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate.* You must ensure that your laboratory prepares and analyzes the Laboratory Fortified Sample Matrix (LFSM) sample for accuracy and Laboratory Fortified Sample Matrix Duplicate (LFSMD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, in paragraph (a)(3) of this section. LFSM/LFSMD samples must be prepared using a sample collected and analyzed in accordance with UCMR requirements and analyzed at a frequency of 5% (or 1 LFSM/LFSMD set per every 20 samples) or with each sample batch, whichever is more frequent. In addition, the LFSM/LFSMD fortification concentrations must be alternated between a low-level fortification and mid-level fortification

approximately 50% of the time. (For example: A set of 40 samples will require preparation and analysis of 2 LFSM/LFSMD paired samples. The first LFSM/LFSMD paired sample set must be fortified at either the low-level or mid-level, and the second LFSM/LFSMD paired sample set must be fortified with the other standard, either the low-level or mid-level, whichever was not used for the initial LFSM/LFSMD paired sample set.) The low-level LFSM/LFSMD fortification concentration must be within ±50% of the MRL for each contaminant (*e.g.,* for an MRL of 1 µg/L the acceptable fortification levels must be between 0.5 µg/L and 1.5 µg/L). The mid-level LFSM/LFSMD fortification concentration must be within ±20% of the mid-level calibration standard for each contaminant, and is to represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no UCMR contaminant recovery acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

* * * * *

(vi) *Reporting.* You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system, accessible at (*http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm*), within 120 days from the sample collection date. You then have 60 days from when the laboratory posts the data to review, approve and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 60 days of the laboratory posting data to EPA's electronic reporting system, the data will be considered approved and available for State and EPA review.

* * * * *

(c) *Incorporation by reference.* These standards 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. All approved material is available for inspection either electronically at *www.regulations.gov*, in hard copy at the Water Docket, EPA/DC, and from the sources below. The Public Reading Room (EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for this Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. The material 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_0f_federal_regulations/ibr_locations.html*.

(1) The following methods from the U.S. Environmental Protection Agency, Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004.

(i) EPA Method 200.8 ''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma—Mass Spectrometry,'' Revision 5.4, 1994, available at *https://www.NEMI.gov*.

(ii) EPA Method 218.7 ''Determination of Hexavalent Chromium in Drinking Water by Ion Chromatography with Post-Column Derivatization and UV-Visible Spectroscopic Detection,'' Version 1.0, November 2011, EPA 815–R–11–005, available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

(iii) EPA Method 300.1 ''Determination of Inorganic Anions in Drinking Water by Ion Chromatography,'' Revision 1.0, 1997, available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

(iv) EPA Method 522 ''Determination of 1,4-Dioxane in Drinking Water by Solid Phase Extraction (SPE) and Gas Chromatography/Mass Spectrometry (GC/MS) with Selected Ion Monitoring (SIM),'' Version 1.0, September 2008, EPA/600/R–08/101, available at *http://www.epa.gov/nerlcwww/ordmeth.htm*.

(v) EPA Method 524.3 ''Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' Version 1.0, June 2009, EPA 815–B–09–009, available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

(vi) EPA Method 537 ''Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS),'' Version 1.1, September 2009, EPA/600/R–08/092, available at *http://www.epa.gov/nerlcwww/ordmeth.htm*.

(vii) EPA Method 539 ''Determination of Hormones in Drinking Water by Solid Phase Extraction (SPE) and Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC–ESI–MS/MS),'' Version 1.0, November 2010, EPA 815–B–10–001, available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

(2) The following methods from ''ASTM International,'' 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(i) ASTM D5673–10 ''Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry,'' approved August 1, 2010. Available for purchase at *http://www.astm.org/Standards/D5673.htm*.

(ii) ASTM D6581–08 ''Standard Test Methods for Bromate, Bromide, Chlorate, and Chlorite in Drinking Water by Suppressed Ion Chromatography,'' approved August 15, 2008. Available for purchase at *http://www.astm.org/Standards/D6581.htm*.

(3) The following methods from ''Standard Methods for the Examination of Water & Wastewater,'' 21st edition (2005), American Public Health Association, 800 I Street NW., Washington, DC 20001–3710.

(i) SM 3125 ''Metals by Inductively Coupled Plasma/Mass Spectrometry.''

(ii) SM 4110D ''Determination of Anions by Ion Chromatography, Part D, Ion Chromatography Determination of Oxyhalides and Bromide.''

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 5. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

■ 6. Section 142.16 is amended as follows:

■ a. In paragraph (j) introductory text by removing ''141.40,''.

■ b. In paragraph (j)(1) by revising the first sentence.

§ 142.16 Special primacy requirements.

* * * * *

(j) * * *

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23 and 141.24, the State shall describe the procedures and criteria, that it will use to review waiver applications and issue waiver determinations. * * *

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[FR Doc. 2012–9978 Filed 5–1–12; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 47; 2012 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–BB62

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 47

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

ACTION: Final rule.

SUMMARY: NMFS approves Framework Adjustment 47 (Framework 47) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and implements the approved measures. The New England Fishery Management Council (Council) developed and adopted Framework 47 based on the biennial review process established in the NE Multispecies FMP to develop annual catch limits (ACLs) and revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. This action also implements management measures and revises existing regulations that are not included in Framework 47, including common pool management measures for fishing year (FY) 2012, modification of the Ruhle trawl definition, and clarification of the regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas. This action is intended to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best available scientific information at the time Framework 47 was submitted.

DATES: Effective May 1, 2012.

ADDRESSES: Copies of Framework 47, the draft environmental assessment (EA), its Regulatory Impact Review (RIR), and the draft Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. A supplemental analysis was included with the draft IRFA prepared by the Council in the preamble to the proposed rule for this action. The Final Regulatory Flexibility Act (FRFA) analysis consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of this final rule and Framework 47. The Framework 47 EA/RIR/FRFA is also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The NE Multispecies FMP specifies management measures for 16 species in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout, and large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as ''regulated species,'' are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex.

Amendment 16 to the NE Multispecies FMP (Amendment 16) established a process for setting acceptable biological catches (ABCs) and ACLs for regulated species and ocean pout, as well as for distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established accountability measures (AMs) for the 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 47 is part of the process established in the FMP to set ABCs and ACLs and to revise management measures necessary to achieve the goals and objectives of the FMP. The Council developed Framework 47 to respond to recent stock assessments and updated stock information, as well as to revise management measures after the fishery has operated for more than 1 year under ACLs and AMs. NMFS published a proposed rule to approve Framework 47 and implement its measures on March 27, 2012 (77 FR 18176), and accepted public comments through April 11, 2012. NMFS proposed additional measures not included in Framework 47 to modify the Ruhle trawl definition, clarify regulations for charter/party vessels fishing in groundfish closed areas, modify the conversion rate used to estimate the live weight of fillets and parts of fish landed for home consumption, and implement management measures for the common pool fishery for FY 2012.

Approved Measures

This section summarizes the Framework 47 measures, all of which have been approved, and the measures being implemented by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which allows the Secretary of Commerce to implement regulations necessary to ensure that fishery management plans or amendments are carried out consistent with the Magnuson-Steven Act. The measures implemented under this authority are necessary to implement changes to the Atlantic Sea Scallop FMP proposed by the Council in Framework 47, and to change regulations that are not part of Framework 47, but that are necessary to clarify existing regulations and achieve the objective of the FMP. This final rule modifies the Rhule trawl definition and clarifies the regulations for charter/party vessels fishing in the groundfish closed areas. This action does not change the conversion rate for home consumption landings, which NMFS had originally proposed, for reasons discussed below. This final rule also implements management measures for the common pool fishery for FY 2012 that are not included in Framework 47, but that are implemented by the Regional Administrator (RA) under authority provided by the FMP.

1. Status Determination Criteria for Winter Flounder and Gulf of Maine Cod

New assessments were conducted for Gulf of Maine (GOM), Georges Bank (GB), and Southern New England/Mid-Atlantic (SNE/MA) winter flounder in June 2011, and a new assessment for GOM cod was completed in December 2011. Based on the results from the 52nd Stock Assessment Workshop (SAW) completed in June 2011, GB winter flounder is no longer experiencing overfishing, and the stock is no longer overfished. SNE/MA winter flounder is still overfished, but overfishing is no longer occurring for this stock. In addition, the overfishing status is no longer unknown for GOM winter flounder, and overfishing is not occurring. However, the overfished status for GOM winter flounder is still unknown. The results of the 53rd SAW completed in December 2011 indicate that overfishing is occurring for GOM cod, and the stock is overfished.

This final rule updates the status determination criteria for the three winter flounder stocks and GOM cod to incorporate the results of the recent stock assessments into the FMP. These changes are based on the best scientific information available. The revised biomass targets for GB and SNE/MA winter flounder is spawning stock biomass at maximum sustainable yield (SSB_{MSY}), and the maximum fishing mortality rate (F) threshold is F_{MSY}. The revised maximum F threshold for GOM winter flounder is F at 40 percent of the maximum spawning potential ($F_{40\%MSP}$). The biomass target for this stock is still undefined. For GOM cod, the biomass target is unchanged from GARM III and is SSB at 40 percent MSP ($SSB_{40\%MSP}$). The maximum F threshold proxy is also unchanged from GARM III and is $F_{40\%MSP}$. Table 1 lists the revised status determination criteria, and the numerical estimates of these criteria are shown in Table 2.

TABLE 1—STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold
GOM winter flounder	Undefined	Undefined	$F_{40\%MSP}$.
GB winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
SNE/MA winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
GOM cod	$SSB_{40\%MSP}$	½ $SSB_{40\%MSP}$	$F_{40\%MSP}$.

TABLE 2—NUMERICAL ESTIMATES OF THE STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target (mt)	Maximum fishing mortality threshold	MSY (mt)
GOM winter flounder	Undefined	0.31	Undefined.
GB winter flounder	10,100	0.42	3,700.
SNE/MA winter flounder	43,661	0.29	11,728.
GOM cod	61,218	0.20	10,392.

2. Rebuilding Program for GB Yellowtail Flounder

GB yellowtail flounder is jointly managed with Canada under the U.S./Canada Resource Sharing Understanding (Understanding). Framework Adjustment 45 to the NE Multispecies FMP (Framework 45) revised the GB yellowtail flounder rebuilding program in 2011, based on the best available scientific information, to rebuild the stock by 2016 with a 50-percent probability of success. This revision extended the rebuilding program to the maximum 10-year rebuilding period allowed by the Magnuson-Stevens Act in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

Under the International Fisheries Agreement Clarification Act (IFACA) enacted into law on January 4, 2011, the Council and NMFS have flexibility in establishing rebuilding programs for stocks that are jointly managed with Canada under the Understanding. IFACA allows the Council and NMFS to consider decisions made under the Understanding as management measures under an international agreement in order to provide an exception to the Magnuson-Stevens Act's maximum 10-year rebuilding period requirement.

Each year, pursuant to the Understanding, the Transboundary Management Guidance Committee (TMGC) meets to consider the scientific advice of the Transboundary Resources Assessment Committee and to make decisions regarding total allowable catch (TAC) recommendations for the upcoming year for each stock managed under the Understanding. The TMGC adopts harvest strategies to guide its annual TAC recommendations. The TMGC's harvest strategy for GB yellowtail flounder is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref}) of 0.25. At its September 2011 meeting, the TMGC reaffirmed its harvest strategy for GB yellowtail flounder to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref}) of 0.25. Based on that harvest strategy, the TMGC developed its 2012 TAC recommendation for GB yellowtail flounder and forwarded the recommendation to the Council for approval (See Item 5 for more information on the 2012 TMGC TAC recommendations).

Given the provisions of IFACA, and that the TMGC decisions regarding a GB yellowtail flounder harvest strategy and annual TAC are considered management measures under an international agreement, NFMS interprets the Magnuson-Stevens Act to allow the rebuilding program for GB yellowtail flounder to exceed 10 years. Therefore, this action revises the rebuilding strategy for GB yellowtail flounder. The revised rebuilding strategy would rebuild the stock by 2032 with at least a 50-percent probability of success. This rebuilding strategy is based on an F of 0.21 and would extend 26 years beyond the rebuilding program start date (2006). The rebuilding time period is as short as possible, taking into account the Understanding and decisions made under it, and the needs of the fishing communities, and will provide more flexibility for negotiating annual catches with Canada.

3. Overfishing Levels and Acceptable Biological Catches

The overfishing level (OFL) for each stock in the NE Multispecies FMP is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). The Council's Scientific and Statistical Committee (SSC) recommends ABCs for each stock that are lower than the OFLs to account for scientific uncertainty. The ABCs are calculated using the estimated stock size for a particular year and are based on the catch associated with 75 percent of F_{MSY} or the F required to rebuild a stock within its rebuilding time period

($F_{rebuild}$), whichever is lower. For SNE/MA winter flounder, the ABC is calculated using the F expected to result from management measures that are designed to achieve an F as close to zero as practicable. For some stocks, the Canadian share of an ABC, or the expected Canadian catch, is deducted from the ABC. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

As part of the biennial review process for the NE Multispecies FMP, the Council adopts OFLs and ABCs for 3 years at a time. Although it is expected that the Council will adopt new catch levels every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. Framework 44 specified OFLps and ABCs for each stock for FYs 2010–2012 based on the best scientific information available, and Framework 45 revised the OFLs and ABCs for five stocks for FYs 2011–2012 based on updated stock information. Although Framework 44 and Framework 45 specified catch levels for all stocks through FY 2012, Framework 47 was developed to set catch levels for FYs 2012–2014 and revise the OFLs and ABCs previously adopted for FY 2012 based on updated stock information.

This action sets the OFLs and ABCs for nine stocks (GB, GOM, and SNE/MA winter flounder, pollock, northern and southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish) for FYs 2012–2014 that are assessed with an index-based stock assessment or that have had a recent stock assessment completed. This action also sets the OFL and ABC for FYs 2012–2013 only for GB yellowtail flounder based on updated stock information. Table 3 lists the OFLs and ABCs for these stocks.

For nine other stocks (GB cod, GB haddock, GOM haddock, SNE/MA yellowtail flounder, CC/GOM yellowtail flounder, American plaice, witch flounder, redfish, and white hake), this action adopts the OFLs and ABCs for FY 2012 only, that were previously specified in Framework 44 or Framework 45 (Table 3). OFLs and ABCs are only being set for FY 2012 based on advice from the SSC. At the time the Council was developing Framework 47, these stocks were last assessed at the 3rd Groundfish Assessment Review Meeting (GARM III) in 2008. The SSC determined that projections from the GARM III assessment were not a reliable basis for providing catch advice for these stocks for all three fishing years from 2012–2014. As a result, the SSC recommended that the Council specify ABCs for FY 2012 only based on the ABCs that were previously adopted in Framework 44 or Framework 45. Consistent with the SSC recommendations, the Council adopted the FY 2012 ABCs previously set by Framework 44 and Framework 45 in Framework 47. The Council also requested that the Northeast Fisheries Science Center complete assessment updates for the stocks last assessed at GARM III in order to set catch limits for FYs 2013–2014 for these stocks. The Council made this request with the understanding that these catch limits would be implemented through a subsequent framework that the Council is already developing.

The Council finalized and submitted Framework 47 to NMFS on February 7, 2012. The stock assessment updates to be used for setting FYs 2013–2014 catch limits were not completed until February 13–17, 2012, and the final report for the updates was not published until March 14, 2012. As the Council and the SSC understood while developing Framework 47, these updated assessments were never intended to be incorporated into Framework 47 for the nine stocks for FY 2012 because they would not be available in time for the Council and the SSC to consider them for implementation by the start of FY 2012. Therefore, Framework 47 adopted the OFLs and ABCs for FY 2012 for these nine stocks based on the best scientific information available at the time the Council took final action on Framework 47.

The updated assessments for five stocks (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder), indicate that the FY 2012 ABCs adopted in Framework 47 are significantly higher than those suggested by the assessment updates. For the remaining eight stocks that were updated in early 2012, the FY 2012 ABCs adopted in Framework 47 are virtually the same, or somewhat lower, than those suggested by the assessment updates. Because the stock assessment updates suggest that ABCs might be different than those adopted in Framework 47 for some stocks, and may be significantly lower for the five stocks specified above, one commenter recommended that NMFS disapprove the OFLs and ABCs for these stocks because they are not consistent with National Standard 2, which requires actions to be consistent with best scientific information available. This comment is briefly discussed below to explain NMFS' decision to approve the FY 2012 OFLs and ABCs despite the comment received on this measure.

The National Standard 2 guidelines (50 CFR 600.315) require that each FMP (and by extension amendment and framework) take into account the best scientific information available at the time, or preparation, of an action. The guidelines recognize that new information often becomes available between the initial drafting of an FMP and its submission to NMFS for final review. The guidelines state that this new information should be incorporated into the action, if practicable; but it is unnecessary for the Council to re-start the FMP process based on this information, unless it indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures. This is not a situation in which the Council received information that ''drastic changes'' have occurred in the fishery prior to submission of the action to NMFS. Instead, as was fully understood in developing Framework 47, the assessment updates would not be completed until after the Council took final action on Framework 47 and submitted it to NMFS for review. As a result, there was no practicable way to incorporate this information into Framework 47 without reinitiating the Council process and delaying the action far beyond the start of FY 2012, which begins on May 1, 2012, and is when the ABCs need to be in place. Therefore, NMFS has determined that it is appropriate for the Council to set the OFLs and ABCs in this action based on the best scientific information available at the time the Council took final action and submitted Framework 47 to NMFS for approval. The appropriate response to the new information that became available after submission of Framework 47 is for the Council to consider whether to initiate a new framework or amendment, or to request an emergency or interim Secretarial action, to revise the existing measures or catch limits adopted in this action.

Consistent with the National Standard 2 guidelines, this determination recognizes the need for some certainty as to what information the Council may rely on in taking its final action, and what information NMFS will use to evaluate the approvability of a Council action. Without such certainty, there would be a lack of predictability and confidence in Council actions, which must be developed well in advance of their implementation due to the time it takes to prepare appropriate analyses and documents for submission to NMFS for final review. A lack of certainty about what information will be used to review a Council action could also

seriously undermine the Council process because neither the Council, nor the public, would have confidence that their efforts would not be meaningless. Thus, new scientific information that becomes available after the Council has submitted its final action to NMFS for review should not, based on National Standard 2, be used retroactively to undo recommended actions that had the benefit of the full Council process.

NMFS also considered the practical effect of disapproving the OFLs and ABCs specified in this action. Approving catch limits for these stocks, whose assessments were updated in early 2012, actually results in slightly lower fishing mortality than if they were disapproved and the default measures specified by Framework 44 and Framework 45 went into place. The default catch limits for FY 2012 for the five stocks mentioned earlier (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder) are identical to those specified in this action, except for GB cod, which is 5 percent higher. For the remaining stocks, the default measures are essentially identical or higher than those adopted in Framework 47. Therefore, disapproving the FY 2012 ABCs in Framework 47 would result in almost identical catch limits as those previously specified, but a higher catch limit for GB cod, which could increase overfishing of this stock while the Council develops its next management action to incorporate the new scientific information available.

Approving these catch limits, as explained above, does not reduce the importance of acting on the new information as soon as possible in a new action, but rather emphasizes the importance of analyzing and considering this information through the full Council process. Consistent with the SSC guidance and the Council's understanding during the development of Framework 47, the Council has already started developing a management action that will incorporate the assessment update information and adopt catch limits for the pertinent stocks for FYs 2013–2014. The Council is scheduled to receive and discuss the results of the assessment updates at its April 25, 2012, meeting. A new stock assessment for SNE/MA yellowtail flounder is also scheduled for June 2012, and the results of this stock assessment will be incorporated into the same Council action to set OFLs and ABCs for the stock for FYs 2013–2014. The Council may also use updated information for other stocks to revise the FYs 2013–2014 OFLs and ABCs specified in this action. The Council intends to complete this management action by May 1, 2013, to set catch limits for FYs 2013–2014. NMFS has notified the Council that the updated assessment information must be incorporated as soon as possible, but no later than May 1, 2013. NMFS recommends that, at its June meeting, the Council identify how and when this information will be incorporated and how that process would affect any existing or planned management measures.

Framework 47, as approved by the Council on November 16, 2011, initially proposed to set specifications for GOM cod for FYs 2012–2014 based on the most recent stock assessment, completed in December 2011. The results of that assessment indicate that the stock is overfished and overfishing is occurring, and that GOM cod cannot rebuild by its rebuilding end date (2014) even in the absence of all fishing mortality. Given the final results of the GOM cod assessment, and that rebuilding cannot be achieved within the rebuilding period, NMFS concluded that the NE Multispecies FMP is not making adequate progress toward ending overfishing and rebuilding GOM cod. In a letter dated January 26, 2012, NMFS notified the Council of this determination and that the Council must implement a plan by May 1, 2013, to immediately end overfishing for GOM cod. The Council was also notified that it has up to 2 years to address GOM cod rebuilding. In addition, NMFS indicated that the Magnuson-Stevens Act provides some flexibility for NMFS to only reduce overfishing, rather than end it immediately, during FY 2012 while the Council develops measures to address GOM cod.

