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WHEN: Tuesday, June 12, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Rules and Regulations

Federal Register
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Tuesday, May 15, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM62

Prevailing Rate Systems; Abolishment of Montgomery, PA, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing an interim rule to abolish the Montgomery, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Chester, Montgomery, and Philadelphia Counties, PA, to the Burlington, NJ, NAF wage area and Luzerne County, PA, to the Morris, NJ, NAF wage area. Bucks County, PA, will no longer be defined. These changes are necessary because the closure of the Naval Air Station Joint Reserve Base (NAS JRB) Willow Grove left the Montgomery wage area without an activity having the capability to conduct a local wage survey.

DATES: *Effective date:* This regulation is effective on May 15, 2012. We must receive comments on or before June 14, 2012. *Applicability date:* FWS employees remaining in the Montgomery NAF wage area will be transferred to the Burlington and Morris NAF wage area schedules on the first day of the first applicable pay period beginning on or after May 15, 2012.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; email *pay-leave-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-leave-policy@opm.gov;* or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Montgomery, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey area county, Montgomery County, and four area of application counties, Bucks, Chester, Luzerne, and Philadelphia Counties. Under section 532.219 of title 5, Code of Federal Regulations, the U.S. Office of Personnel Management (OPM) may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that the closure of the Naval Air Station Joint Reserve Base (NAS JRB) Willow Grove left the Montgomery wage area without an activity having the capability to conduct a local wage survey. The NAF FWS employment in Montgomery County is currently 20 employees at NAS JRB Willow Grove. DOD recommended that OPM abolish the Montgomery NAF FWS wage area and redefine Chester, Montgomery, and Philadelphia Counties, PA, to the Burlington, NJ, NAF wage area and Luzerne County, PA, to the Morris, NJ, NAF wage area.

Since Chester, Luzerne, Montgomery, and Philadelphia Counties will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be areas of application. In defining counties as area of application counties, OPM considers the following criteria:

(i) Proximity of largest facilities activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

In selecting a wage area to which Chester County should be redefined, proximity favors the Harford, MD, NAF wage area. All other criteria are indeterminate. Based on the mixed nature of the regulatory analysis findings, we believe the fact that Chester County is geographically linked to Bucks, Delaware, Montgomery, and Philadelphia Counties, with all five counties encompassing the greater Philadelphia area, provides strong evidence that these counties should remain together. Therefore, OPM recommends that Chester County be redefined as an area of application to the Burlington NAF wage area.

In selecting a wage area to which Montgomery and Philadelphia Counties should be redefined, proximity favors the Burlington NAF wage area. All other criteria are indeterminate. Based on the application of the regulatory criteria, OPM recommends that Montgomery and Philadelphia Counties be redefined as areas of application to the Burlington NAF wage area.

In selecting a wage area to which Luzerne County should be redefined, proximity favors the Morris NAF wage area. All other criteria are indeterminate. Based on the application of the regulatory criteria, OPM recommends that Luzerne County be redefined as an area of application to the Morris NAF wage area.

OPM is removing Bucks County from the wage area definition. There are no longer NAF FWS employees working in Bucks County. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, Bucks County should not be defined as part of an NAF wage area.

The Burlington NAF wage area will consist of one survey county, Burlington County, NJ, and nine area of application counties: New Castle County, DE; Atlantic, Cape May, Monmouth, Ocean, and Salem Counties, NJ; and Chester, Montgomery, and Philadelphia Counties, PA. The Morris NAF wage area will consist of one survey county, Morris County, and three area of application counties: Somerset County, NJ, and Luzerne and Monroe Counties, PA. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for

advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the closure of NAS JRB Willow Grove left the Montgomery wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Chester, Montgomery, and Philadelphia Counties must be transferred to a continuing wage area as soon as possible.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

■ 2. Appendix B to subpart B is amended by removing, under the State of Pennsylvania, the entry for ''Montgomery.''

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

■ 3. Appendix D to subpart B is amended for the State of Pennsylvania by removing the wage area listing for Montgomery, PA, and for the State of New Jersey by revising the wage area listings for Burlington, NJ, and Morris, NJ, to read as follows:

* * * * *

NEW JERSEY

Burlington

Survey Area

New Jersey:
Burlington

Area of application. Survey area plus:

Delaware:
New Castle
New Jersey:
Atlantic
Cape May
Monmouth
Ocean
Salem
Pennsylvania:
Chester
Montgomery
Philadelphia

Morris

Survey Area

New Jersey:
Morris

Area of application. Survey area plus:

New Jersey:
Somerset
Pennsylvania:
Luzerne
Monroe

* * * * *

[FR Doc. 2012–11763 Filed 5–14–12; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–10–0078; NOP–09–03FR]

RIN 0581–AD05

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to enact two recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on June 20, 2008, and May 30, 2004. This final rule establishes exemptions (uses) for two substances, fenbendazole and moxidectin, along with any restrictive annotations, as parasiticides in organic livestock production.

DATES: *Effective Date:* This rule becomes effective May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations sections 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501–6522), (OFPA), and NOP regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling appear on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the NOP has published multiple amendments to the National List: October 31, 2003 (68 FR 61987); November 3, 2003 (68 FR 62215); October 21, 2005 (70 FR 61217); June 7, 2006 (71 FR 32803); September 11, 2006 (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007 (72 FR 58469); December 10, 2007 (72 FR 69569); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); July 6, 2010 (75 FR 38693); August 24, 2010 (75 FR 51919); December 13, 2010 (75 FR 77521); March 14, 2011 (76 FR 13501); August 3, 2011 (76 FR 46595); and February 14, 2012 (77 FR 8089). Additionally, proposed amendments to the National List were published on November 8, 2011 (76 FR 69141); January 12, 2012 (77 FR 1980; 77 FR 1996); and February 6, 2012 (77 FR 5717).

This final rule amends the National List to enact two recommendations submitted to the Secretary by the NOSB on June 20, 2008, and May 30, 2004.

II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule amends § 205.603(a) of the National List regulations by revising paragraph (a)(18) to move ivermectin to a new section (ii), adding fenbendazole at new section (i), and adding moxidectin at new section (iii) as follows: (a)(18) Parasiticides. Prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.

(i) Fenbendazole (CAS #43210–67–9)—only for use by or on the lawful written order of a licensed veterinarian.

(ii) Ivermectin (CAS #70288–86–7).

(iii) Moxidectin (CAS #113507–06–5)—for control of internal parasites only.

III. Related Documents