At its January 25, 2012, meeting, the Council's SSC met to discuss the GOM cod stock assessment. At the request of the Council, the SSC did not recommend ABCs for GOM cod for FYs 2012–2014. Instead, the SSC reviewed the stock assessment and identified issues that may warrant a closer examination and that may influence the interpretation of the assessment results. Subsequently, at its February 1, 2012, meeting, the Council did not adopt ABCs for GOM cod for Framework 47. The Council requested that NMFS implement an interim action for FY 2012 to reduce overfishing on GOM cod while the Council responds to the new GOM cod stock assessment and develops measures for FY 2013 that will immediately end overfishing. In response to the Council's request, NMFS published an interim action on April 3, 2012, to set catch levels for GOM cod for FY 2012 (77 FR 19944). Therefore, although this action does not include OFLs and ABCs for GOM cod for FYs 2012–2014, it is not deficient regarding GOM cod because of the interim action. The SSC will meet in the future to recommend ABCs for FYs 2013–2014 for GOM cod, and the Council intends to adopt these ABCs in a future management action.

TABLE 3—FYS 2012–2014 OFLS AND ABCS (MT)

Stock	OFL			U.S. ABC		
	2012	2013	2014	2012	2013	2014
GB cod	7,311	.....	.....	5,103	.....	.....
GB haddock	51,150	.....	.....	30,726	.....	.....
GOM haddock	1,296	.....	.....	1,013	.....	.....
GB yellowtail flounder	1,691	1,691	.....	564	564	.....
SNE/MA yellowtail flounder	3,166	.....	.....	1,003	.....	.....
Cape Cod (CC)/GOM yellowtail flounder	1,508	.....	.....	1,159	.....	.....
American plaice	4,727	.....	.....	3,632	.....	.....
Witch flounder	2,141	.....	.....	1,639	.....	.....
GB winter flounder	4,839	4,819	4,626	3,753	3,750	3,598
GOM winter flounder	1,458	1,458	1,458	1,078	1,078	1,078
SNE/MA winter flounder	2,336	2,637	3,471	626	697	912
Redfish	12,036	.....	.....	9,224	.....	.....
White hake	5,306	.....	.....	3,638	.....	.....
Pollock	19,887	20,060	20,554	15,400	15,600	16,000

TABLE 3—FYS 2012–2014 OFLS AND ABCS (MT)—Continued

Stock	OFL			U.S. ABC		
	2012	2013	2014	2012	2013	2014
Northern windowpane flounder	230	230	230	173	173	173
Southern windowpane flounder	515	515	515	386	386	386
Ocean pout	342	342	342	256	256	256
Atlantic halibut	143	143	143	85	85	85
Atlantic wolffish	92	92	92	83	83	83

4. Annual Catch Limits

Unless otherwise noted below, the U.S. ABC for each stock (for each fishing year) is divided into the following fishery components to account for all sources of fishing mortality: State waters (portion of ABC expected to be caught from state waters outside Federal management); other sub-components (expected catch by non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. Currently, the scallop fishery only receives an allocation for GB and SNE/MA yellowtail flounder, the mid-water trawl fishery only receives an allocation for GB and GOM haddock, and the recreational groundfish fishery only receives an allocation for GOM cod and haddock. Once the ABC is divided, sub-annual catch limits (sub-ACLs) and ACL sub-components are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability, monitoring adequacy, precision of management tools, latent effort, and catch of groundfish in non-groundfish fisheries. Appendix III of the Framework 47 EA provides a detailed description of the process used to estimate management uncertainty and calculate ACLs for this action (see **ADDRESSES**).

The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fishery, state waters, and non-groundfish fisheries) are counted against the catch limit for each stock. Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. ACL sub-components represent the expected catch by components of the fishery that are not subject to AMs (e.g., state waters).

This final rule sets ACLs for each groundfish stock except GOM cod (see Item 3 of this preamble), based on the ABCs set by this action. The ACLs for FYs 2012–2014 are listed in Table 4 through Table 7. For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative Potential Sector Contributions associated with those sectors. The distribution of the groundfish sub-ACL between the common pool and sectors shown in Tables 5 through Table 7 are based on preliminary FY 2012 sector rosters submitted to NMFS as of December 1, 2011, including any PSC updates or corrections that have been made since the proposed rule for this action was published. This distribution differs from the common pool and sector sub-ACLs included in the Framework 47 EA, which were based on FY 2011 sector rosters, and do not reflect updated rosters submitted to NMFS for FY 2012. FY 2012 sector rosters will not be finalized until May 1, 2012, because owners of individual permits signed up to participate in sectors have until the end of the 2011 fishing year, or April 30, 2012, to drop out of a sector and fish in the common pool for FY 2012. NMFS also extended the deadline to join a sector for FY 2012 through April 30, 2012, to provide common pool vessels the opportunity to join a sector due to the potential impacts of the FY 2012 GOM cod catch limits. The sector sub-ACLs listed in the tables below may change due to changes in the sector rosters. If necessary, updated sector sub-ACLs will be published in a future adjustment rule to reflect the final FY 2012 sector rosters as of May 1, 2012.

TABLE 4—FY 2012 ALLOCATIONS TO THE RECREATIONAL GROUNDFISH FISHERY, SCALLOP FISHERY, AND MID-WATER TRAWL FISHERY (MT)

Fishery	Stock	
Recreational Groundfish Fishery	GOM Cod n/a	GOM Haddock. 259.
Scallop Fishery	SNE/MA Yellowtail Flounder 126	GB Yellowtail Flounder. 307.5.
Midwater Trawl Fishery	GB Haddock 286	GOM Haddock. 9.

TABLE 5—FY 2012 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB cod	4,861	4,605	4,523	82	51	204
GB haddock	29,260	27,438	27,306	132	307	1,229
GOM haddock	958	912	648	5	15	22
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
SNE/MA yellowtail flounder	936	760	592	168	10	40
CC/GOM yellowtail flounder	1,104	1,046	1,019	27	35	23
American plaice	3,459	3,278	3,221	57	36	145
Witch flounder	1,563	1,448	1,424	24	49	66
GB winter flounder	3,575	3,387	3,365	22	0	188
GOM winter flounder	1,040	715	691	24	272	54
SNE/MA winter flounder	603	303	na	303	175	125
Redfish	8,786	8,325	8,291	34	92	369
White hake	3,465	3,283	3,256	27	73	109
Pollock	14,736	12,612	12,530	82	754	1,370
Northern windowpane flounder	163	129	na	129	2	33
Southern windowpane flounder	381	72	na	72	39	270
Ocean pout	240	214	na	214	3	23
Atlantic halibut	83	36	na	36	43	4
Atlantic wolffish	77	73	na	73	1	3

TABLE 6—FY 2013 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common Pool sub-ACL	State waters sub-component	Other sub-component
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
GB winter flounder	3,572	3,384	3,362	22	0	188
GOM winter flounder	1,040	715	690	25	272	54
SNE/MA winter flounder	672	337	na	337	195	139
Pollock	14,927	12,791	12,707	83	756	1,380
Northern windowpane flounder	163	129	na	129	2	33
Southern windowpane flounder	381	72	na	72	39	270
Ocean pout	240	214	na	214	3	23
Atlantic halibut	83	36	na	36	43	4
Atlantic wolffish	77	73	na	73	1	3

TABLE 7—FY 2014 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB winter flounder	3,427	3,247	3,226	21	0	180
GOM winter flounder	1,040	715	690	25	272	54
SNE/MA winter flounder	879	441	0	441	255	182
Pollock	15,308	13,148	13,062	86	760	1,400
Northern windowpane flounder	163	129	0	129	2	33
Southern windowpane flounder	381	72	0	72	39	270
Ocean pout	240	214	0	214	3	23
Atlantic halibut	83	36	0	36	43	4
Atlantic wolffish	77	73	0	73	1	3

5. U.S./Canada Total Allowable Catches

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are managed jointly with Canada through the U.S./Canada Resource Sharing Understanding. Each year the TMGC, which is made up of representatives from Canada and the U.S., negotiates a shared TAC for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral (less than 50-percent) risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality should be further reduced to promote rebuilding. The shared TACs are allocated between the U.S. and Canada based on a formula that considers historical catch percentages and the current resource distribution based on trawl surveys. The U.S./Canada Management Area comprises the entire stock area for GB yellowtail flounder; therefore, the U.S. TAC for this stock is also the U.S. ABC.

In September 2011, the TMGC recommended 2012 shared TACs for eastern GB cod, eastern GB haddock, and GB yellowtail flounder. The TMGC recommended a shared TAC of 675 mt for eastern GB cod, 16,000 mt for eastern GB haddock, and 900 mt for GB yellowtail flounder. However, at its September 2011 meeting, the Council's SSC recommended an ABC of 1,150 mt for GB yellowtail flounder, which was higher than the TMGC recommendation. On September 28, 2011, the Council reviewed the recommendations of the TMGC and the SSC, and approved the TMGC recommendations for eastern GB cod and eastern GB haddock. The Council also approved an ABC of up to 1,150 mt for GB yellowtail flounder, consistent with the SSC's recommendation. The TMGC met by conference call in October 2011 to reconsider its 2012 recommendation for GB yellowtail flounder since the ABC approved by the Council was higher than the shared TAC initially negotiated by the TMGC. At this meeting, the TMGC recommended a shared TAC of 1,150 mt for GB yellowtail flounder for 2012.

The 2012 U.S./Canada TACs and the percentage shared for each country are listed in Table 8. For 2012, the annual percentage shares for each country are based on a 10-percent weighting of historical catches and a 90-percent weighting of the current resource distribution. Any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. TACs will be deducted from the U.S. TAC in the following fishing year. If FY 2011 catch information indicates that the U.S. fishery exceeded its TAC for any of the shared stocks, NMFS will reduce the FY 2012 U.S. TAC for that stock in a future management action.

TABLE 8—2012 U.S. CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES

TAC	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared TAC	675	16,000	1,150
U.S. TAC	162 (24%)	6,880 (43%)	564 (49%)
Canada TAC	513 (76%)	9,120 (57%)	586 (51%)

6. Incidental Catch Total Allowable Catches and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B Days-At-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Table 9 shows the percentage of the common pool sub-ACL allocated to the special management programs and the FYs 2012–2014 Incidental Catch TACs for each stock. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is counted against the common pool sub-ACL.

The Incidental Catch TAC is further divided among each special management program based on the percentages listed in Table 10. Table 11 lists the FYs 2012–2014 Incidental Catch TACs for each special management program. The FY 2012 sector rosters will not be finalized until May 1, 2012, for the reasons mentioned earlier in this preamble. Therefore, the common pool sub-ACL may change due to changes to the FY 2012 sector rosters. Updated incidental catch TACs will be published in a future adjustment rule, if necessary, based on the final sector rosters as of May 1, 2012.

TABLE 9—COMMON POOL INCIDENTAL CATCH TACS FOR FYS 2012–2014 (MT, LIVE WEIGHT)

Stock	Percentage of common pool sub-ACL	2012	2013	2014
GB cod	2	1.6	n/a	n/a
GB yellowtail flounder	2	0.1	n/a	n/a
SNE/MA yellowtail flounder	1	1.7	n/a	n/a
CC/GOM yellowtail flounder	1	0.3	n/a	n/a
Plaice	5	2.9	n/a	n/a
Witch flounder	5	1.4	n/a	n/a
GB winter flounder	2	0.4	0.4	0.4
SNE/MA winter flounder	1	3.0	3.4	4.4
White hake	2	0.9	n/a	n/a

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program	Closed Area I hook gear haddock SAP	Eastern U.S./CA haddock SAP
GB cod	50	16	34
GB yellowtail flounder	50	n/a	50
SNE/MA yellowtail flounder	100	n/a	n/a
CC/GOM yellowtail flounder	100	n/a	n/a
Plaice	100	n/a	n/a
Witch flounder	100	n/a	n/a

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM—Continued

Stock	Regular B DAS program	Closed Area I hook gear haddock SAP	Eastern U.S./CA haddock SAP
GB winter flounder	50	n/a	50
SNE/MA winter flounder	100	n/a	n/a
White hake	100	n/a	n/a

TABLE 11—INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM FOR FY 2012–2014 (MT, LIVE WEIGHT)

Stock	Regular B DAS program			Closed Area I hook gear haddock SAP			Eastern U.S./Canada haddock SAP		
	2012	2013	2014	2012	2013	2014	2012	2013	2014
GB cod	0.8	n/a	n/a	0.3	0.0	0.0	0.5	0.0	0.0
GB yellowtail flounder	0.03	n/a	n/a	n/a	n/a	n/a	0.03	n/a	n/a
SNE/MA yellowtail flounder	1.7	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM yellowtail flounder	0.3	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Plaice	2.9	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Witch flounder	1.2	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
GB winter flounder	0.2	0.2	0.2	n/a	n/a	n/a	0.2	0.2	0.2
SNE/MA winter flounder	3.0	3.4	4.4	n/a	n/a	n/a	n/a	n/a	n/a
White hake	0.5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

7. Common Pool Trimester Total Allowable Catches

Beginning in FY 2012, the common pool sub-ACL for each stock (except for SNE/MA winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) will be divided into trimester TACs. Table 12 shows the percentage of the common pool sub-ACL that is allocated to each trimester for each stock. Once NMFS projects that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock will be closed for the remainder of the trimester. The area closure will apply to all common pool vessels fishing with gear capable of catching the pertinent stock. The trimester TAC areas for each stock, as well as the applicable gear types, are defined at § 648.82(n)(2). Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Overages of the trimester TAC in Trimester 1 or Trimester 2 will be deducted from the Trimester 3 TAC, and any overage of the total sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

Table 13 lists the common pool trimester TACs for FYs 2012–2014 based on the ACLs and sub-ACLs set in this action (see Item 4 of this preamble). As described earlier, vessels have until April 30, 2012, to drop out of a sector, and common pool vessels may join a sector through April 30, 2012. If the final sub-ACLs included in this rule change as a result of changes to FY 2012 sector rosters, the trimester TACs will also change. NMFS will update the common pool trimester TACs in an adjustment rule in early May 2012, if necessary.

TABLE 12—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER

Stock	Percentage of common pool sub-ACL		
	Trimester 1	Trimester 2	Trimester 3
GB cod	25	37	38
GOM cod	27	36	37
GB haddock	27	33	40
GOM haddock	27	26	47
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
CC/GOM yellowtail flounder	35	35	30
American plaice	24	36	40
Witch flounder	27	31	42
GB Winter flounder	8	24	69
GOM Winter flounder	37	38	25
Redfish	25	31	44
White hake	38	31	31
Pollock	28	35	37

TABLE 13—FY 2012–2014 COMMON POOL TRIMESTER TACS

Stock	2012			2013			2014		
	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3
GB cod	20.5	30.3	31.1	n/a	n/a	n/a	n/a	n/a	n/a
GB haddock	35.6	43.5	52.7	n/a	n/a	n/a	n/a	n/a	n/a
GOM haddock	1.3	1.2	2.3	n/a	n/a	n/a	n/a	n/a	n/a
GB yellowtail flounder	0.6	0.9	1.6	0.6	0.9	1.6	n/a	n/a	n/a
SNE/MA yellowtail flounder	35.3	62.2	70.6	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM yellowtail flounder	9.5	9.5	8.1	n/a	n/a	n/a	n/a	n/a	n/a
American plaice	13.7	20.5	22.8	n/a	n/a	n/a	n/a	n/a	n/a
Witch flounder	6.4	7.3	9.9	n/a	n/a	n/a	n/a	n/a	n/a
GB winter flounder	1.8	5.3	15.2	1.8	5.3	15.2	1.7	5.1	14.6
GOM winter flounder	8.9	9.1	6.0	9.1	9.3	6.1	9.1	9.3	6.1
Redfish	8.6	10.6	15.0	n/a	n/a	n/a	n/a	n/a	n/a
White hake	10.1	8.2	8.2	n/a	n/a	n/a	n/a	n/a	n/a
Pollock	23.0	28.8	30.5	23.4	29.2	30.9	24.0	30.0	31.7

*Tri 1 = Trimester 1; Tri 2 = Trimester 2; Tri 3 = Trimester 3.

8. Common Pool Restricted Gear Areas

This action removes the common pool Western GB Multispecies Restricted Gear Area (RGA) and the SNE Multispecies RGA. These RGAs were implemented by Amendment 16 beginning in FY 2010 to help meet the mortality objectives for the common pool fishery, and primarily reduce the catch of flatfish species by common pool vessels. There are sufficient fishing mortality controls for common pool vessels to keep catch within the common pool catch limits. Therefore, the Western GB and SNE Multispecies RGAs are no longer needed to control fishing mortality for the common pool fishery. NMFS expects that removing the Western GB and SNE Multispecies RGAs will facilitate fishing for common pool vessels without risk of exceeding the common pool catch limits. In addition, removing these common pool RGAs will simplify the regulations and avoid confusion with new restricted gear areas included in this action as an AM for common pool and sector vessels (see Item 9 of this preamble).

9. Accountability Measures

AMs are required to prevent overfishing and ensure accountability in the fishery. Proactive AMs are intended to prevent ACLs from being exceeded, and reactive AMs are meant to correct or mitigate overages if they occur. Amendment 16 implemented AMs for all of the groundfish stocks. Upon approving Amendment 16, however, NMFS notified the Council that it was concerned that the AMs developed for stocks not allocated to sectors lacked sector-specific AMs. NMFS recommended that the Council develop appropriate AMs for these stocks in a future action. As a result, Framework 47 intended to revise the AMs for these stocks for common pool and sector vessels.

During the development of Framework 47, there was ongoing litigation on Amendment 16. Oceana, an environmental organization, challenged Amendment 16 partially because it lacked sector-specific AMs for stocks not allocated to sectors. On December 20, 2011, the U.S. District Court for the District of Columbia upheld most of Amendment 16, but found that the Amendment's lack of reactive AMs for those stocks not allocated to sectors (SNE/MA winter flounder, northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish) violated the Magnuson-Stevens Act. The court remanded this single issue to NMFS and the Council for further action. The Council developed the Framework 47 AMs before the Court decided the case, however, and, therefore, did not specifically address this remand in Framework 47. When it proposed Framework 47, NMFS asked for specific comments about the adequacy of sector specific AMs in light of the court's decision and remand.

Ocean Pout and Windowpane Flounder, and Atlantic Halibut

This action adopts reactive AMs for ocean pout, both stocks of windowpane flounder, and Atlantic halibut for sector and common pool vessels that would be triggered if the total ACL is exceeded. NMFS will evaluate total catch of each stock in the year following the pertinent fishing year (Year 2), and if the total ACL for the fishing year (Year 1) is exceeded, the AM will be implemented in the next fishing year (Year 3). For example, if the total ACL for ocean pout is exceeded in FY 2012, NMFS will implement the applicable AM for ocean pout in FY 2014.

The Council decided to implement these AMs in Year 3 out of its concern that final catch information, including final discard estimates, needed to evaluate total catch in the fishery would not be available in time to implement until Year 3.

To determine if the total ACL is exceeded for any of these stocks, NMFS will include catch by the groundfish fishery as well as catch by sub-components of the fishery (e.g., state waters and non-groundfish fisheries). Since these AMs are meant to restrict catch by common pool and sector vessels, sectors cannot be exempt from these AM provisions. Adopting these AMs removes the trimester TAC provision for common pool vessels, which was the previous AM implemented by Amendment 16 for these stocks that would have become effective in FY 2012. Prior to Framework 47, the AMs for these stocks only applied to common pool vessels, and did not include measures to restrict catch by sector vessels should an ACL be exceeded.

Currently, a sub-ACL is only allocated to the common pool fishery for these stocks and catch by common pool and sector vessels is counted against the common pool sub-ACL. If a sub-ACL is specified in the future for other fisheries, and AMs are developed for these fisheries, the AMs for the groundfish fishery or any other fisheries would only be triggered if both the total ACL for the stock and the fishery's sub-ACL are exceeded, including the fishery's share of any overage caused by the other sub-components.

If the total ACL for Atlantic halibut is exceeded in Year 1, landing of Atlantic halibut will be prohibited by common pool and sector vessels in Year 3. If the total ACL is exceeded for ocean pout, northern windowpane flounder, or

southern windowpane flounder in year 1, gear restrictions will apply in the AM areas developed for each stock for both sector and common pool vessels in Year 3. For all three stocks, trawl vessels will be required to use selective trawl gear. Approved gears include the haddock separator trawl, the Ruhle trawl (see Item 14 for description of Ruhle trawl that includes the mid-sized eliminator (or Ruhle) trawl in the definition of this gear type), the rope trawl, and any other gears authorized by the Council in a management action or approved for use consistent with the process defined at § 648.85(b)(6). There are no restrictions on longline or gillnet gear because these gear types comprise a small amount of the total catch for these stocks. If the amount of the total ACL overage is between the management uncertainty buffer and up to 20 percent, the small AM area will be triggered for the pertinent stock. Currently, the management uncertainty buffer is 5 percent; however, this buffer could be modified in the future. If the ACL is exceeded by 21 percent or more, the large AM area will be triggered. The applicable GB AM area will be implemented if the total ACL for northern windowpane is exceeded, and the applicable SNE AM area will be implemented if the total ACL for southern windowpane is exceeded. Both the GB and SNE AM areas will be implemented if the total ACL for ocean pout is exceeded. Sectors may not be exempted from these AM provisions.

Currently, common pool and sector vessels have a one-fish landing limit for Atlantic halibut. Because commercial groundfish vessels can only land one Atlantic halibut per trip, and generally do not target this stock, a zero possession limit, by itself, even if implemented sooner than Year 3, will not likely create a sufficient incentive for vessels to avoid catching this stock should the total ACL be exceeded. Therefore, NMFS finds that the reactive AM for this stock adopted in this action is not adequate, by itself, in light of court's remand described above. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for Atlantic halibut. NMFS requests that the Council take action to ensure that necessary revisions to the reactive AM for Atlantic halibut are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

NMFS is approving the reactive AM for Atlantic halibut because, should the total ACL be exceeded, it will provide some benefit to the fishery as a conservation measure, where currently there is none, and will alleviate perceived inequity between sector and common pool vessels. The AM for this stock adopted in Amendment 16, which would go into place if NMFS disapproved the Framework 47 a.m., only applies to common pool vessels. Common pool and sector catch would count against the common pool sub-ACL, and if the sub-ACL were exceeded, the common pool sub-ACL would be reduced by the amount of the overage in the subsequent fishing year. In FY 2010, sector vessels caught 92 percent of the total commercial catch for Atlantic halibut, and, based on preliminary catch information, sector vessels have caught more than 95 percent of the total commercial catch for Atlantic halibut in FY 2011. Therefore, although NMFS does not find the reactive AM for this stock adopted in this action adequate by itself, in light of court's remand described above, approving this reactive AM as a conservation measure provides some meaningful benefit until a new, or additional, reactive AM can be developed.

With respect to the delayed implementation of these reactive AMs to Year 3, NMFS recommends that these AMs be implemented as soon as possible after the overage occurs, when catch data, including final discard information, reliably show an overage of the catch limit, and not be bound by an AM that only allows implementation in Year 3. The Council recommended a Year 3 implementation because of concerns that final catch data for these stocks, which include catch from state waters and non-groundfish fisheries and discard estimates, could not be reliably available in time to trigger the AM in Year 2, or earlier. As monitoring improves, and discard estimates are more readily available for all components of the fishery, NMFS anticipates that these reactive AMs can, and should, be implemented more quickly.

SNE/MA Winter Flounder and Atlantic Wolffish

Amendment 16 prohibited possession of SNE/MA winter flounder and Atlantic wolffish by commercial vessels. This action adopts the current zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish for commercial vessels. Based on FY 2010 catch information and partial FY 2011 catch information, the Council concluded, before the decision in the Amendment 16 lawsuit described above, that prohibiting possession appears to have kept catch of these stocks well below mortality targets, and that such preventive measures satisfy the AM requirements of the Magnuson-Stevens Act. However, although zero possession may be a sufficient proactive AM for these stocks, the Magnuson-Stevens Act requires reactive AMs. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for SNE/MA winter flounder and Atlantic wolffish. NMFS requests that the Council take action to ensure reactive AMs for SNE/MA winter flounder and Atlantic wolffish are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

Although zero possession does not meet the requirement for a reactive AM for these stocks, NMFS approves these measures because it removes a potential inequity for common pool vessels. Adopting zero possession for SNE/MA winter flounder and Atlantic wolffish, as prescribed by Framework 47, removes the trimester TAC provision for these stocks for common pool vessels established by Amendment 16. Under the default Amendment 16 measures, if the overall sub-ACL for these stocks is exceeded in a year, the common pool's sub-ACL is reduced by the amount of the overage. This AM only applies to the common pool, even if sector vessels cause the overage. Because common pool vessels generally take less than 10 percent of the total commercial catch of these two stocks, there is a potential inequity in only applying the AM to the common pool vessels. Until the Council is able to develop reactive AMs for these two stocks, the zero possession proactive AM will avoid disproportionately penalizing common pool vessels for catch by sector vessels, and will continue to benefit the fishery by keeping catch within allowable levels.

10. Removal of Cap on Yellowtail Flounder Catch in Scallop Access Areas

In 2004, Framework 39 to the NE Multispecies FMP and Framework 16 to the Atlantic Sea Scallop FMP implemented a cap on the amount of yellowtail flounder that could be caught in the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access

Areas. This measure was implemented before ACL and AM provisions were added to the NE Multispecies and Atlantic Sea Scallop FMPs to ensure that yellowtail flounder catches did not exceed the target TACs for yellowtail flounder or exceed the U.S TAC for GB yellowtail flounder. This action removes the 10-percent access area cap for the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access Areas. The scallop fishery is still subject to its GB and SNE/MA yellowtail flounder sub-ACLs, but there is no limit on how much of the sub-ACLs can be caught in the scallop access areas. The yellowtail flounder sub-ACLs limit the amount of yellowtail flounder that can be caught by the scallop fishery, so a catch cap for the access areas in no longer necessary to meet fishing mortality objectives.

11. Implementation of Scallop Fishery Accountability Measure

Each year a portion of the GB and SNE/MA yellowtail flounder ABC is allocated to the scallop fishery as a sub-ACL. If the scallop fishery exceeds its sub-ACL for either of these stocks, the statistical areas with high catch rates of yellowtail flounder are closed to limited access scallop vessels. The duration of the closure depends on the magnitude of the overage. Framework 23 to the Atlantic Sea Scallop FMP (Framework 23) set the yellowtail flounder seasonal closure AM schedule for scallop vessels to ensure that the closures would occur during the months with the highest yellowtail flounder catch rates.

This action modifies when the AM for the scallop fishery is triggered. The scallop fishery AM will be triggered if: (1) The scallop fishery exceeds it sub-ACL for any groundfish stock, and the total ACL for that stock is also exceeded; or (2) the scallop fishery exceeds its sub-ACL by 50 percent or more for any groundfish stock, even if the total ACL for that stock is not exceeded. If the scallop fishery AM is triggered, the corresponding scallop seasonal closure will be implemented according to the seasonal closure AM schedule. Currently, the scallop fishery is only allocated a sub-ACL for GB and SNE/MA yellowtail flounder; however, this measure applies to the scallop fishery AM for any additional groundfish stock that is allocated to the scallop fishery in a future action. This measure is applied retroactively to the 2011 scallop fishing year.

Given the differences in the scallop and groundfish fishing years, complete catch information for GB and SNE/MA yellowtail flounder will not be available until sometime after April 30 (the end of the groundfish fishing year). In addition, inseason catch information is not available for groundfish ACL sub-components, such as state waters catch. As a result, when evaluating the total catch of GB and SNE/MA yellowtail flounder for the purposes of triggering the scallop fishery AM, NMFS will primarily rely on partial catch information to project total fishing year catch of these two stocks from state waters and non-groundfish fisheries. NMFS will also use partial fishing year data to estimate GB and SNE/MA yellowtail flounder catch by the commercial groundfish fishery and will project catch of these two stocks by groundfish vessels for the remainder of the groundfish fishing year. NMFS will add the maximum carryover available to the groundfish fishery to the estimate of total catch when evaluating whether the total ACL has been exceeded for a groundfish stock for the purposes of triggering the scallop fishery AM.

This measure is expected to allow more flexibility in the fishery. The yellowtail flounder allocation to the scallop fishery is based on an estimated catch of yellowtail flounder with the projected scallop harvest for the fishing year. There is uncertainty in the projected yellowtail flounder catch in the scallop fishery, and this measure will help account for that uncertainty without compromising the mortality objectives for GB and SNE/MA yellowtail flounder. In addition, triggering the AM when the scallop fishery exceeds its allocation by 50 percent or more will still ensure accountability in the fishery. The Council did not specifically include how to reference this measure in the scallop regulations in Framework 47; therefore, NMFS adopts these references under its authority in section 305(d) of the Magnuson-Stevens Act.

12. Inseason Re-Estimation of Scallop Fishery GB Yellowtail Flounder Sub-ACL

The allocation of the GB yellowtail flounder sub-ACL to the scallop fishery is based on an estimate of the expected GB yellowtail flounder catch in the scallop fishery. Because there is uncertainty in the initial estimates of projected GB yellowtail flounder catch, it is possible that the initial allocation to the scallop fishery will be too low, which could cause the scallop sub-ACL to be exceeded, or that the initial allocation to the scallop fishery will be too high, which could reduce GB yellowtail flounder yield. This measure creates a mechanism to re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the groundfish fishery sub-ACL for GB yellowtail flounder up to the difference between the original estimate and the revised estimate. Any increase to the groundfish fishery sub-ACL will be distributed to sectors and the common pool. NMFS will not make any changes to the GB yellowtail flounder sub-ACL for the scallop fishery if the revised estimate indicates that the scallop fishery will catch 90 percent or more of its sub-ACL. Consistent with the Administrative Procedure Act, NMFS will notify the public of any changes to the GB yellowtail flounder sub-ACLs. This measure is expected to prevent any loss of GB yellowtail flounder yield that may occur if the initial catch estimate of this stock by the scallop fishery is too high. Re-estimating the expected GB yellowtail flounder catch by the scallop fishery mid-season will allow additional GB yellowtail flounder yield by the commercial groundfish fishery, and will help achieve optimum yield for this stock.

Due to uncertainty associated with the revised estimate of expected GB yellowtail flounder catch, NMFS has the authority to adjust the size of the change made to the sub-ACLs for the scallop and groundfish fisheries. Based on the amount of the uncertainty, NMFS could revise the sub-ACLs by any amount between the initial estimate of expected GB yellowtail flounder catch by the scallop fishery and the revised estimate. Implementation of this measure may be delayed until data are sufficient for NMFS to project GB yellowtail flounder catch and re-estimate the GB yellowtail flounder sub-ACL for the scallop fishery mid-season. Consideration of uncertainty and delay in implementation of this measure will avoid errors in re-estimating the GB yellowtail flounder sub-ACLs if the projected scallop fishery catch is underestimated. Errors in the re-estimation of the scallop fishery sub-ACL could cause the scallop fishery to exceed its sub-ACL if projected catch is underestimated, which may trigger the scallop fishery AM. In addition, if the groundfish fishery catches the additional GB yellowtail flounder allocated mid-fishing year, the U.S. TAC for GB yellowtail flounder could be exceeded.

13. Annual Measures for FY 2012 Under Regional Administrator Authority

The FMP authorizes the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This rule includes management measures for FY 2012 that are being implemented under RA authority. These measures are not part of Framework 47, and were not specifically proposed by the Council, but are included in this final rule because they relate to Framework 47 measures (i.e., ACLs). The RA may modify these measures if current information indicates changes are necessary. Any adjustments to these measures will be implemented through an inseason action consistent with the Administrative Procedure Act.

Table 14 lists the initial FY 2012 trip limits for common pool vessels. These FY 2012 trip limits take into consideration changes to the FY 2012 common pool sub-ACLs and sector rosters, trimester TACs for FY 2012, catch rates of each stock during FY 2011, bycatch, the potential for differential DAS counting in FY 2012, public comments received on the proposed FY 2012 trip limits, and other available information. This action does not change the default cod trip limit for vessels with a limited access Handgear A permit (300 lb (136.1. kg) per trip), an open access Handgear B permit (75 lb (34.0 kg) per trip), or a limited access Small Vessel Category permit (300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined).

NMFS will monitor common pool catch using dealer-reported landings, VMS catch reports, and other available information, and if necessary, will adjust the common pool management measures.

TABLE 14—INITIAL FY 2012 COMMON POOL TRIP LIMITS

Stock	Initial FY 2012 trip limits
GOM cod	650 lb (294.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	1,000 lb (453.6 kg) per trip.
GB haddock	10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	250 lb (113.4 kg) per trip.
GB winter flounder	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB yellowtail flounder	500 lb (226.8 kg) per trip.
SNE/MA yellowtail flounder	1,500 lb (680.4 kg), up to 4,500 (2,041.1 kg) per trip.
American plaice	unrestricted.
Pollock	unrestricted.
Witch flounder	250 lb (113.4 kg) per trip.
White hake	1,500 lb (680.4 kg) per trip.
Redfish	unrestricted.

The FMP also provides the RA the authority to allocate the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (June 1, 2005; 70 FR 31323) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg)). This calculation accounts for the projected catch from the area outside the SAP. Based on the groundfish sub-ACL of 479,946 lb (217,700 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action allocates zero trips to the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2012. Vessels can still fish in this SAP in FY 2012 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels are not allowed to fish in this SAP using flounder nets.

14. Mid-Size Ruhle Trawl

This action modifies the definition of the Ruhle Trawl to include the smaller dimensions of the mid-size Eliminator trawl and only include the primary design features of the net design. The following modifications are being made: Replace the minimum fishing circle requirement with a more concise and enforceable measure using the minimum number of meshes at the wide end of the first bottom belly; adjust the mesh configuration in the forward part of the net and the minimum kite area requirements to that of the mid-size Eliminator; and remove the sweep configuration requirements. The sweep requirements have been removed from the definition because this component of the gear is largely based on bottom composition and preference, and is not the primary bycatch reduction device. The primary bycatch reduction device for this gear type is the large meshes located in the forward part of the net. The minimum mesh sizes and minimum kite area are reduced to enable the mid-size Eliminator to meet the Ruhle trawl definition.

The Council requested that NMFS implement a smaller-scale version of the Ruhle trawl (i.e., the mid-size Eliminator Trawl) that should be: (1) Available for use by both sector and non-sector vessels in the Eastern U.S./Canada Haddock SAP and Regular B DAS Program; and (2) assigned a separate gear code but should not be assigned a separate stratum for the purpose of discard information. Expanding this definition will increase fishing opportunity for smaller vessels by allowing them to utilize this smaller-scale trawl, and therefore, have access to the Haddock SAP, as well as the B DAS program. In addition, vessels will be able to operate under the Ruhle trawl gear code, which will result in reduced discard rates for certain species, particularly depleted stocks that may have constraining catch limits.

Vessels fishing in the Regular B DAS Program or the Haddock SAP must use approved trawl gear that has been determined to reduce the catch of NE multispecies stocks of concern. The RA may approve additional gears for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP if a gear meets gear performance standards defined at § 648.85(b)(6)(iv)(J)(*2*). These

gear performance standards were developed to allow the harvest of healthy stocks (e.g., GB haddock) while avoiding the capture of stocks of concern (e.g., GB cod and GB yellowtail flounder). The full-size Eliminator trawl (i.e., Ruhle trawl) was tested in 2006. This experiment demonstrated that it effectively harvested the target species haddock while reducing catches of cod and other stocks of concern. In response to a Council's request, NMFS, approved the Ruhle trawl for use in the B DAS Program and Haddock SAP on July 14, 2008 (73 FR 40186). The current definition of the Ruhle trawl is specific to the experimental net, which was designed for relatively large vessels. The University of Rhode Island (URI) conducted a follow-on study that tested two smaller versions of the Ruhle trawl that could be used by smaller vessels (small-size Eliminator trawl and mid-size Eliminator trawl) to determine if the catch performance of the smaller trawls is similar to that of the full-size trawl. Following a successful peer review in 2010, the Council determined that the mid-size Eliminator trawl effectively meets the pertinent gear performance standards and requested that NMFS approve the use of the mid-size Eliminator trawl by sector and non-sector vessels in the B DAS Program and Haddock SAP.

Vessels participating in the NE multispecies common pool and sector management programs are subject to catch limits, which include discarded catch. Vessel Trip Report (VTR) gear codes, in conjunction with stock area fished and sector, are used to establish discard strata for each NE multispecies stock to ensure these catch limits are not exceeded. Each discard stratum has a particular discard rate associated with each NE multispecies stock based on of Northeast Fisheries Observer Program (NEFOP) and at-sea-monitor (ASM) data. There are currently three commonly used VTR trawl gear codes for groundfish: Bottom fish; haddock separator; and Ruhle trawl. Because the haddock separator trawl and the Ruhle trawl were designed to fish more selectively than a regular bottom fish trawl, trips using these two gear types generally have reduced catch for certain stocks of NE multispecies, particularly flatfish and cod, resulting in a lower discard rate for these species. Due to the similar catch performance characteristics of the mid-size Eliminator and Ruhle trawl, data from both gear types will be pooled for the purpose of assigning discard rates and establishing discard strata.

The Council also requested that NMFS create a new VTR gear code for the mid-size Eliminator Trawl to monitor the catch performance of this net design in the fishery. However, creating a new gear code would not achieve the Council's objective. A mid-size Eliminator trawl can range in size from the experimental net up to the size of the Ruhle trawl. As a result, a vessel may correctly choose the mid-size Eliminator Trawl VTR gear code, but the net size could vary considerably from the experimental net size. This would prevent using the VTR gear code to monitor how the experiment net performs when adopted in the fishery. Instead, NMFS will use foot-rope length and discard data obtained by trips that are accompanied by a NEFOP assigned observer or ASM. Data from observed or monitored vessels that are using a mid-size Eliminator with a sweep that is comparable to the experimental net sweep of 33m (109 ft) will be used to evaluate how the experimental gear is performing in practice.

15. Monitoring of Fillets, Fish Parts, and Fish Landed for At-Home Consumption

In the proposed rule for this action, NMFS proposed to replace the 3:1 counting method with new species-specific conversion factors for the purposes of counting fillets and fish-parts landed for at-home consumption against the pertinent ACLs. However, based on public comments received on this proposed measure, and additional analysis performed, NMFS concluded that the 3:1 counting method is the most accurate for counting fillets and fish parts landed for at-home consumption against ACLs, and that any changes to this conversion factor should go through the Council.

Framework Adjustment 27 to the NE Multispecies FMP (Framework 27) implemented a counting rate of 3:1 for the purposes of ensuring compliance with days-at-sea possession limits. This counting rate was implemented prior to implementation of ACLs and AMs in the FMP. When Amendment 16 was implemented in 2010, the 3:1 counting rate was not extended for quota monitoring purposes to ensure that all catch by common pool and sector vessels is counted and attributed to the appropriate sub-ACL. Therefore, on July 19, 2011, NMFS published an interim final rule correcting the counting method for fillets and parts of fish landed for home consumption (76 FR 42577). The interim final rule applied the 3:1 counting rate to all fillets and parts of fish landed for home consumption by sector and common pool vessels.

For FY 2010 and FY 2011, fish landed for at-home consumption were counted at a 1:1 rate against the common pool and sector sub-ACLs. This was not accurate. Beginning in FY 2012, all fillets and parts of fish landed for home consumption will be multiplied by 3 for quota monitoring purposes. All catch by sector and common pool vessels, including fillets retained by crew for home consumption, count against a sector's ACE for that stock or the common pool sub-ACL for that stock. The 3:1 counting method is consistent with the FMP requirement that all catch by sector and common pool vessels be accounted for, and is also consistent with the 3:1 counting method implemented by the Council in Framework 27. The 3:1 counting rate for fillets and parts of fish will also continue to be used to determine compliance with possession limits for common pool vessels.

16. Charter/Party Vessel Closed Area Letter of Authorization

Framework Adjustment 33 to the NE Multispecies FMP (Framework 33) allowed charter/party and recreational vessels to fish in the GOM Rolling Closure Areas, the Western GOM Closure Area, Cashes Ledge Closure Area, and the Nantucket Lightship Closed Area, provided the vessel is issued a letter of authorization (LOA) from the Regional Administrator. Framework 33 prohibited vessels issued this LOA from selling any fish, except for species that are not managed by the New England Fishery Management Council (NEFMC) or the Mid-Atlantic Fishery Management Council (MAFMC). When NMFS implemented this action, the regulations only provided an exception to the sale of tuna for charter/party vessels issued this LOA. This exception was inconsistent with the Council's intent. In addition to tuna, striped bass and lobster, among other species, are not managed by the NEFMC or the MAFMC, and therefore, should be precluded from the prohibition of sale. This action clarifies the regulations that charter/party vessels issued a LOA to fish in the GOM Rolling Closure Areas, the Western GOM Closure Area, Cashes Ledge Closure Area, and the Nantucket Lightship Closed Area are only prohibited from selling fishing species managed by the NEFMC or the MAFMC.

Comments and Responses on Measures Proposed in the Framework 47 Proposed Rule

NMFS received nine comments during the comment period on the Framework 47 proposed rule from six individuals, one industry group, the Council, and Oceana.

Acceptable Biological Catches and Annual Catch Limits

Comment 1: Oceana commented that NMFS should disapprove the catch limits in Framework 47 because they are not based on the best scientific information available and, therefore, violate National Standard 2. Oceana stated that the stock assessment updates completed in early 2012 should be the basis for setting catch limits in Framework 47, and that NMFS should disapprove the ABCs for the 13 stocks whose assessments were updated in 2012. Oceana also stated that NMFS should take emergency or interim action to revise catch limits for FY 2012.

Response: National Standard 2 guidelines (50 CFR 600.315) require that each FMP (and by extension amendment and framework) must take into account the best scientific information available at the time, or preparation, of an action. The guidelines recognize that new information often becomes available between the initial drafting of an FMP and its submission to NMFS for final review. The guidelines state that this new information should be incorporated into the action, if practicable; but it is unnecessary for the Council to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures. This is not a situation in which the Council received information that ''drastic changes'' have occurred in the fishery prior to submission of the action to NMFS. Instead, as was fully understood in the development of Framework 47, the assessment updates were not completed until after the Council took final action on Framework 47 and submitted it to NMFS for review. As a result, there was no practicable way to incorporate this information into Framework 47 without reinitiating the Council process and delaying the action far beyond the start of FY 2012, which begins on May 1, 2012, and is when the ABCs need to be in place. Therefore, NMFS has determined that it is appropriate for the Council to set the OFLs and ABCs in this action based on the best scientific information available at the time the Council took final action and submitted Framework 47 to NMFS for approval. The appropriate response to the new information that became available after submission to NMFS is for the Council to consider whether to initiate a new framework or amendment, or to request an emergency or interim Secretarial action, to revise the existing measures or catch limits adopted in this action.

Consistent with the National Standard 2 guidelines, this determination recognizes the need for some certainty as to what scientific information the Council may rely on in taking its final action, and what information NMFS will use to evaluate the approvability of a Council action. Without such certainty, there would be a lack of predictability and confidence in Council actions, which must be developed well in advance of their implementation due to the time it takes to prepare appropriate analyses and documents for submission to NMFS for final review. Uncertainty about what information will be used to review a Council action could also seriously undermine the Council process, because neither the Council, nor the public, would be confident their efforts would not be meaningless. Thus, new scientific information that becomes available after the Council has submitted its final action to NMFS for review should not, based on National Standard 2, be used retroactively to undo recommended actions that had the benefit of the full Council process.

NMFS also considered the practical effect of disapproving the OFLs and ABCs specified in this action. Approving the catch limits for these stocks, whose assessments were updated in early 2012, actually results in slightly less fishing mortality than if they were disapproved and the default measures specified by Framework 44 and Framework 45 went into place. The default catch limits for FY 2012 for the five stocks mentioned earlier (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder) are identical to those specified in this action, except for GB cod, which is 5 percent higher. For the remaining stocks, the default measures are essentially identical or higher than those adopted in Framework 47. Therefore, disapproving the FY 2012 ABCs in Framework 47 would result in the same catch limits as those previously specified, and a higher catch limit for GB cod, which could increase overfishing on this stock while the Council develops its next management action to incorporate the new scientific information available.

Approving these catch limits, as explained above, does not reduce the importance of acting on the new information as soon as possible in a new action, but rather emphasizes the importance of analyzing and considering this information through the full Council process. Consistent with the SSC guidance and the Council's understanding during the development of Framework 47, the Council has already started developing a management action to incorporate the assessment update information and adopt catch limits for the pertinent stocks for FYs 2013–2014. A new stock assessment is also scheduled for SNE/MA yellowtail flounder in June 2012, and the results of this stock assessment will be incorporated into the same Council action to set OFLs and ABCs for the stock for FYs 2013–2014. The Council may also use updated information for other stocks to revise the FYs 2013–2014 OFLs and ABCs specified in this action. The Council intends to complete this management action by May 1, 2013, to set catch limits for FYs 2013–2014.

Oceana's comment recommending emergency action is outside the scope of this action and is considered to be an independent request for NMFS to take action addressing the updated stock assessment information. As explained above, this new information should preferably be considered through the full Council process, and NMFS has charged the Council to address this new information as soon as possible. At the time of this rulemaking, the Council has not yet had the opportunity to review and discuss the results of the assessment updates. NMFS believes this information is best incorporated through the Council process, and is waiting on a response from the Council to Framework 47 and the assessment updates. The Council is scheduled to receive and discuss the results of the assessment updates at its April 25, 2012, meeting. NMFS has notified the Council that the updated assessment information must be incorporated as soon as possible, but no later than May 1, 2013. NMFS recommends that, at its June meeting, the Council identify how and when this information will be incorporated and how that process would affect any existing or planned management measures.

Accountability Measures

Comment 1: The Council commented that the use of zero possession has been effective at keeping catches within allowable levels for pertinent stocks. The Council commented that adopting zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish, and as a reactive AM for Atlantic halibut, is the Council's preferred method for ensuring catch levels are not exceeded while also giving industry the greatest possible opportunity to target healthy stocks. Oceana commented that the use of zero possession as an AM is not adequate for

SNE/MA winter flounder, Atlantic wolffish, or Atlantic halibut.

Response: NMFS agrees that zero possession for SNE/MA winter flounder and Atlantic wolffish appears to have effectively kept catches within allowable levels. In FY 2010, total catch of these two stocks was well below the total ACL, and based on preliminary catch information, it appears that total catches will also be below the total ACL in FY 2011. However, as discussed in Item 9 of this preamble, although zero possession may be a sufficient proactive AM for these two stocks, effective reactive AMs remain necessary, and must be developed as soon as possible as a step in the ongoing process to ensure compliance with the with the Court remand. If zero possession continues to be an effective proactive AM, the reactive AM will likely not be triggered. However, should the proactive AM fail, and an overage of the total ACL occurs, a reactive AM will ensure this overage is mitigated, and prevent repeated overages of the ACL. For Atlantic halibut, a zero possession reactive AM, while a step in the right direction, by itself, is not adequate in light of the court's remand. Because commercial groundfish vessels can only land one halibut per trip, and generally do not target halibut, a zero possession limit will not likely create a sufficient incentive for vessels to avoid catching this stock should an ACL be exceeded. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for these stocks. NMFS requests that the Council take action to ensure that effective reactive AMs are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

While NMFS recognizes that the AMs approved in this action do not satisfy the court remand, zero possession as a proactive AM for SNE/MA winter flounder, and as a reactive AM for Atlantic halibut, will still provide some benefit to prevent catch from exceeding the ACLs for these stocks, and will reduce a potential inequity between common pool and sector vessels. The initial AMs implemented by Amendment 16 for these stocks only applied to common pool vessels. Catch by common pool and sector vessels counted against the common pool sub-ACL. Based on preliminary FY 2011 catch information, sector vessels have caught more than 95 percent of the total commercial catch for SNE/ME winter flounder, Atlantic wolffish, and Atlantic halibut. Disapproving the Framework 47 AMs for these stocks would result in the same default management measures for SNE/MA winter flounder and Atlantic wolffish (zero possession), no reactive AM for Atlantic halibut, and would disproportionately penalize common pool vessels. Therefore, NMFS has approved zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish, but recognizes that reactive AMs are required for these stocks and must be developed as soon as possible. In addition, NMFS approves the reactive AM for Atlantic halibut because it will provide some conservation benefit while the Council develops a more effective reactive AM for this stock. Approving these AMs will also ensure the common pool vessels are not disproportionately penalized for any overages that may occur.

Comment 2: Oceana disagreed that an AM should be implemented 2 years after the fishing year in which the overage occurred, and stated that this measure is inconsistent with the National Standard 1 guidelines. Oceana suggests that inseason AMs are not impossible and that preliminary data is used for inseason management in other fisheries.

Response: The Council adopted AMs for windowpane flounder, ocean pout, and Atlantic halibut that would be implemented in Year 3 because evaluating total catch includes catch of these stocks in state waters and non-groundfish fisheries. The Council felt that final catch data, including final discard estimates, would not be reliably available in time to implement these AMs earlier than Year 3. Indeed, catch information, including discard estimates, are not readily available inseason for these components of the fishery. While we are approving this measure because it provides a reactive AM for these stocks should an ACL be exceeded, where no AM currently exists, NMFS recommends that the Council reconsider the timing of these AMs. NMFS recommends to the Council that AMs should be implemented as soon as possible, rather than 2 years after an overage occurs, when catch data, including final discard information, show an overage of the catch limit. As monitoring improves, and discard estimates are more readily available for all components of the fishery, NMFS anticipates that these reactive AMs can, and should, be implemented more quickly.

Annual Measures for FY 2012 Under Regional Administrator Authority

Comment 1: One commenter favored an 800 lb per day-at-sea (DAS) trip limit for GOM cod. The commenter stated that this trip limit would make each trip more profitable and would allow hiring one crew member, as opposed to fishing alone.

Response: NMFS proposed a trip limit range for GOM cod of 500 lb-800 lb per DAS. NMFS is implementing an initial FY 2012 trip limit for GOM cod of 650 lb per DAS. NMFS believes this trip limit will allow a more profitable trip than the 500 lb DAS limit in FY 2011. A 650-lb trip limit will likely preserve the GOM cod trimester TAC throughout each trimester and prevent premature closure of the trimester TAC area. If necessary, NMFS will modify trip limits inseason to prevent under harvest or overharvest of the trimester TACs, or the common pool sub-ACLs.

Comment 2: One commenter stated that the common pool fishery does not need the trimester TAC AM because trip limits effectively control fishing mortality during the fishing year and requested that NMFS not implement the trimester TAC AM for the common pool fishery. This commenter also stated that the trimester TAC AM for white hake should not apply to vessels fishing with longline or hook gear. Another commenter stated that the distribution of the common pool sub-ACL to the trimesters should be revisited.

Response: The trimester TAC AM provision was adopted in Amendment 16 in 2010, and is not part of Framework 47. Accordingly, this measure was not proposed in this action. Because this measure was not part of Framework 47, these comments are irrelevant to, and outside the scope of, the measures approved in this final rule.

To provide some background, however, FY 2012 will be the first fishing year that this AM is effective for the common pool fishery. The trimester TAC AM serves as a reactive AM that is triggered if an overage of the common pool catch limit occurs. Sector-specific reactive AMs are required for every groundfish stock. The trimester TAC AM is only one type of reactive AM that the Council may use, and the Council could develop a different AM for the common pool fishery if it chooses. However, any changes to the trimester TAC AM must be developed through the full Council process in another action, and cannot be addressed in this rule. If trip limits continue to be an effective proactive AM that keep common pool catch within allowable levels, the trimester TAC AM will likely not be triggered. However, if inseason management measures fail to keep catch

within allowable levels, the trimester TAC AM will ensure overfishing does not occur and mitigate any overages.

When the trimester TAC AM was developed, the area closures for each stock were applied to any gear types capable of catching that stock. In addition, the distribution of the common pool sub-ACL was based on the distribution of landings and the influence of management measures on landings patterns. NMFS does not have the authority to modify the applicable gear types for the white hake trimester TAC AM or the distribution of the common pool sub-ACL. Any modifications to these measures must be made through the Council process. NMFS recommends that the commenters raise this issue to the Council for possible inclusion in a future management action.

Mid-Size Ruhle Trawl

Comment 1: Two individuals commented that they strongly support the proposed revision to the Ruhle trawl definition because it will provide smaller vessels with increased fishing opportunities. One commenter suggested that eliminating the requirement for a minimum kite area (as opposed to the proposed minimum kite area of 19.3 sq. ft (1.8 sq. m)) would allow more flexibility.

Response: NMFS believes that the minimum kite size is necessary because it will help ensure that the catch performance of the mid-size Ruhle trawl will be more consistent and comparable with the catch performance of the experimental net. The large meshes greatly reduce catch of flounders and cod; however, the experimental net effectively caught other fish, such as haddock, as a result of the relatively high profile of the net. The high profile of the net is due, in part, to the lift provided by the kites. A minimum kite size will also minimize the catch performance differences between kites and headrope floats. Therefore, NMFS retained the minimum kite size requirement.

Monitoring of Fillets, Fish Parts, and Fish Landed for At-Home Consumption

Comment 1: One individual commented that landing fish for home consumption should be prohibited, and that all catch should be counted against the appropriate catch limit.

Response: ACLs and AMs for the groundfish fishery were implemented by Amendment 16 in FY 2010. Allowing home consumption of some fish has been a long-standing provision and was not proposed for elimination. Therefore, this comment is outside the scope of this action. In any event, landings and discards from all fisheries are counted against the catch limit for each stock, including landings by commercial groundfish vessels for home consumption. The proposed rule was intended only to address the appropriateness of the conversion factor for determining the live weight of fillets and parts of fish landed for home consumption. As discussed in the response to the next comment, NMFS decided not to implement a new conversion factor for fish parts landed for home consumption.

Comment 2: One individual and the Council commented that the proposed species-specific conversion factors for home consumption are nearly identical to the conversional factors used for dressed fish, which could underestimate the amount of fish landed for home consumption.

Response: NMFS agrees that the proposed species-species conversion factors are similar to the conversion factors used for dressed fish. Based on additional analysis, NMFS is not implementing the proposed species-specific conversion factors. Beginning in FY 2012, all fillets and parts of fish landed for home consumption will be multiplied by 3 and attributed to the appropriate sector ACE or common pool sub-ACL. Any change to the conversion factor should be considered by Council first.

Changes From the Proposed Rule

NMFS has made three changes from the proposed rule. After further review, the coordinates for several AM areas are revised to correct errors contained in the proposed rule. In addition, the regulations are further revised to reflect the removal of the trimester TAC for the common pool fishery for those stocks whose AMs were revised in this action. NMFS is not implementing species-specific conversion factors in place of the 3:1 counting rate for home consumption landings, as was proposed in the proposed rule for this action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that Framework 47 is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Act, and other applicable law.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. The effective date of this action affects a parallel rulemaking approving sector operations plans for the start of FY 2012 on May 1, 2012. In addition, the effective date of this action affects the scallop fishery AM for FY 2011. Therefore, these actions must be in effect at the beginning of FY 2012 to fully capture the environmental and economic benefits of Framework 47 measures as well as the FY 2012 sector operations plans. Due to unforeseen circumstances related to FY 2012 catch levels for GOM cod, the Council's submission of Framework 47 to NMFS was delayed until February 2012. Due to this constraint, this rulemaking could not be completed further in advance of May 1, 2012. Therefore, in order to have this action effective at the beginning of FY 2012, it is necessary to waive the 30-day delayed effectiveness of this rule.

The waiver of the 30-day delayed effectiveness for this final rule is in the public interest because it is necessary to implement a number of measures by the start of FY 2012 that would benefit the NE multispecies fishery and the Atlantic sea scallop fishery. This action sets catch levels for FY 2012–2014 for most groundfish stocks, adopts U.S./Canada TACs for FY 2012, removes restricted gear areas for common pool vessels, and alleviates the scallop fishery AM trigger to allow the scallop fishery to catch more yellowtail flounder. This rule also includes measures controlling fishing effort by common pool vessels to help prevent the premature or overharvest of the common pool trimester TACs and sub-ACLs during FY 2012. Waiving the 30-day delayed effectiveness of this final rule will ensure that the appropriate catch levels are implemented at the start of FY 2012. Waiver of delayed effectiveness will also ensure that common pool vessels will benefit from the removal of restricted gear areas as soon as possible. This measure will also modify when the scallop fishery AM is triggered to allow the scallop fishery to catch more yellowtail flounder before an AM is triggered. This measure is being applied retroactively to FY 2011, and a waiver of the delayed effectiveness will prevent a premature trigger of the scallop fishery AM.

Failure to waive the 30-day delayed effectiveness would result in the default FY 2012 ABCs, which could be lower or higher than those adopted in this final rule. This could prevent vessels from maximizing the benefit from increased catch limits or result in catch limits that are too high based on the best scientific information available. Failure to waive the 30-day delayed effectiveness of this action could also result in no TACs being specified for U.S./Canada stocks. Without an allocation for Eastern GB

cod or haddock, sector vessels would be unable to fish in the Eastern U.S./Canada Area. Failure to waive delayed effectiveness will delay the removal of the GB or SNE/MA Multispecies Restricted Gear Areas, which would unnecessarily burden common pool vessels and reduce their economic efficiency. Failure to delay could also result in prematurely triggering the scallop fishery AM pending final FY 2011 catch information. Thus, delaying implementation of this final rule would result in short-term adverse economic impacts to groundfish and scallop vessels and associated fishing communities. In addition, delaying implementation of this final rule could increase the risk of excessive catch by common pool vessels, and exceeding a trimester TAC or sub-ACL, if the FY 2012 trip limits included in this rule are not in place at the start of FY 2012. Therefore, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

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

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An FRFA was prepared for this action, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA, which includes the summary in this rule and the analyses contained in Framework 47 and its accompanying EA/RIR/FRFA, describes the economic impact the measures adopted in Framework 47 would have on small entities. A description of this action and its objectives and the legal basis for this action are contained in Framework 47 and in the preamble to the proposed rule as well as this final rule; it is not repeated here. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**). This FRFA analyzes expected impacts of the measures in Framework 47, including setting GOM cod specifications based on the new GOM cod assessment. As explained in the preamble, however, the Council did not adopt ABCs for GOM cod in Framework 47. Therefore, the following summary also includes expected impacts of this action in the absence of GOM cod specifications.

No issues were raised by public comments in response to the IRFA or with respect to the economic impacts of this action. As a result, no changes were made from the proposed rule.

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

FY 2010, which is the last full fishing year for which data are available, was used as the baseline period in this analysis to estimate the impacts of this action on regulated small entities. The measures implemented by this action would primarily affect commercial groundfish vessels (in a sector or in the common pool) and commercial Atlantic sea scallop vessels. The primary economic impact of the action is associated with the specification of ACLs and sub-ACLs. The Small Business Administration considers a commercial fishing operation a small entity if it has annual sales of less than $4 million (see North American Industry Classification System code 114111). Multiple vessels may be owned by a single owner, and contrary to the IRFA prepared for Framework 47, data tracking ownership recently became available to determine affiliated entities. However, this FRFA does not analyze the expected impacts of this action using ownership groups (i.e., ownership of multiple vessels by one owner). Therefore, for the purposes of analysis, each permitted vessel is treated as a single entity, except for vessels participating in the sector program, as described below.

In the IRFA prepared for Framework 47, as explained in Section 8.11.2 of Framework 47, sectors were used as the regulated entity for the first time to estimate impacts of this action. Sectors were used as the entity for analysis, in part, because each vessel's Potential Sector Contribution only becomes fishable quota if the vessel is a member of a sector. Since sectors are allocated Annual Catch Entitlement (ACE), based on the cumulative Potential Sector Contribution of each individual sector member, sectors as an affiliated entity provides a useful approach for analyzing the impacts of Framework 47. This approach differs from the approach used to prepare the IRFA for the proposed rule to implement the 2012 sector operations plans and allocate ACE to sectors, as well as other previous groundfish actions. In the past, individual vessels, not sectors, were used as the regulated entity to estimate impacts of measures on vessels participating in the sector program. NMFS determined that deeming a sector as the regulated entity, for the purposes of analysis under the RFA, is a useful alternative to analyzing individual vessels for Framework 47. NMFS believes this analysis should also be completed using the individual vessels as the regulated entity to provide continuity with the RFA analyses of previous actions. Therefore, a supplemental analysis was prepared using individual vessels as the regulated entity to analyze the impacts of Framework 47. This supplemental analysis, which is described below, along with the Framework 47 analysis, gives the public the best description of impacts of Framework 47.

The entities affected by this action would include 7 large and 10 small regulated entities participating in the sector program, and 342 small regulated entities in the common pool. If individual vessels are considered regulated entities for the sector program, this action would affect 740 small regulated entities enrolled in the sector program.

If sectors are considered regulated entities for the purposes of estimating this rule's impacts, this rule would affect 7 large and 10 small regulated entities participating in the sector program in FY 2010. Mean gross sales of fish for the 7 large entities was $13.7 million, and approximately $2 million for the 10 small entities. Under this action, 3 large entities would fall below the threshold of $4 million in sales, which would result in 4 large and 13 small regulated entities. NMFS estimates this action will result in mean gross sales for the large regulated entities of $9.5 million, which is a 30-percent reduction from the baseline period. Mean gross sales for the small regulated entities is estimated at $0.7 million, which is a 62-percent reduction from the baseline period.

There were 343 commercial groundfish vessels in the common pool that had at least $1 in gross sales from fish during FY 2010. All of these were small regulated entities with mean gross sales of $156,000. Of this amount, NMFS estimates that gross sales from groundfish would be approximately $2,600 per vessel, or less than 2 percent of the mean gross sales. Although this action may trigger common pool AMs, which would limit opportunities to fish for groundfish, the impact on small regulated entities would likely be insignificant.

If individual vessels are considered the regulated entities for the purposes of this FRFA, this action would affect substantially more small entities. During FY 2010, for example, 740 vessels enrolled in the sector program, and 607 remained in the common pool. During the baseline period, 446 sector vessels and 343 common pool vessels generated gross sales from any species. Of those vessels, 305 sector vessels and 145 common pool vessels generated gross

sales from groundfish species. No individual vessel generated gross sales in excess of $4 million. Therefore, using individual vessels as the regulated entity, all regulated entities are considered small, and there are no disproportional impacts between small and large entities. Mean gross sales of fish for vessels enrolled in the sector program were $299.9K, and $138.1K for common pool vessels. This action is expected to reduce mean gross sales of fish by 33 percent for sector vessels to $200.1K. Mean gross sales for common pool vessels are expected to decline to $132.6K, which is less than a 5-percent decline.

Potentially affected entities in the scallop fishery would include 347 limited access scallop vessels and 730 general category scallop vessels. All individual vessels in the sea scallop fishery are considered small business entities under the Small Business Administration criteria. Mean gross sales for limited access scallop vessels are approximately $1 million, and are approximately $80,000 for general category scallop vessels. The statistical areas with the highest catch rates of GB yellowtail flounder are 562 and 525. If this action caused one or both of these areas to close beginning on March 1, 2013, fishing effort by scallop vessels would be displaced to other locations, primarily the Mid-Atlantic region. Since more than 75 percent of revenues from the Atlantic sea scallop fishery come from statistical areas south of Georges Bank, the impact of closing statistical areas 562 or 525 is difficult to anticipate. In addition, during FY 2010, less than 1 percent of total revenues in the scallop fishery came from the statistical areas potentially affected by this action. There were no access area trips taken in the scallop fishery during this time. Opening portions of statistical area 562 to access area trips could increase the probability of triggering an AM for the scallop fishery, and could increase the potential for adverse regulatory impacts to lost access area trips or displaced fishing effort. However, the effect on profitability is likely to be minimal, and because all participating vessels are deemed to be small regulated entities, there are no disproportional impacts.

The primary impact of this action is associated with setting ACLs, which includes specification of sub-ACLs of GB and GOM haddock to the Atlantic herring fishery. Because this action decreases the ABCs for GB and GOM haddock, Atlantic herring vessels are potentially affected by this action. In calendar year 2010, 90 vessels were issued a limited access herring permit and two vessels exceeded $4 million in sales. Approximately 17 percent of the haddock ABCs were landed in FY 2010, and similar utilization of the available quota is expected under this action. Therefore, vessels participating in the Atlantic herring fishery are not expected to be affected by this action.

Of the affected entities under this action, only groundfish sectors and vessels are anticipated to be adversely affected. Due to conservation needs, this action would reduce short-term profits for regulated small entities relative to the baseline period. Regulated small sector entities are estimated to be more adversely impacted by this action than large sector entities. Gross sales for small sector entities would be reduced by 63 percent, and gross sales for large entities would be reduced by 30 percent. These are short-term impacts. In addition, reductions in fishing opportunities for some stocks are necessary to ensure rebuilding. The ability to lease quota between sectors and consolidate quota within sectors will help mitigate the adverse effect on profitability. In addition, exemptions included in the 2012 sector rule are expected to mitigate adverse economic impacts. However, using sectors as the regulated entities, this action is likely to have a significant impact on regulated small sector entities under the disproportionality criteria. This analysis was based in part on anticipated decreases in the GOM cod catch limits for FYs 2012–2014 that were initially proposed as part of this action. However, Framework 47 no longer sets the GOM cod catch limits for FY 2012–2014, as explained in the preamble, and, therefore, the expected impacts of this action on regulated small entities are likely to be less.

Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

During the development of Framework 47, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Proposed actions and alternatives are described in detail in Framework 47, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. Reasonable alternatives are limited because of the legal requirements to implement effective conservation measures which necessarily may result in negative impacts that cannot be effectively mitigated. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements several measures that enable small entities to offset some portion of the estimated economic impacts. These measures include: extending the rebuilding period for GB yellowtail flounder; removing the Western GB and SNE Multispecies RGAs for common pool vessels; re-estimation of the GB yellowtail flounder sub-ACL for the scallop fishery; eliminating the cap on yellowtail flounder catch in the Nantucket, Closed Area I, and Closed Area II Sea Scallop Access Areas; and revising the scallop fishery AM trigger.

Revisions to the status determination criteria for the three winter flounder stocks and GOM cod primarily affect setting the OFLs, ABCs, and ACLs for these stocks based on these criteria. Over the long-term, the revised status determination criteria limit the potential harvest from the fishery. The MSY values are higher for GB and SNE/MA winter flounder than the previous MSY values which would result in greater potential revenues over the long-term. This action also extends the rebuilding period for GB yellowtail flounder, which allows for greater yellowtail flounder catches and result in larger revenues for groundfish and scallop vessels than if the rebuilding program was not extended beyond 2016. Adopting the U.S./Canada TACs for FY 2012 would have short-term positive economic impacts if no U.S. TACs were specified. Reduced revenue due to decreases in Eastern GB cod and GB yellowtail flounder TACs could be mitigated if vessels are able to maximize Eastern GB haddock catch.

Removing the Western GB Multispecies and SNE Multispecies RGAs for common pool vessels could increase revenues for common pool vessels compared to revenues if this action was not implemented. Removing these RGAs will likely increase common pool landings of some stocks, increase efficiency for common pool vessels, and may reduce costs for common pool vessels because vessel operators would

not be required to purchase selective gear to fish in these areas. The economic impacts of the AMs adopted in this action could be mitigated by using selective gear or fishing in other areas, and will be addressed in a future rulemaking implementing the AMs, if necessary. Given the relatively small size of the AM areas, additional trip costs for fishing in other areas are likely negligible.

Eliminating the 10-percent yellowtail flounder access area caps for the scallop fishery will reduce the incentive for derby fishing, and will likely positively impact on the scallop fishery. In addition, revising the implementation of the scallop fishery AM is expected to mitigate economic impacts that may occur if the scallop fishery exceeds its yellowtail flounder allocation. This measure will prevent the loss of scallop landings, revenues, and increased fishing costs compared to impacts of this measure not being implemented. This measure will also prevent effort shifts to less optimal areas by scallop vessels, as well as effort shifts into seasons with lower meat weights for scallops. Inseason re-estimation of the scallop fishery GB yellowtail flounder sub-ACL will have positive economic benefits for the groundfish fishery. These benefits would only occur in years when the scallop fishery is not projected to catch its initial sub-ACL, and the groundfish sub-ACL is increased mid-fishing year. When additional quota is made available to the groundfish fishery, revenues for the groundfish fishery will increase if groundfish vessels are able to catch additional GB yellowtail flounder.

Modifying the definition of the Ruhle trawl will provide more flexibility for the groundfish fishery in the use of trawl gear that minimizes catch of stocks of concern. This measure will provide small vessels with increased fishing opportunities. The additional exempted gear option will provide vessels a choice of the most cost-effective means of targeting healthy stocks.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This action does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 26, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14,

■ a. Remove and reserve paragraphs (i)(2)(vi)(B), (i)(2)(vi)(C), and (i)(3)(v)(C);

■ b. Remove paragraph (k)(7)(i)(C)(*4*);

■ c. Revise paragraph (k)(13)(ii)(B); and

■ d. Add paragraph (k)(20).

The revision and addition read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(5) and (6); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(20) *AMs for both stocks of windowpane flounder and ocean pout.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

* * * * *

■ 5. In § 648.60, paragraphs (a)(5)(ii)(C)(*1*) and (*3*) are removed and reserved, and paragraph (g)(1) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

■ 6. In § 648.64, paragraph (a) introductory text and paragraphs (b)(1) and (c)(1) are revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. Unless otherwise specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations, the sub-ACLs for the 2011 through 2013 fishing years are as follows:

* * * * *

(b) * * *

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
GBYT AM 1 ...	41°50′	66°51.94′
GBYT AM 2 ...	40°30.75′	65°44.96′
GBYT AM 3 ...	40°30′	66°40′
GBYT AM 4 ...	40°40′	66°40′
GBYT AM 5 ...	40°40′	66°50′
GBYT AM 6 ...	40°50′	66°50′
GBYT AM 7 ...	40°50′	67°00′
GBYT AM 8 ...	41°00′	67°00′
GBYT AM 9 ...	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1 ...	41°50′	66°51.94′

* * * * *

(c) * * *

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery

is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

* * * * *

■ 7. In § 648.81:

■ a. Revise paragraphs (c)(2)(ii)(B), (f)(2)(iii)(B), and (n); and

■ b. Remove paragraph (o).

The revsions read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(n) *GOM Cod Spawning Protection Area.* (1) Except as specified in paragraph (n)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the RA upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. latitude	W. longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (n)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

■ 8. In § 648.82:

■ a. Revise paragraphs (n)(2)(i)(A), (n)(2)(ii) introductory text, and (n)(2)(ii)(L) through (N); and

■ b. Remove paragraphs (n)(2)(ii)(O) and (n)(2)(ii)(P).

The revisions read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(n) * * *

(2) * * *

(i) *Trimester TACs.* (A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of 4 months in duration, beginning at the start of the fishing year (i.e., Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows):

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM cod	27	36	37
GB cod	25	37	38
GOM haddock	27	26	47
GB haddock	27	33	40
CC/GOM yellowtail flounder	35	35	30
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
GOM winter flounder	37	38	25
GB winter flounder	8	24	69
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER—Continued

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
White hake	38	31	31

* * * * *

(ii) *Stock area closures.* If the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

* * * * *

(L) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′

REDFISH TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

* * * * *

■ 9. In § 648.85:

■ a. Revise paragraphs (b)(5) and (b)(6)(iv)(J)(*3*)(*i*) through (*v*); and

■ b. Remove paragraphs (b)(6)(iv)(J)(*3*)(*vi*) and (c)(1) through (3).

The revisions read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for

these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) * * *

(iv) * * *

(J) * * *

(*3*) * * *

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (× 2), top wing, bottom wing, wing side panels (× 2), bunt, square, square side panels (× 2), first top belly, first bottom belly, first belly side panels (× 2), and second bottom belly.

(*ii*) The top and bottom jibs, jib side panels, top and bottom wings, and wing side panels, bunt, and first bottom belly (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first top belly, and first belly side panels must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the first top belly and second bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have at least 15 meshes (240 cm each) at the wide end of the first bottom belly, excluding the gore.

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 19.3 sq. ft. (1.8 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible, used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

* * * * *

■ 10. In § 648.86, revise paragraph (c) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part, unless otherwise specified in § 648.90(a)(5)(i)(D)(*2*).

* * * * *

■ 11. In § 648.87, revise paragraph (c)(2)(i) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

■ 12. In § 648.89, revise paragraphs (e)(1) and (e)(3)(ii) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

* * * * *

(3) * * *

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

* * * * *

■ 13. In § 648.90, revise paragraph (a)(4)(iii)(C) and add paragraphs (a)(5)(i)(D), (a)(5)(i)(E), and (a)(5)(iv) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(iii) * * *

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D

of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. Based on information available, NMFS shall re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(E)(*1*) of this section.

* * * * *

(5) * * *

(i) * * *

(D) *AMs for both stocks of windowpane flounder, ocean pout, and Atlantic halibut.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, or Atlantic halibut was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in the second fishing year after the fishing year in which the overage occurred, consistent with the Administrative Procedure Act. For example, if NMFS determined the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014.

(*1*) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(*1*), by any amount between the management uncertainty buffer and up to 20 percent, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.81(n)(3)(i)(A); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
NWS1	41°10′	67°40′
NWS2	41°10′	67°20′
NWS3	41°00′	67°20′
NWS4	41°00′	67°00′
NWS5	40°50′	67°00′
NWS6	40°50′	67°40′
NWS1	41°10′	67°40′

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. latitude	W. longitude
NWL1	42°10′	67°40′
NWL2	42°10′	67°20′
NWL3	41°00′	67°20′
NWL4	41°00′	67°00′
NWL5	40°50′	67°00′
NWL6	40°50′	67°40′
NWL1	42°10′	67°40′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
SWS1	41°10′	71°30′
SWS2	41°10′	71°20′
SWS3	40°50′	71°20′
SWS4	40°50′	71°30′
SWS1	41°10′	71°30′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 1

Point	N. latitude	W. longitude
SWL1	41°10′	71°50′
SWL2	41°10′	71°10′
SWL3	41°00′	71°10′
SWL4	41°00′	71°20′
SWL5	40°50′	71°20′
SWL6	40°50′	71°50′
SWL1	41°10′	71°50′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. latitude	W. longitude
SWL7	(1)	73°30′
SWL8	40°30′	73°30′
SWL9	40°30′	73°50′
SWL10	40°20′	73°50′
SWL11	40°20′	(2)
SWL12	(3)	73°58.5′
SWL13	(4)	73°58.5′
SWL14	40°32.6′ (5)	73°56.4′ (5)
SWL7	(1)	73°30′

[1] The southern-most coastline of Long Island, NY at 73°30′ W. longitude.

[2] The eastern-most coastline of NJ at 40°20′ N. latitude, then northward along the NJ coastline to point SWL12.

[3] The northern-most coastline of NJ at 73°58.5′ W. longitude.

[4] The southern-most coastline of Long Island, NY at 73°58.5′ W. longitude.

[5] The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to point SWL7.

(*2*) *Atlantic halibut.* If NMFS determines the overall ACL is exceeded for Atlantic halibut, any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies Category K permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented as specified in paragraph (a)(5)(i)(D) of this section.

(E) *AMs for SNE/MA winter flounder and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies charter/party permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land SNE/MA winter flounder, as specified in § 648.86(l), as a proactive AM to prevent the overall ACL for these stocks from being exceeded.

* * * * *

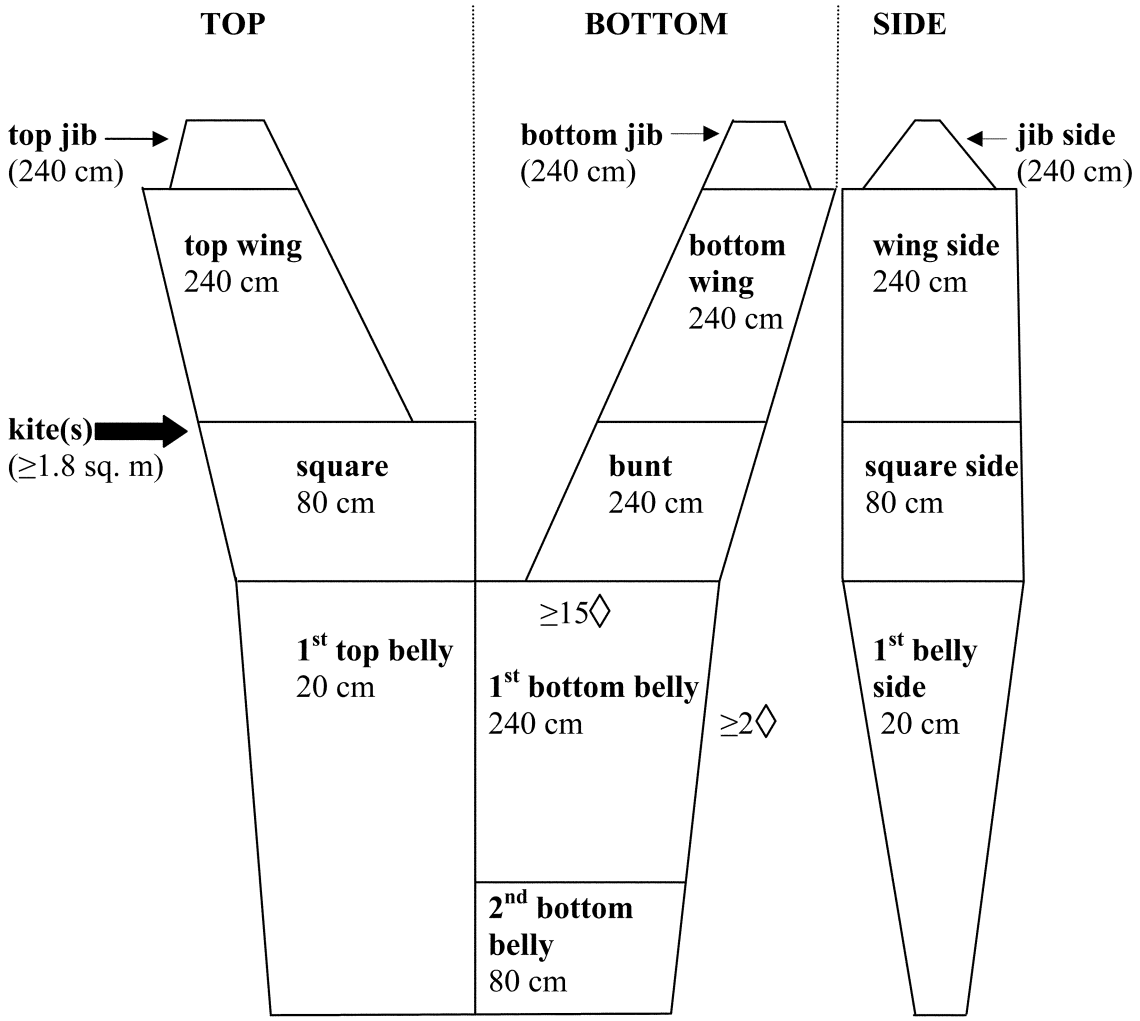
(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether the overall ACL for each stock allocated to the scallop fishery has been exceeded. When evaluating whether the overall ACL has been exceeded, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock. If catch by scallop vessels exceeds the pertinent sub-ACL specified in paragraph (a)(4)(iii)(C) of this section by 50 percent or more, or if scallop catch exceeds the scallop fishery sub-ACL and the overall ACL for that stock is also exceeded, then the applicable scallop fishery AM shall take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

* * * * *

■ 14. In part 648, revise Figure 1 to read as follows:

BILLING CODE 3510–22–P

Figure 1 to Part 648



Nomenclature for Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[FR Doc. 2012–10526 Filed 5–1–12; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120120056–2414–02]

RIN 0648–XA797

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2012 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Final rule.

SUMMARY: This final rule partially approves, and implements, 19 Northeast (NE) multispecies (groundfish) sector operations plans and contracts for fishing year (FY) 2012, and allocates quotas of NE multispecies to the sectors. This final rule does not approve certain exemptions and measures proposed in the operations plans, as explained below. Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. This provides vessels participating in sectors with increased operational flexibility while limiting overall fishing mortality. This final rule also announces a preliminary allocation to the New Hampshire State-Operated Permit Bank.

DATES: Effective May 1, 2012, through April 30, 2013; except the exemption from the requirement to declare intent to fish in the Eastern U.S./Canada Special Access Program and the Closed Area II Yellowtail Flounder/Haddock Special Access Program prior to leaving the dock, which will become effective on further notification.

ADDRESSES: Copies of each sector's final operations plan and contract, the environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Daniel M. Morris, Acting Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on the 19 sector operations plans and contracts was published in the **Federal Register** on February 15, 2012 (77 FR 8780), with public comments accepted through March 1, 2012. After review of the public comments, NMFS has partially approved the 19 sector operations plans and contracts, determining the operations plans, as approved, to be consistent with the goals of the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the sector regulations at § 648.87.

Background

The NE groundfish sector management system is a voluntary system that allocates a portion of groundfish stocks to self-selecting groups of permit holders, called sectors. Sector members are granted increased operational flexibility through exemptions from regulations in exchange for taking on additional responsibility. The annual allocations to sectors are called Annual Catch Entitlements (ACE) and are based on the collective fishing history of the sectors' members. Sectors are self-selecting, meaning each sector can choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

NMFS received operations plans and preliminary contracts for FY 2012 from 19 sectors (see Table 1). In accordance with the sector regulations, the proposed rule for this action sought comment on the 19 operations plans and contracts for FY 2012, and the exemptions proposed. The Administrator of NMFS for the NE Region (Regional Administrator) has made a determination that the 19 sector operations plans and contracts, as approved, are consistent with the goals of the FMP, and comply with sector operation measures.

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the groundfish fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17 sectors, for a total of 19 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized five new sectors (for a total of 24 sectors).

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector's TAC is called an ACE. Regional Administrator approval authorizes a sector to fish and allocates an ACE for stocks of regulated NE multispecies. Each individual sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, and each ACE is based upon the landings history of permits participating in that sector.

Nineteen sectors submitted operations plans and sector contracts, and requested allocation of stocks regulated under the FMP for FY 2012. The operations plans were similar to previously approved versions, but include changes to incorporate the additional requested exemptions. Five sectors chose not to submit operations plans and contracts for FY 2012: The Georges Bank (GB) Cod Hook Sector; Northeast Fishery Sector (NEFS) I; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and, the State of Rhode Island Permit Bank Sector. The State of Maine Permit Bank Sector, Northeast Fishery Sector IV and Sustainable Harvest Sector 3 would operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits to active vessels.

A separate rule (77 FR 16942, March 23, 2012) approves Amendment 17, which authorizes the allocation of ACE to state-operated permit banks without requiring those state-operated permit banks to comply with the administrative and procedural requirements for groundfish sectors. State-operated permit banks have until April 1, 2012, to declare whether each of their permits will contribute to the permit bank's ACE or will be used to provide DAS to common pool vessels. This final rule approves the Maine Permit Bank Sector; however, the State of Maine may elect to instead operate in FY 2012 under the state-operated permit bank provisions, as authorized by Amendment 17.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE APPROVED FY 2012 SECTORS *

Sector	Permit count	Number of active vessels	Gear type(s) fished (percent)	Area(s) fished
Fixed Gear Sector (FGS)	105	37	Gillnet: 45 Hook Gear: 55	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Maine Permit Bank Sector (MEPBS)	8	0	N/A	N/A.
Northeast Coastal Communities Sectors (NCCS).	28	10	Trawl: 83 Hook Gear: 17	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 10	54	21	Trawl: 65 Gillnets: 34	Gulf of Maine. Inshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 11	44	35	Trawl: 15 Gillnet: 85	Gulf of Maine. Southern New England/Mid-Atlantic.
NEFS 12	11	10	Trawl: 65 Gillnet: 30 Hook: 5	Gulf of Maine. Inshore Georges Bank.
NEFS 13	38	29	Trawl: 96 Gillnet: 4	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 2	79	70	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid Atlantic.
NEFS 3	83	35	Gillnet: 95 Hook Gear: 5	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 4	49	0	N/A	N/A.
NEFS 5	29	22	Trawl: 100	Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 6	19	4	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 7	20	18	Trawl: 56 Gillnet: 44	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 8	20	12	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 9	61	18	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Port Clyde Community Groundfish Sector (PCCGS).	42	32	Trawl: 46 Gillnet: 54	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank.
Sustainable Harvest Sector 1 (SHS 1)	116	41	Trawl: 90 Gillnet: 10	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Sustainable Harvest Sector 3 (SHS 3)	19	0	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Tri-State Sector (TSS)	18	6	Trawl: 83 Gillnet: 16 Hook gear: 1	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.

* The data in this table are from the sector rosters submitted as of December 1, 2011, and are subject to change based on final sector rosters.

Allocation of ACEs

As of December 1, 2011, 845 of the 1,475 eligible NE multispecies permits have preliminarily enrolled in a sector or state-operated permit bank for FY 2012. These permits account for approximately 99 percent of the FY 2012 commercial groundfish sub-ACL. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2011. Permits not enrolled in a sector have through April 30, 2012, to join a sector. Permits enrolled in a sector have until April 30, 2012, to withdraw from a sector and join the common pool for FY 2012. State-operated permit banks must notify NMFS by April 1 whether each of their permits will contribute to the permit bank's ACE or will be used to provide DAS to common pool vessels. NMFS will publish final ACEs for sectors and state-operated permit banks, and common pool sub-ACL totals, based upon final rosters and permit bank declarations, as soon as possible after the start of FY 2012.

ACEs are calculated by summing the potential sector contributions (PSC) of permits enrolled in a sector, or state-operated permit bank, for a stock and then multiplying that percentage by the available commercial sub-ACL for that stock. Table 2 shows the cumulative percentage of each commercial sub-ACL each sector and state-operated permit bank will receive, based on their rosters as of December 1, 2011.

Individual permits are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather the GB cod and GB haddock allocation of each sector and state-operated permit bank is divided into a Western ACE and an Eastern ACE for each stock. Eastern GB cod and haddock ACEs are to be harvested exclusively in the Eastern U.S./Canada Area and are based on the sector's, or permit bank's, percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the Eastern U.S./Canada Area GB cod TAC and 6 percent of the Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs.

An interim final rule (77 FR 19944, April 3, 2012) set the ACL for GOM cod for FY 2012, along with a sub-ACL of GOM cod for the commercial fishery. The commercial fishery sub-ACL for GOM cod is 4,170 mt. The commercial fishery sub-ACL is allocated to sectors, state-operated permit banks, and the common pool based on the total permit enrollment in all sectors and state-operated permit banks, and the cumulative GOM cod PSCs associated with the sectors and state-operated permit banks. This results in a common pool sub-ACL of 81 mt. The remainder of the GOM cod commercial sub-ACL (4,089 mt) is the potential sector catch for FY2012. The potential sector catch is reduced by 471 mt to account for possible carryover of GOM cod ACE from FY 2011. The 471-mt reduction is necessary to ensure sector catch in FY 2012 contributes to a reduction in overfishing of GOM cod. The remaining amount, after reduction for potential ACE carryover, is the sector sub-ACL (3,618 mt). The sector sub-ACL for GOM cod (3,618 mt) is divided among the sectors and state-operated permit banks based on their PSCs.

The PSCs of all sectors and state-operated permit banks do not add up to 100 percent because some limited access permits are enrolled in the common pool. To account for this when allocating the GOM cod sector sub-ACL among only sectors and state-operated permit banks, the GOM cod PSC of each sector and each state-operated permit bank was divided by the sum of all sectors' and state-operated permit banks' GOM cod PSCs. This determines each sector's and state-operated permit bank's share (a percentage) of the sector sub-ACL. Therefore, a sector's GOM cod ACE is calculated by multiplying the sector's share (calculated as described above and listed in Table 3) by the sector sub-ACL (3,618 mt) instead of multiplying the sector's GOM cod PSC (as listed in Table 2) by the commercial sub-ACL for GOM cod (4,170 mt).

Tables 4 and 5 show the ACEs each sector and state-operated permit bank will be allocated based on their December 1, 2011, sector rosters for FY 2012, including any PSC corrections that have been made since the proposed rule published. The final ACEs, to the nearest pound, are provided to the individual sectors and state-operated permit banks, and NMFS uses those final ACEs for monitoring sector catch. While the common pool does not receive a specific allocation of ACE, the common pool sub-ACLs have been included in each of these tables for comparison.

At the start of FY 2012, NMFS will withhold 20 percent of each sector's FY 2012 ACE (the ACE buffer) for each stock to allow time to process any FY 2011 ACE transfers and to determine whether the FY 2012 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2011 ACE overage by that sector. Sectors will be allowed to trade ACE, exclusively to balance any overages, for 2 weeks following the finalization of sector catch for FY 2011. The New England Fishery Management Council (Council) and sector managers will be notified of this deadline in writing and the decision will be announced on the NMFS Northeast Regional Office Web site (*http://www.nero.noaa.gov/*).

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Table 2. Preliminary cumulative PSC (percentage) of each sector and state-operated permit bank, by stock, for FY 2012.*^

Name	Permit Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common Pool	630	1.79	1.93	0.48	0.73	1.42	22.14	2.59	1.75	1.63	0.65	3.32	0.41	0.81	0.65
Fixed Gear Sector	105	28.32	2.22	6.35	1.35	0.01	0.30	1.91	0.55	0.84	0.03	2.22	2.90	5.86	7.86
Maine Permit Bank Sector	11	0.23	0.96	0.04	1.00	0.01	0.03	0.31	1.04	0.66	0.00	0.87	0.81	1.64	1.71
NCCS	28	0.17	0.73	0.12	0.34	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.44	0.86	0.45
NEFS 2	79	5.88	18.27	11.63	16.50	1.87	1.41	19.04	7.93	12.76	3.16	18.25	15.87	6.28	12.13
NEFS 3	83	1.27	15.70	0.15	9.91	0.01	0.36	9.23	4.27	2.99	0.03	10.70	1.38	4.80	7.07
NEFS 4	49	4.12	8.63	5.31	8.28	2.16	2.36	5.06	9.26	8.48	0.69	5.11	6.63	8.00	5.83
NEFS 5	29	1.77	0.09	3.35	0.31	6.31	22.14	0.64	1.15	1.32	1.79	0.09	0.24	0.20	0.26
NEFS 6	19	2.85	2.48	2.92	3.81	2.70	5.17	2.87	3.80	5.09	1.42	3.69	5.31	3.91	3.29
NEFS 7	20	4.39	0.43	3.74	0.56	9.29	3.93	2.68	3.41	3.07	11.38	0.86	0.54	0.74	0.69
NEFS 8	20	6.14	0.50	5.72	0.21	10.94	5.60	6.43	1.65	2.55	14.57	3.39	0.54	0.51	0.60
NEFS 9	61	14.66	1.74	11.97	4.79	27.55	8.15	10.65	8.38	8.36	42.80	2.44	5.92	4.17	4.24
NEFS 10	54	1.19	5.99	0.31	2.61	0.02	0.55	14.55	2.09	3.70	0.02	29.39	0.57	0.98	1.52
NEFS 11	41	0.39	11.22	0.04	2.36	0.00	0.02	2.11	1.35	1.47	0.00	1.94	0.94	2.34	6.46
NEFS 12	11	0.02	2.43	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	1.06	2.50	2.96
NEFS 13	38	6.84	0.75	13.82	0.88	16.65	14.12	3.46	3.76	4.79	5.39	1.59	3.88	1.71	2.17
New Hampshire State-Operated Permit Bank	4	0.00	1.14	0.00	0.03	0.00	0.00	0.02	0.03	0.01	0.00	0.06	0.02	0.08	0.11
Port Clyde Community Groundfish Sector	42	0.11	4.54	0.04	2.52	0.00	0.66	0.94	7.42	4.99	0.00	1.40	2.49	4.26	3.73
Sustainable Harvest Sector 1	114	18.76	19.35	32.19	42.20	12.55	8.09	12.75	39.51	34.42	15.90	9.57	49.84	50.12	38.17
Sustainable Harvest Sector 3	19	0.43	0.56	0.37	0.28	0.44	2.89	2.32	0.80	1.20	0.17	2.50	0.22	0.23	0.07
Tri-State Sector	18	0.68	0.36	1.45	0.44	7.24	1.35	1.33	0.93	0.85	1.92	1.40	0.00	0.02	0.03
All Sectors and State-Operated Permit Banks	845	98.21	98.07	99.52	99.27	98.58	77.86	97.41	98.25	98.37	99.35	96.68	99.59	99.19	99.35

* The data in this table are based on signed roster contracts as of December 1, 2011.

^ Percentages have been rounded to two decimal places in this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

† For FY 2012, 14.66 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 58.31 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 3. Preliminary GOM Cod PSCs and Sector Shares for FY 2012.

Name	Permit Count	GOM Cod PSC %	GOM Cod Share %
Common Pool	630	1.93	
Fixed Gear Sector	105	2.22	2.26
Maine Permit Bank Sector	11	0.96	0.98
NCCS	28	0.73	0.74
NEFS 2	79	18.27	18.63
NEFS 3	83	15.70	16.00
NEFS 4	49	8.63	8.80
NEFS 5	29	0.09	0.09
NEFS 6	19	2.48	2.53
NEFS 7	20	0.43	0.44
NEFS 8	20	0.50	0.51
NEFS 9	61	1.74	1.77
NEFS 10	54	5.99	6.11
NEFS 11	41	11.22	11.44
NEFS 12	11	2.43	2.47
NEFS 13	38	0.75	0.76
New Hampshire State-Operated Permit Bank	4	1.14	1.16
Port Clyde Community Groundfish Sector	42	4.54	4.63
Sustainable Harvest Sector 1	114	19.35	19.73
Sustainable Harvest Sector 3	19	0.56	0.57
Tri-State Sector	18	0.36	0.37
Total	**1,475**	**100.00**	**100.00**

Table 4. Preliminary ACE (in tons), by stock, for each sector and state-operated permit bank for FY 2012.*^

Name	Permit Count	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common Pool	630	3	88	89	36	109	5	3	185	30	63	26	24	26	38	29	91
Fixed Gear Sector	105	51	1,387	90	482	1,440	10	0	3	22	20	13	1	17	266	212	1,093
Maine Permit Bank Sector	11	0	11	39	3	10	7	0	0	4	38	11	0	7	74	59	237
NCCS	28	0	8	30	9	27	2	2	6	7	5	3	3	7	40	31	63
NEFS 2	79	10	288	743	882	2,636	119	4	12	220	287	204	118	144	1,457	227	1,686
NEFS 3	83	2	62	638	11	33	71	0	3	106	154	48	1	84	126	174	983
NEFS 4	49	7	202	351	403	1,204	60	5	20	58	335	135	26	40	608	290	811
NEFS 5	29	3	86	4	254	758	2	15	185	7	41	21	67	1	22	7	36
NEFS 6	19	5	140	101	222	662	27	6	43	33	137	81	53	29	487	142	457
NEFS 7	20	8	215	17	284	848	4	22	33	31	123	49	425	7	50	27	95
NEFS 8	20	11	301	20	434	1,296	2	26	47	74	60	41	544	27	49	18	83
NEFS 9	61	26	718	71	908	2,712	35	66	68	123	303	133	1,598	19	543	151	590
NEFS 10	54	2	58	244	24	71	19	0	5	168	76	59	1	232	52	35	211
NEFS 11	41	1	19	456	3	8	17	0	0	24	49	23	0	15	86	85	898
NEFS 12	11	0	1	99	0	1	6	0	0	6	27	10	0	2	97	90	412
NEFS 13	38	12	335	30	1,048	3,131	6	40	118	40	136	76	201	13	356	62	302
New Hampshire State-Operated Permit Bank	4	0	0	46	0	0	0	0	0	0	1	0	0	0	2	3	15
Port Clyde Community Groundfish Sector	42	0	5	185	3	8	18	0	6	11	268	80	0	11	228	154	518
Sustainable Harvest Sector 1	114	33	919	787	2,442	7,296	304	30	68	147	1,428	549	594	75	4,574	1,814	5,306
Sustainable Harvest Sector 3	19	1	21	23	28	83	2	1	24	27	29	19	6	20	20	8	10
Tri-State Sector	18	1	33	15	110	328	3	17	11	15	34	14	72	11	0	1	5
All Sectors and State-Operated Permit Banks	845	175	4,810	3,989	7,547	22,552	715	237	652	1,123	3,550	1,570	3,709	762	9,139	3,590	13,812

*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector and state-operated permit bank.

Table 5. Preliminary ACE (in metric tons), by stock, for each sector for FY 2012.*^

Name	Permit Count	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common Pool	630	3	79	81	33	99	5	3	168	27	57	24	22	24	34	27	82
Fixed Gear Sector	105	46	1,258	82	437	1,306	9	0	2	20	18	12	1	16	242	192	992
Maine Permit Bank Sector	11	0	10	35	3	9	7	0	0	3	34	10	0	6	67	54	215
NCCS	28	0	8	27	8	25	2	2	6	6	5	3	2	6	37	28	57
NEFS 2	79	10	261	674	800	2,391	108	4	11	199	260	185	107	131	1,321	206	1,529
NEFS 3	83	2	56	579	10	30	65	0	3	97	140	43	1	77	115	158	892
NEFS 4	49	7	183	319	366	1,092	54	5	18	53	304	123	24	37	552	263	736
NEFS 5	29	3	78	3	230	688	2	14	168	7	38	19	61	1	20	6	33
NEFS 6	19	5	127	92	201	601	25	6	39	30	125	74	48	26	442	128	415
NEFS 7	20	7	195	16	257	769	4	20	30	28	112	44	385	6	45	24	87
NEFS 8	20	10	273	18	393	1,175	1	24	43	67	54	37	493	24	45	17	75
NEFS 9	61	24	651	64	823	2,461	31	60	62	111	275	121	1,450	17	493	137	535
NEFS 10	54	2	53	221	21	64	17	0	4	152	69	54	1	210	47	32	191
NEFS 11	41	1	17	414	2	7	15	0	0	22	44	21	0	14	78	77	815
NEFS 12	11	0	1	90	0	1	6	0	0	5	25	9	0	2	88	82	373
NEFS 13	38	11	304	28	951	2,840	6	36	107	36	123	69	182	11	323	56	274
New Hampshire State-Operated Permit Bank	4	0	0	42	0	0	0	0	0	0	1	0	0	0	2	3	14
Port Clyde Community Groundfish Sector	42	0	5	167	3	8	16	0	5	10	243	72	0	10	207	140	470
Sustainable Harvest Sector 1	114	30	833	714	2,215	6,619	276	27	61	133	1,295	498	539	68	4,149	1,646	4,814
Sustainable Harvest Sector 3	19	1	19	20	25	75	2	1	22	24	26	17	6	18	18	7	9
Tri-State Sector	18	1	30	13	100	298	3	16	10	14	30	12	65	10	0	1	4
All Sectors and State-Operated Permit Banks	845	159	4,364	3,618	6,847	20,459	648	215	592	1,019	3,221	1,424	3,365	691	8,291	3,256	12,530

*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector and state-operated permit bank.

Sector Operations Plans and Contracts

NMFS received 19 sector operations plans and contracts by the September 1, 2011, deadline, and subsequently received preliminary rosters by the December 1, 2011, deadline for FY 2012. Each sector elected to submit a single document that is both the sector's contract and the sector's operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds the sector's members to the sector and its operations plan.

Each sector conducts fishing activities according to its approved operations plan; however, each operations plan and sector member must comply with the regulations governing sectors, which are found at § 648.87. All permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of inactive permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all applicable Federal fishing regulations, except as specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes are included in updated LOAs issued to sector members and through amendments to the approved operations plan.

NMFS allocates to sectors, and state-operated permit banks, all large-mesh groundfish stocks for which member permits have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder. NMFS does not allocate Atlantic halibut, northern windowpane flounder, southern windowpane flounder, Atlantic wolffish, SNE/MA winter flounder, and ocean pout because these stocks have small ACLs, and permits have limited landings history. Instead, these stocks are managed with trip limits. Allocating these stocks would complicate monitoring of sector operations and would require a different scheme for determining each permit's potential sector contribution.

Sector vessels are required to retain all legal-sized allocated groundfish, unless NMFS grants the sector an exemption allowing the sector's vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels counts against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery) will have their groundfish catch (including discards) on those trips debited against the sector's ACE. Ratios to calculate discards on unobserved sector trips are determined by NMFS based on observed trips.

Sectors must not exceed any ACE during the FY. Amendment 16 required sectors to develop independent third-party dockside monitoring (DSM) programs to verify landings at the time they are weighed by the dealer, and to certify that the landing weights are accurate as reported by the dealer. FW 45 sets the required coverage level for DSM to the level that NMFS funds. For FY 2012, NMFS will not fund a DSM program; therefore, the DSM level for FY 2012 is zero. Amendment 16 also required that sectors design, implement, and fund an at-sea monitoring (ASM) program beginning in FY 2012. However, for 2012, NMFS will fund and operate an ASM program for all sectors. The details of the ASM program run by NMFS are included in Appendix 3 of *Sector Operations Plan, Contract, and Environmental Assessment Requirements Fishing Year 2012* (copies available from NMFS, see **ADDRESSES**). The ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the Northeast Fishery Observer Program (NEFOP). These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. As discussed later, NMFS has determined that this level of observer coverage is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Sectors are required to monitor their landings and available ACE, and submit weekly catch reports to NMFS. In addition, the sector manager is required to provide NMFS with aggregate sector reports on a daily basis after reaching a threshold (specified in the operations plan). Once a sector catches its ACE for a particular stock, the sector is required to cease all fishing operations in that stock area until it acquires additional ACE for that stock. Sectors may transfer ACE between themselves, but sectors may not transfer ACE to or from common pool vessels. Each sector must submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the operations plan and contract. Sector members may be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector operations plan submitted for FY 2012 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2012, each sector plans to allocate each sector member an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE, minus a reserve.

In order to comply with the National Environmental Policy Act (NEPA) in an efficient manner, a single EA was prepared analyzing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16 and the EA prepared for Framework Adjustment 45. The summary findings of the EA conclude that each sector will likely produce similar effects that will result in non-significant impacts. An analysis of aggregate sector impacts was also conducted and the Regional Administrator has issued a Finding of No Significant Impact for the sector EA.

Amendment 16 contains several ''universal'' regulatory exemptions that apply to all sectors. These universal exemptions apply to: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when

fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas (RCA).

Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Regulations prohibit sectors from requesting exemptions from year-round closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). If NMFS grants an exemption to a sector, NMFS issues each sector vessel a LOA authorizing the exemption for each such vessel.

Approved FY 2012 Exemptions

A total of 49 exemptions from the NE multispecies regulations were requested by sectors through their FY 2012 operations plans. This final rule authorizes 20 exemptions (see Table 6) for the sectors that requested them, after NMFS thoroughly reviewed and considered public comments on the exemption requests.

In FY 2011, sectors were exempted from the following 16 requirements; and these exemptions are again approved for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding legal-size unmarketable fish; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72°30′ W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA).

NMFS has also approved new exemptions for FY 2012 from the following four requirements: (17) Prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (18) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets (to allow 6-inch (15.2-cm) mesh); (19) prohibition on a vessel hauling another vessel's hook gear; and (20) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (with an effective date to be determined).

Disapproved Exemptions for FY 2012

NMFS has denied new exemptions from the following five requirements in FY 2012, which were proposed for approval: (21) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (22) seasonal restriction for the CA II Yellowtail Flounder/Haddock SAP; (23) maximum ACE carry-over provision; (24) ACE buffer provision; and (25) minimum fish size provisions for haddock. The reasons for these denials are detailed later in this preamble.

NMFS has denied exemptions from the following 13 requirements because they are prohibited by FMP regulations: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) all hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

NMFS has denied exemptions from the following eight requirements because they were previously rejected, and sector applicants provided no new information that would warrant an exemption: (39) Minimum fish sizes to allow 100-percent retention; (40) minimum fish sizes to retain 12-inch (30.5-cm) yellowtail flounder; (41) VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) prohibition on pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) sector roster submission by the December 1 deadline.

NMFS has denied exemptions from the following three requirements because they may jeopardize rebuilding of the GOM cod stock, which is overfished and experiencing overfishing: (47) the April GOM Rolling Closure Area; (48) the May GOM Rolling Closure Area; and (49) the June GOM Rolling Closure Area.

This final rule implements approved FY 2012 exemptions only for sectors that requested those exemptions through their sector operations plans (see Table 6). The accompanying EA has analyzed all approved exemption requests as if all sectors had requested all exemptions. Therefore, sectors not granted an approved exemption in this final rule may request any of the approved exemptions at any time during the FY, except the discarding exemption, and could add these exemptions to their operations plans through amendments to those plans. Approved amendments to operations plan will be posted on the Northeast Regional Office Web site at: *http://www.nero.noaa.gov/sfd/sfdmultisectorinfo.html* under 'Other Resources.' NMFS also issues sector vessels updated LOAs reflecting any approved amendments to their sector's operations plan.

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Table 6. Exemptions Granted to FY 2012 Sectors

	Exemption	FGS	MEPBS	NCCS	NEFS 2	NEFS 3	NEFS 4	NEFS 5	NEFS 6	NEFS 7	NEFS 8	NEFS 9	NEFS 10	NEFS 11	NEFS 12	NEFS 13	PCS	SHS1	SHS 3	TSS
1	120 Day Gillnet Block out of the Fishery	X		X		X			X	X			X	X	X	X	X	X	X	X
2	20 Day Spawning Block	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
3	Limits on the Number of Gillnets for Day Gillnet Vessels	X				X			X	X			X	X	X	X	X	X	X	X
4	Prohibition on a vessel's hauling another Vessel's gillnet gear	X			X	X			X	X			X	X	X	X	X	X	X	X
5	Limits on the Number of Gillnets that May be Hauled on GB when fishing on a Groundfish/Monkfish DAS	X				X			X	X			X	X	X	X	X	X	X	X
6	Limits on the Number of Hooks that May be Fished	X		X		X			X	X			X	X	X			X	X	X
7	DAS Leasing Program Length and Horsepower Restrictions	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
8	GOM Sink Gillnet Mesh Exemption January Through April	X				X			X	X			X	X	X	X	X	X	X	X
9	Extension of the GOM Haddock Sink Gillnet Program Through May	X				X			X	X			X	X	X	X	X	X	X	X
10	Prohibition on Discarding	X												X	X			X	X	
11	Daily catch reporting by Sector Managers for Sector vessels that fish in the CA I Hook Gear Haddock SAP	X		X		X			X	X			X	X	X	X		X	X	X
12	Gear Requirements in the US/CA Management Area	X			X	X		X	X	X	X	X	X	X	X	X		X	X	X
13	Powering VMS While at the Dock*	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
14	DSM Requirements for Vessels Fishing West of 72°30' W. Long.	X			X	X		X	X	X	X	X	X			X		X	X	X
15	DSM requirements for Handgear A-permitted Sector Vessels	X			X	X			X	X	X		X					X	X	X
16	DSM Requirements for Monkfish Trips in the Monkfish SFMA	X			X	X		X	X	X	X	X	X			X		X	X	X

Table 6 Continued. Exemptions Granted to FY 2012 Sectors

	Exemption	FGS	MEPBS	NCCS	NEFS 2	NEFS 3	NEFS 4	NEFS 5	NEFS 6	NEFS 7	NEFS 8	NEFS 9	NEFS 10	NEFS 11	NEFS 12	NEFS 13	PCS	SHS1	SHS 3	TSS
17	Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip	X							X	X		X	X			X		X	X	X
18	6.5-Inch Minimum Mesh Size Requirement to Allow 6-Inch Mesh for Targeted Redfish Trips	X			X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
19	Prohibition on a Vessel Hauing Another Vessel's Hook Gear	X				X			X	X			X			X		X	X	
20	Requirement to declare intent to fish in the Eastern US/CA SAP and CA II YT/haddock SAP from the dock	X						X	X	X	X	X	X			X		X	X	X

* The sector vessel may only powerdown its VMS if the vessel does not hold other permits requiring continuous VMS operation, and must send the VMS power down declaration before turning off power to the VMS unit.

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Approved FY 2012 Sector Exemption Requests—Regulations That Were Previously Exempted for FY 2011

In FY 2011, sectors were exempted from the following 16 requirements; and these exemptions are again approved for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding legal-size unmarketable fish; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72°30′ W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA). Details of these exemptions and the rationale for approving them can be found in the proposed rule for this action, and the final rule for FY 2011, and are not repeated in this final rule. Comments on these exemptions are addressed in detail below.

Approved Exemption Requests—New Exemptions for FY 2012

17. Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP to allow additional access to healthy stocks on a category B DAS using selective gears. This SAP had quotas for groundfish stocks to prevent overfishing. Under the rules implementing FW 40A, NE multispecies vessels fishing on a trip within this SAP were prohibited from deploying fishing gear outside of the SAP on the same trip when they declared into the SAP (§ 648.85(b)(7)(iv)(G)). This restriction was established to avoid potential quota monitoring and enforcement complications that could arise when a vessel fishes both inside and outside the SAP on the same trip.

This final rule grants an exemption from the prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP on the same trip for FY 2012. However, to ensure accurate accounting of catch in this SAP, vessels using this exemption are prohibited from towing a trawl, or setting fixed gear, across the border of the SAP. The intent is that each tow or haul of gear occurs entirely inside, or entirely outside, the SAP boundaries. NMFS proposed requiring vessels using this exemption to send NMFS a VMS catch report that specifically identifies GB haddock (and any other shared allocation) catch from inside the SAP prior to the end of the trip, or within 24 hr of landing, to identify catch from inside and outside the SAP on the same trip. However, sector vessels participating in this SAP are already required to send a daily VMS catch report. Therefore, to streamline reporting, NMFS will use the daily VMS catch report from vessels participating in this SAP to identify catch from inside the SAP separately from catch outside the SAP on the same trip. Vessels fishing both inside and outside this SAP on the same trip must report only catch within the SAP in their daily VMS catch report. Vessels will send their daily VMS catch report to NMFS if their sector is also granted an exemption from the requirement for daily catch reporting by the sector manager for vessels participating in the CA I Hook Gear Haddock SAP (#11 above). This exemption will increase sector operational flexibility and efficiency. NMFS has no reason to believe that this particular catch report would be any less accurate than the existing sector catch reports; however, the Regional Administrator reserves the right to revoke this exemption if it is determined that the exemption negatively impacts monitoring.

18. 6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

An exemption from the 6.5-inch (16.5-cm) minimum mesh size for trawl net cod ends to allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets in all regulated mesh areas to target redfish is approved for FY 2012. The exemption is intended to increase the catch of redfish, increase the operational flexibility of sector vessels, and increase the profit margins of sector fishermen. Sector vessels participating in the directed redfish fishery under this exemption will be required to declare their intention to the Sector Manager at least 48 hr prior to departure, comply with the pre-trip notification system (PTNS) requirements, and may only use this exemption on trips carrying either an at-sea monitor or NEFOP observer to monitor catch and bycatch. Daily catch reports must be submitted to the Sector Manager to ensure that all catch is harvested within the sector's ACE. The Regional Administrator reserves the right to revoke this exemption if it is determined the exemption is negatively impacting spawning fish or populations of stocks the current minimum mesh sizes were intended to protect.

The 6.5-inch (16.5-cm) minimum mesh size was initially adopted through interim rules in 2001 and 2002 (67 FR 21140, April 29, 2002; 67 FR 50292, August 1, 2002), and made permanent through Amendment 13. FW 42 further modified the mesh regulations in the SNE and MA regulated mesh areas (RMA) to reduce discards of yellowtail flounder. The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs. Minimum mesh size restrictions have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. These requirements were intended to protect spawning fish and increase the size of targeted fish. Mesh selectivity is only one of a number of factors that influences the overall selection pattern in a fishery. Fishermen can influence the size of the fish they catch by fishing at different times of the year, in different locations, or by using different gear or techniques.

Although a codend minimum mesh size of 6 inches (15.2 cm) is smaller than the current legal size for standard trawl gear, it is the same size codend mesh currently authorized for use on GB by sector vessels using selective gears. Available mesh selectivity studies show that 6-inch (15.2-cm) mesh is unlikely to increase sub-legal catch for cod and haddock, but information is lacking for other stocks and mesh sizes. For this reason, NMFS will monitor this exemption to ensure that this exemption does not result in a greater retention of sub-legal groundfish, as well as non-allocated species and bycatch. If an exemption from the 6.5-inch (16.5-cm) minimum mesh size restriction increases sub-legal groundfish bycatch by sector vessels, then juvenile escapement, stock age structure, and overall mortality reduction objectives could be undermined. Further, equity may be a concern if sub-legal bycatch triggered management actions affecting the entire fishery, including non-sector vessels. The LOA issued to sector vessels that qualify for this exemption

will specify the requirements for using 6-inch (15.2-cm) mesh to help ensure the provision is enforceable.

NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM through a network approach, including fishing enterprises, gear manufacturers, researchers, social and economic experts, and managers. This approach includes investigating success of various mesh sizes within the fishery. It is anticipated that results from that research will be available in the near future and would be used in further evaluating requests for exemption from the minimum mesh size requirements.

19. Prohibition on a Vessel Hauling Another Vessel's Hook Gear

An exemption from the prohibition on a vessel hauling another vessel's hook gear is approved for FY 2012. This exemption will allow fishermen from within the same sector to haul each other's hook gear. The exemption from hook limits and implementation of ACE as a mortality control make it unnecessary to prevent a vessel from hauling another vessel's gear as an effort control. Consistent with the exemption approved for community gillnets, all vessels utilizing community hook gear will be jointly liable for any violations associated with that gear. This joint liability would assist in the enforcement of regulations. Additionally, each member intending to haul the same gear will be required to mark the gear, consistent with §§ 648.14(k)(6)(ii)(B) and 648.84(a).

Current regulations prohibit one vessel from hauling another vessel's hook gear (§ 648.14(k)(6)(ii)(B)). The regulations were developed to facilitate the enforcement of existing hook regulations that were created as effort and mortality controls, and no provisions exist in the regulations allowing for multiple vessels to haul the same gear. The increased flexibility afforded by this exemption may increase efficiency.

20. Requirement To Declare Intent To Fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP Prior To Leaving the Dock

An exemption from the requirement to declare intent to fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock is granted for FY 2012. This exemption will allow sector vessels to declare their intent to fish in these SAPs while at sea. This exemption will not be effective until such time that the VMS system is modified to accommodate making these declarations at sea. Sectors granted this exemption will be notified by electronic mail when this exemption takes effect, and sector vessels will be issued new LOAs explaining how to make declarations using this exemption and including any additional requirements for using this exemption.

NE multispecies vessels are required to declare that they will be fishing in either the Eastern U.S./Canada Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (§§ 648.85(b)(8)(v)(D) and 648.85(b)(3)(v)). This measure was included in the final rule implementing Framework 40A to ensure that vessels fishing exclusively in those areas could be credited DAS for their transit time to and from these SAPs. Because sector catch is limited by ACE, DAS credit for trips in these SAPs is no longer necessary.

Disapproved Exemption Requests—New Exemptions Requests That Were Proposed for Approval

21. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

SAPs allow access to year-round closed areas in order to facilitate access to groundfish stocks that can support an increase in mortality. The Eastern U.S./Canada Haddock SAP was implemented with a sunset date by FW 40A in 2004 to provide an opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The SAP required vessels to use gear that reduced the catch of cod and other stocks of concern. The SAP had a season of May 1 through December 31 to reduce effort during periods of groundfish spawning. In 2006, FW 42 implemented this SAP permanently and shortened the season to August 1 through December 31 to reduce cod catch. Subsequent actions approved additional gear types for use in this SAP.

For sector vessels, the only benefit of this SAP is that it provides access to the northern tip of CA II. Amendment 16 exempts sectors from the gear requirements of this SAP because sector catch is constrained by ACEs, but sectors are still required to comply with reporting requirements and the restricted season for access from August 1 through December 31 (§ 648.85(b)(3)(iv)). Sectors argue that their catch is restricted by ACE and their access to the SAP area in the northern tip of CA II should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC). However, NMFS is concerned that this exemption may have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the Council's current prohibition on allowing exemptions from closed areas applies to SAPs. No comment was received from the Council regarding its intent. This exemption is denied because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons or if their intent was to prohibit such exemptions because it is a year-round closed area.

22. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

SAPs allow access to year-round closed areas in order to facilitate access to groundfish stocks that can support an increase in fishing mortality. The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II on a Category B DAS. Vessels were required to use either a flounder net or other gear types approved for use in the Eastern U.S./Canada Area. The SAP season ran from June 1 through December 31. In 2005, FW 40 B made this SAP permanent and shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Amendment 16 further revised this SAP by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open to allow targeting of GB yellowtail flounder. Sectors are required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When open only to target haddock, the flounder net is not authorized and only approved trawl gears or hook gear may be used. The gear requirements were implemented to avoid catching yellowtail flounder when the SAP was open only to the targeting of haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail

Flounder/Haddock SAP provides access to a large area in CA II. Sectors are required to use the same approved gears as the common pool to reduce the advantage sector vessels have over common pool vessels. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted.

The seasonal restriction on this SAP was put in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer and spawning groundfish in the spring. Impacts to the physical environment and EFH would be negligible because any increase in effort would be minor and the portion of CA II included in this SAP is outside any HAPC. However, NMFS is concerned that this exemption could have negative effects on allocated stocks by increasing effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the Council's current prohibition on allowing exemptions from closed areas applies to SAPs. No comment was received from the Council regarding its intent. This exemption is denied because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons or if their intent was to prohibit such exemptions because it is a year-round closed area.

23. Maximum ACE Carryover Provision

Each sector is allowed to carry over up to 10 percent of its original ACE allocation of each stock from one FY to the next, with the exception of GB yellowtail flounder (§ 648.87(b)(1)(i)(C)). Allowing a sector to carry over a portion of its allocation reduces concern that a sector may leave ACE uncaught to avoid accidentally exceeding its ACE. Sectors requested an exemption to carry over up to 50 percent of unused ACE into the following FY. Allowing sectors to carry over ACE would provide greater flexibility in when and how they fish during a given FY.

NMFS conducted a limited preliminary analysis of increasing the current ACE carryover limits and the resultant potential for overfishing in the subsequent year. This analysis was included in the draft EA published with the proposed rule for this action. Based on the preliminary analysis, the Regional Administrator proposed to allow sectors to carry over 11–30 percent of each stock's ACE (except GOM cod and GB yellowtail flounder) from FY 2011 to FY 2012. NMFS provided the analysis to the Council with a request that its Scientific and Statistical Committee (SSC) review it and recommend to NMFS whether or not to allow increased carryover for any stocks, and if so, what level above 10 percent would be appropriate. NMFS is concerned that an increase in ACE carryover could allow a substantial increase in catch beyond what has been analyzed in setting the FY 2012 ACLs. In a letter dated January 20, 2012, the Council raised a number of questions (see proposed rule) about the preliminary analysis and the legality of such carryovers in light of Magnuson-Stevens Act requirements. This final rule denies this exemption, and the final EA lists this exemption as considered, but rejected, because the important scientific and legal issues raised by the Council remain unresolved. A future action could grant this exemption if the issues are resolved and the resolution supports granting this exemption.

24. ACE Buffer Provision

Amendment 16 implemented the ACE buffer provision to ensure that each sector would have 20 percent of its ACE available to account for any potential overage from the previous year. At the beginning of each FY, NMFS withholds 20 percent of a sector's ACE for each stock for up to 61 days (i.e., through June 30), or longer (§ 648.87(b)(1)(iii)(C)). This hold gives NMFS time to finalize sector catch and ACE trades that take place after the end of the FY, and to apply any overage penalties to a sector that exceeded its ACE. Sectors are requesting to be exempted from this 20-percent ACE buffer restriction when a sector manager reports that the sector has not exceeded any of its ACE. Sectors sought this exemption to increase operational flexibility and efficiency to bring additional revenue into the sector.

This exemption is denied because NMFS does not have the ability to verify whether a sector manager's report is accurate until the annual reconciliation process, as discussed above, is complete. Due to this time lag, it is possible that sectors could potentially exceed their ACE in a subsequent FY after an overage has occurred before the second year's ACE is reduced by the first year's overage. For example, if a sector was allocated 100 mt of a stock in year 1, but caught 120 mt, the sector would be required to pay back 20 mt in year 2. However, if the sector fished its complete allocation for year 2 before NMFS discovered the overage from year 1, the sector would then also have overfished the reduced year 2 allocation.

25. Minimum Fish Size Provisions for Haddock

Commercial haddock catch must be at least 18 inches (45.7 cm) to be retained by a vessel (§ 648.83(a)(1)). This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption (§ 648.83(a)(2)). The 18-inch (45.7-cm) minimum size for haddock was first implemented by an interim action in 2009 (74 FR 17030, April 13, 2009). This was a reduction from the previous minimum size of 19 inches (48.3 cm), designed to reduce discards and increase yield. The 18-inch (45.7-cm) minimum size was made permanent by Amendment 16.

Sectors requested an exemption from the minimum fish size regulation for the purpose of landing headed and gutted haddock that are less than 18 inches (45.7 cm) as a headed and gutted haddock provide a value-added product. This exemption request is intended to allow legal-sized fish that were previously landed whole to be landed headed, or headed and gutted, without a change to the actual size composition of the catch.

This exemption has been denied by NMFS because of enforceability concerns and issues with properly monitoring catch for this stock that could potentially have negative impacts on the stock assessments. There are no accepted conversion factors to accurately determine the whole weight or length of headed and gutted haddock. Therefore, it would not be possible to accurately track that catch against sector ACEs, and it would be impossible for enforcement to determine whether the headed fish came from legal-sized fish. In addition, increases in the proportion of fish landed without heads would negatively impact stock assessment work because biological samples (ages and lengths) cannot be obtained from fish landed without heads.

Disapproved Exemption Requests—Exemptions Denied Because They Are Prohibited

Amendment 16 contains several ''universal'' exemptions applicable to all sectors and authorized sectors to request additional exemptions from NE multispecies regulations through their sector operations plans. However, Amendment 16 also prohibits sectors from requesting exemptions from year-round closed areas, permitting

restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements). Exemptions were requested by several sectors that are specifically prohibited (e.g., access to permanent closed areas) or that fall outside of the NE multispecies regulations (e.g., Eastern U.S./Canada in-season actions).

In a letter dated September 1, 2010, NMFS notified the Council that NMFS interprets the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), NMFS also requested that the Council define which regulations sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM, ACE monitoring, VTR regulations, or counting of discards against ACE.

NMFS has denied exemptions from the following 13 requirements because they are prohibited: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

Disapproved Exemption Requests—Exemptions Denied Because They Were Previously Rejected and No New Information Was Provided

NMFS has denied exemptions from the following eight requirements because they were previously rejected, and sectors provided no new information in support: (39) Minimum fish sizes, to allow 100-percent retention; (40) minimum fish sizes, to retain 12-inch (30.5-cm) yellowtail flounder; (41) that VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) no pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) submitting a roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs. The details of these exemption requests, analysis of these exemptions, and the reasons they were previously denied are contained in the final rules approving sectors for FYs 2010 and 2011, and their accompanying EAs. The requesting sectors provided no new information, justification, rationale, or mitigation to address these concerns.

Disapproved Exemption Requests—Exemptions Denied Because They May Jeopardize Rebuilding of the GOM Cod Stock

NMFS has denied exemptions from the following three requirements because they may jeopardize rebuilding of the GOM cod stock, which a new stock assessment has determined is overfished and experiencing overfishing: (47) April GOM Rolling Closure Area; (48) May GOM Rolling Closure Area; and (49) June GOM Rolling Closure Area.

NMFS denied requests for additional exemptions from GOM Rolling Closure Areas in FYs 2010 and 2011 because of concerns that directly targeting spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. In addition, those requests were disapproved because the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine mammals.

In response to requests for additional exemptions from GOM Rolling Closure Areas (including new exemption requests that would exclude gillnet gear) and discussions about increasing access to these areas at the Council's Lessons Learned Sector Workshop, the Regional Administrator considered proposing partial exemption from some of the closures as a short-term solution while the Council considered the long-term future of these closures as part of the pending omnibus habitat amendment. Options considered for possible exemptions would have required trawl vessels to use selective trawl gears, excluded gillnet gear, and prohibited hook gear from using squid or mackerel as bait. However, given the new status of the GOM cod stock, NMFS has denied additional exemptions from the GOM RCAs, and these exemptions are listed as considered, but rejected, in the final EA.

Disapproved Provisions of Operations Plans

NMFS has disapproved a provision proposed in the NEFS 5, NEFS 7, and NEFS 13 operations plans that would allow their members to participate in a fishery for bait skate, regardless of whether the sectors had ACE available for all allocated stocks, from June 1 through December 1, in waters off southern Massachusetts, Rhode Island, Connecticut, and New York. Currently, the majority of the area in the proposed provision lies within the Mid-Atlantic Exemption Area, where vessels that are issued a valid Skate Bait LOA may participate in the skate bait fishery when not on a declared groundfish trip. Although this provision as a whole has been denied, sector (and common pool) vessels may currently participate in the skate bait fishery in the entire Mid-Atlantic Exemption Area.

NMFS is currently considering a request, submitted by NEFS 5, for an exempted fishery identical in description to the denied skate bait provision in the operations plans of NEFS 5, NEFS 7, and NEFS 13. A fishery exemption may be approved if the Regional Administrator determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, and that such exemption will not jeopardize fishing mortality objectives. Unlike the GOM haddock sink gillnet program that was denied for the fishery as a whole, but granted to sectors as an exemption because their ACEs controlled their overall catch, the bait skate fishery provision requested in these three operations plans specifically requests authorization to fish without the sector being accountable for its vessels' groundfish catch. Without ACE accountability, participation by sector vessels would not be substantially different from participation by common pool vessels. Therefore, NMFS has not approved this provision of the sectors' operations plans, because this exempted fishery request is currently being considered for all appropriately permitted vessels under separate rulemaking.

Comments and Responses

Eight letters, many addressing multiple issues, were submitted from several entities: Oceana, the Massachusetts Division of Marine Fisheries (DMF), the Council, the Northeast Sector Service Network (NESSN), Associated Fisheries of Maine, and three individuals. Only comments that were within the scope of this rulemaking, including the analyses used to support these measures, are responded to below.

General Comments

Comment 1: One fisherman commented that sectors have negatively impacted his business operations.

Response: The commenter was not specific about the nature or cause of the negative impacts to his business. However, he is free to participate in the common pool and fish under DAS, rather than participating in a sector. Sectors are temporary, voluntary, fluid associations of vessels that can join together to take advantage of flexibilities and efficiencies that sectors are afforded. Vessel owners may choose to join a sector or not, and can change their decision from one year to the next, based on what they believe are the best opportunities for them at that point in time. The proposed rule announced that some sector rosters will be opened until April 30, allowing additional opportunity for each eligible NE multispecies permit holder to evaluate their personal best option for FY 2012.

Comment 2: One individual commented that all exemption requests should be denied because fish stocks do not belong to sectors.

Response: Groundfish stock ownership is not relevant to exemption request decisions. Unlike an individual fishing quota or individual transferable quota, sectors are allocated quotas on an annual basis and do not own either a groundfish stock or access to a groundfish stock. Annual allocations are determined based on the ACL and annual voluntary membership of the sector. The FMP grants sectors universal exemptions from some effort control measures, and allows sectors the opportunity to request additional exemptions from existing regulations, but not from a sector's ACE. The approved exemptions will allow sector members greater flexibility in harvesting their allocation and additional opportunities to attempt to obtain optimum yield from the fishery without jeopardizing the rebuilding plans for overfished stocks.

Comment 3: NESSN and the AFM supported granting the 16 exemptions that were approved for FY 2011.

Response: NMFS approved the 16 exemptions from the NE multispecies regulations in FY 2011 because many of the regulations were designed to limit fishing mortality by controlling fishing effort. These regulations are no longer necessary because sectors are restricted to an ACE for each groundfish stock that limits overall fishing mortality. Other exemptions were granted from dockside monitoring requirements to exclude trips and vessels that landed minimal amounts of groundfish. No contrary information has been provided about the effect of the exemptions used in FY 2011. The rationales for approving the exemptions for FY 2011 continue to apply in FY 2012; therefore, all exemptions granted in FY 2011 have been approved for FY 2012.

Comment 4: AFM supported granting the nine novel exemptions proposed for approval for FY 2012.

Response: NMFS has approved four of the novel exemptions proposed for approval, and denied the remaining five. Exemptions are approved or denied individually, and the rationale for each decision is discussed in this preamble and in responses to specific comments.

SAP Seasons

Comment 5: AFM supported granting an exemption from the seasonal restrictions for both the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP, stating that this was not in conflict with the regulations and that an increase in effort on spawning haddock is not a concern due to the robust condition of GB haddock and underharvest of the GB haddock ACL. One anonymous commenter opposed the requests due to concern for GB cod spawning, and stated that the Council specifically did not exempt sectors from the seasons of these SAPs.

Response: Amendment 16 prohibits granting sectors exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs. The Council did not comment regarding its intent for this provision. Therefore, NMFS denied this exemption because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons within closed areas or if sectors should be prohibited from such exemptions because it is a year-round closed area.

Haddock Minimum Size

Comment 6: NESSN supported exemption from the minimum fish size provisions for haddock. They further stated that NMFS's experience in implementing similar regulations for monkfish should provide an adequate knowledge base to determine appropriate ways to address their concerns about enforcement issues at sea.

Response: NMFS denied an exemption request from the minimum fish size requirements in FY 2010, stating that it would present significant enforcement concerns by allowing different fish sizes in the market place and because of concerns that the exemption could potentially increase the targeting of juvenile fish. This exemption is being denied again for FY 2012 for similar reasons.

Unlike the monkfish fishery, there are no currently accepted conversion factors to accurately determine the whole weight or length of headed and gutted haddock. Given this, it would not be possible to accurately track that catch against sector ACEs, and it would be problematic to enforce that the headed fish came from legal-sized fish. Increases in the proportion of fish landed without heads would also negatively impact stock assessment work because biological samples (ages and lengths) cannot be obtained from fish landed without heads. These issues are not comparable to the monkfish fishery. That fishery has a separate minimum size for monkfish tails, accepted conversion factors to determine whole weight from tail weight, and monkfish are best aged using vertebrae, unlike haddock, which are aged using otoliths located in the head.

ACE Buffer Provision

Comment 7: AFM and NESSN supported granting an exemption from the 20-percent ACE buffer provision. NESSN supported granting the exemption on a sector-by-sector basis if the sector has actively engaged throughout the year to address elements impacting the accuracy of that sector's reports. Further, NESSN commented that NMFS could release some portion of ACE buffer prior to the end of reconciliation, based on outstanding data elements and their possible impact on final ACE balance.

Response: This exemption was denied because NMFS has no ability to verify whether a sector manager's report is accurate until the annual reconciliation process is complete. NMFS anticipates completing FY 2011 reconciliation weeks faster than FY 2010 reconciliation due to improvements to the process and the cooperation of sectors, which would mitigate the commenters' concerns.

Requirement To Declare Intent To Fish in SAPs Prior To Leaving the Dock

Comment 8: AFM and NESSN supported granting an exemption from the requirement that a vessel declare its intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock to reduce administrative burden and cost for vessels.

Response: NMFS agrees and this exemption is granted for FY 2012. This exemption allows sector vessels to declare their intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP while at sea. The effective date of this exemption is being delayed until the VMS system is modified to accommodate making these declarations at sea. NMFS will notify the sectors once this modification is finalized.

6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

Comment 9: The Council, NESSN, and AFM all supported an exemption from the 6.5-inch (16.5-cm) minimum mesh size to allow the use of 6-inch (15.2-cm) codends on trawl nets when targeting redfish. The Council supported this exemption to more fully utilize the available ACLs of the healthy redfish stock and to enable the achievement of optimum yield. NESSN referenced studies in 2008 and 2009, which demonstrated that 6.5-inch (16.5-cm) mesh is inefficient for catching redfish, and asserted that the requirement for vessels to carry an LOA would facilitate enforcement.

Response: NMFS agrees and has approved an exemption that will allow vessels to fish 6.0-inch (15.2-cm) mesh codends when targeting redfish. Sector vessels fishing under this exemption will be required to have a LOA on board the vessel, which will facilitate enforcement. This exemption will provide additional flexibility for vessels to develop techniques to better target redfish. Mesh selectivity is only one of a number of factors that influences the overall selection pattern in a fishery. Fishermen can influence the size of fish they catch by fishing at different times of the year, in different locations, or by using different gear or techniques. This exemption should increase the catch of redfish, increase the operational flexibility of sector vessels, and increase profit margins of sector fishermen. Vessels may only use this exemption when at-sea monitors or NEFOP observers are on board. This will provide information about bycatch in this fishery to better facilitate monitoring of the impact of this exemption. The Regional Administrator reserves the right to revoke this exemption if it is determined the exemption is negatively impacting spawning fish or populations of stocks the current minimum mesh sizes were intended to protect. NMFS is currently funding a study to investigate strategies and methods to sustainably harvest the redfish resource in the GOM. It is anticipated that results from that research will be available in the near future and would be used in further evaluating requests for exemption from the minimum mesh size.

ASM Coverage Level for FY 2012

Comment 10: Oceana commented that Amendment 16 requires sector operations plans to demonstrate an adequate level of ASM and asserted that the ASM program currently proposed for FY 2012 will leave the NE multispecies fishery out of compliance with the mandates of the Magnuson-Stevens Act. DMF also asserted that the ASM coverage level is unacceptably low.

Response: Amendment 16 required that sectors design, implement, and fund an ASM program beginning in FY 2012. However, for 2012, NMFS will fund and operate an ASM program for all sectors; therefore, it is unnecessary for each sector operations plan to specify the details of an ASM program for FY 2012. The details of the ASM program run by NMFS are included in Appendix 3 of *Sector Operations Plan, Contract, and Environmental Assessment Requirements Fishing Year 2012* (copies available from NMFS, see **ADDRESSES**). For FY 2012, the ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the NEFOP. These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. This level of observer coverage is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Beginning in FY 2012, Amendment 16 requires that the levels of ASM coverage shall be specified by NMFS and must be sufficient to accurately monitor sector operations and at least meet the 30-percent coefficient of variation (C.V.) specified in the Standardized Bycatch Reporting Methodology (SBRM) (73 FR 4736, January 28, 2008). This does not mean that Amendment 16 requires the discard rate for each individual sector (or every combination of sector, area and gear (stratum)), to be monitored with this level of precision. Analyses (copies available from NMFS, see **ADDRESSES**) of FY 2010 (the only complete year of data available) shows that the 25-percent coverage rate proposed for FY 2012 would be sufficient to accurately monitor sector operations and meet the 30-percent C.V., as specified in the SBRM.

Comment 11: DMF urged NMFS to reconsider approval of sector exemptions granting freedom without the accountability provided by higher levels of catch monitoring.

Response: NMFS has approved 20 exemptions for FY 2012, including many that grant increased flexibility, and believes that the current level of monitoring is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved. Analysis of the C.V. achieved for each stock in FY 2011 cannot yet be determined because FY 2011 continues through April 30, 2012. However, as noted above, analyses of FY 2010 show that the 25-percent coverage rate proposed for FY 2012 would be sufficient to accurately monitor sector operations and meet the 30-percent C.V., as specified in the SBRM.

Limit on the Number of Gillnets for Day Gillnet Vessels

Comment 12: DMF commented that NMFS should deny or revise the exemption from net limits for Day gillnet vessels based on the impact that gillnets have on spawning aggregations. DMF cited research by Dean, *et. al.* recently published in the *North American Journal of Fisheries Management* (32:124–134, 2012).

Response: NMFS granted an exemption from the Day gillnet limits in FYs 2010 and 2011, and is granting this exemption again in FY 2012, to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA. This will provide greater operational flexibility to sector vessels in deploying gillnet gear. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their stock ACEs limit overall fishing mortality. Data from FY 2010 (Table 4.1.4.2–2 of the EA) show that sink gillnet gear days went down by 4.66 percent from FY 2009 (prior to this sector exemption) to FY 2010 (the first year the exemption was granted).

The information DMF cites regarding the impact of fishing on spawning aggregations is not specific to the number of gillnets an individual may fish at one time, but is more generally applicable to the locations and timing of spawning closures developed by the Council. The Council's Habitat Committee is currently working on an omnibus amendment to revise all closed areas in the NE, including consideration of the location and timing of rolling closure areas.

Limits on the Number of Hooks That May Be Fished

Comment 13: DMF commented that the exemption from hook limits is

unwise because there has been a shift to targeting GOM cod from GB cod.

Response: NMFS has granted this exemption for FY 2012 because catch data show that sector ACEs continue to limit GOM cod mortality. Data from FY 2010 (EA Table 4.1.4.2–4) shows that longline gear days went up 377.48 percent from FY 2009 (prior to this sector exemption) to FY 2010 (the first year the exemption was granted). However, longline catch of groundfish went down 30 percent (EA Table 4.1.5–1) from 2009 to 2010 and remains only 2 percent (EA Table 4.1.4.2–1) of groundfish catch. Further, not all longline use targets GOM cod, or even groundfish.

GOM Rolling Closure Areas

Comment 14: DMF commented that NMFS should consider granting exemptions to the April, May, and June GOM Rolling Closures Areas, but require the sectors to implement the strategy the Northeast Seafood Coalition provided in its comments on the proposed rule for FY 2010 sector operations plans, or a modified version of the strategy.

Response: NMFS has denied this exemption for FY 2012 because of the new overfished status of the GOM cod stock and concerns that disrupting spawning aggregations can adversely impact the reproductive potential of a stock. As shown in the information cited by DMF in its comments (see Response to Comment 12), fishing activity disrupts spawning aggregations, causing impacts to the stock beyond the mortality of the individual fish caught.

The strategy proposed in 2010 by the Northeast Seafood Coalition included vessels fishing on a rotating basis to limit daily effort, limiting the percentage of cod ACEs that could be taken in April, and incorporating a sentinel vessel providing information on bycatch and spawning fish to other vessels. However, that proposed system is untested. Therefore, it is not appropriate at this time to use this strategy as the basis of an exemption to the GOM Rolling Closure Areas, given the poor condition of the GOM cod stock.

The Gulf of Maine Research Institute (GMRI) recently applied for an Exempted Fishing Permit to allow the testing of a real-time monitoring system that, if successful, could facilitate this exemption in the future. NMFS continues to work with GMRI to develop its proposal into a scientifically rigorous study. Sectors could test these strategies at any time in areas that are currently open to fishing.

Maximum ACE Carryover Provision

Comment 15: AFM supported an exemption to increase the carryover of unused ACE from the currently allowed 10 percent to the level that would not undermine rebuilding. NESSN also supported an exemption to increase the carryover of unused ACE as long as such carryover does not result in overfishing, impede rebuilding objectives, or threaten the health of a stock. In addition, NESSN suggested NMFS should preliminarily approve this exemption and actively engage sector and industry members to ensure that there is a clear understanding and agreement on what the potential short- and long-term implications of this request may be, allowing each sector to opt in or out after a clear understanding of how the exemption would be implemented.

Response: NMFS has denied this exemption, and the final EA lists this exemption as considered, but rejected, given that the important scientific and legal issues raised by the Council remain unresolved. NMFS is also concerned that an increase in ACE carryover could allow a substantial increase in catch beyond what was analyzed in setting the FY 2012 ACLs. Because of these unanswered questions, NMFS cannot conclude that the carryover would not result in overfishing, impede rebuilding objectives, or threaten the health of a stock. NMFS will continue to work on resolving the biological, legal, and policy issues associated with increasing ACE carryover. A future action could grant this exemption if all concerns are resolved.

Classification

The Administrator, Northeast Region, NMFS, determined that this annual sector approval is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from review under Executive Order (E.O.) 12866.

The Assistant Administration for Fisheries (AA) finds that there is adequate justification under 5 U.S.C. 553(d)(1) to waive the 30-day delay in effective date because this final rule relieves several restrictions. This final rule helps the NE multispecies fishery mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks, and increases the economic efficiency of vessel operations through the authorization of 19 sector operations plans for FY 2012. As explained in detail above, 20 exemptions from NE multispecies regulations have been approved for FY 2012, which provide increased flexibility to all of the sectors by exempting them from effort control restrictions and administrative burdens that would be unnecessarily onerous for fishing vessels whose fishing activity is constrained by a hard quota.

Additionally, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. Failure to waive the 30-day delay in effectiveness could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities. A delay in implementing this final rule would prevent owners who have signed up to join a sector in FY 2012 (845 permits, 57 percent of eligible groundfish permits, accounting for 99 percent of the historical commercial NE multispecies catch) from taking advantage of the flexibility in vessel operations this final rule implements, thereby undermining the intent of the rule. For example, when this final rule takes effect, sector vessels will receive exemptions from trip limits, DAS limits, and seasonal closure areas that this final rule allows, but would be prohibited from fishing for groundfish during the delayed effectiveness period. Vessels committed to a sector may not fish in both the common pool and a sector in the same FY. Consequently, vessels currently signed into a sector would be forced to cease fishing operations entirely during the delay in effectiveness to maintain their sector membership for FY 2012. If they choose to fish in the common pool (i.e., fish during the delay in effectiveness under existing regulations), they would thereby lose for the entirety of FY 2012 the mitigating economic efficiencies associated with the restrictions from which sector vessels are relieved. This would also reduce the economic efficiency of the majority of the fleet (400+ active vessels) until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels. This would be contrary not only to the interest of the fishing communities, but to the public at large; prohibiting a significant portion of the fleet from fishing reduces the availability of local seafood. For the reasons outlined above, the requirement to delay implementation of this final rule for a period of 30 days is hereby waived.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider

the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards for all for-profit economic activities or industries are in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector as a firm with receipts (gross revenues) of up to $4 million.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the relevant portions of the proposed rule describing sector operations plans and requested exemptions, the corresponding analysis in the EA prepared for this action, the discussions, including responses to public comments included in this final rule, and this summary of the FRFA. This FRFA also incorporates by reference the IRFA prepared for the FW 47 proposed rule (77 FR 18176, March 27, 2012). In the IRFA prepared for Framework 47, sectors were used as the regulated entity for the first time as an alternative approach for analyzing the impacts of Framework 47. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Need for, and Objectives of, This Rule

Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. The intended effect is to provide vessels participating in sectors with increased operational flexibility. The flexibility afforded sectors includes exemptions from certain specified regulations, as well as the ability to request additional exemptions. The objective of the action is to authorize the operations of 19 sectors in FY 2012, and to allow the permits enrolled in sectors and the New England communities where they dock and land to benefit from sector operations.

Summary of Public Comments

All public comments, including those in response to the IRFA and comments regarding the economic effects of the rule not specifically addressed to the IRFA, and our response to those comments, are contained in this preamble.

Description and Estimate of the Number of Small Entities Affected

The number of entities affected will be the number of permits enrolled in sectors for FY 2012. The maximum number of entities that could be affected by this action is 1,475, the number of permits eligible to join a sector for FY 2012. This action will likely affect about 845 entities, which represents the number of permits enrolled in sectors and state-operated permit banks as of December 1, 2011. Sector rosters for FY 2012 may change through April 30, 2012; therefore, it is not possible to know the final number of entities affected before May 1, the date on which this action takes effect. However, based on FY 2010 and FY 2011, we expect the number of entities affected to change very little. Each of these permits is a small entity, based on the definition as stated above and explained below. The economic impact resulting from this action on these small entities is positive, since the action provides additional operational flexibility to vessels participating in NE multispecies sectors for FY 2012. In addition, this action further mitigates negative impacts from the implementation of Amendment 16, FW 44, and FW 45, which placed additional effort restrictions on the groundfish fleet.

The SBA size standard for small commercial fishing entities (North American Industry Classification System code 114111) is up to $4 million in annual sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. NMFS acknowledges there are entities that qualify as large business entities based on rules of affiliation. However, reliable ownership affiliation data were not available during the analyses of Amendment 16 and FW 45. Therefore, to be consistent with those analyses, this final rule continues to consider each operating unit as a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities.

In the IRFA prepared for Framework 47, sectors were used as the regulated entity for the first time to estimate impacts of the proposed action. Sectors were used as the entity for that analysis, in part, because each vessel's PSC only becomes fishable quota if the vessel is a member of a sector. Since sectors are allocated ACE based on the cumulative PSC of each individual sector member, considering sectors as an affiliated entity provides an alternative approach for analyzing the impacts of Framework 47.

Reporting, Recordkeeping and Other Compliance Requirements

This final rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. This action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action are documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block will reduce the reporting burden for sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Sector vessels exempt from the gillnet limit (up to 150 nets) are also exempt from current tagging requirements, and are instead required to tag gillnets with one tag per net. Compliance with the tagging requirement will not necessarily require sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, sector vessels that have not previously purchased the maximum number of gillnet tags may find it necessary to purchase additional tags to comply with this requirement at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear requires each vessel to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags may be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if a vessel chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each without rigging.

The GOM Sink Gillnet exemption does not involve additional reporting requirements. However, to use this exemption, sector vessels may need to purchase 6-inch (15.2-cm) mesh gillnet nets. At the time this FRFA was prepared, no cost information was available for a 6-inch (15.2-cm) mesh gillnet panel. However, the cost of a 6.5-inch (16.5-cm) mesh 300-ft (91.4-m) gillnet panel, complete with floats and break-away links, is estimated at $310. The quantity of 6-inch (15.2-cm) mesh gillnets purchased by a vessel to participate in this program will depend on the vessel's gillnet designation (a Day gillnet vessel would have a 150-net limit) and the perceived economic benefits of utilizing the exemption,

which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP does not change the reporting burden of individual participating vessels, as the vessels would merely change the recipient of their current daily report.

Other exemptions granted by this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements exists in the final rules implementing Amendment 16 and each approved FY 2012 sector operations plan.

Steps the Agency Has Taken To Minimize Significant Adverse Economic Impact on Small Entities

This action will create a positive economic impact for the participating sector vessels because it mitigates the impacts from restrictive management measures implemented under the NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual vessels are available. The *2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross revenue per trip and per day absent in 2010 were higher for the average sector vessel and lower for the average common pool vessel. However, the report stipulates this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will remain economically viable while adjusting to changing economic and fishing conditions. Thus, this final rule provides benefits to sector members that they would not have under the No Action Alternative. The preamble discusses reasons for approval or disapproval of each requested exemption.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, an LOA, or letter of authorization, for each permit holder enrolled in a sector that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter or bulletin, will be sent to all holders of NE multispecies permits enrolled in a sector. The guide and this final rule will be available upon request (see **ADDRESSES**).

On February 3, 2012, NMFS published final rules listing the Gulf of Maine distinct population segment (DPS) of Atlantic sturgeon as threatened, and listing the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon as endangered, effective April 6, 2012. Preliminary analysis indicates that multiple Atlantic sturgeon DPSs may be affected by the continued operation of the NE multispecies fishery and formal consultation under Section 7 of the ESA has been reinitiated and is ongoing for the NE multispecies fishery. The previous Biological Opinion for the NE multispecies fishery completed in October 2010 concluded that the actions considered would not jeopardize the continued existence of any listed species. This Biological Opinion will be updated and additional evaluation will be included to describe any impacts of the NE multispecies fishery on Atlantic sturgeon DPSs and define any measures needed to mitigate those impacts, if necessary. It is anticipated that any measures, terms and conditions included in an updated Biological Opinion will further reduce impacts to the species. It is expected that the completion of the Biological Opinion will occur before the beginning of the 2012 NE multispecies fishing year on May 1, 2012. NMFS has determined that continued operation of the fishery during the consultation period is not likely to jeopardize the continued existence of listed species.

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

Dated: April 26, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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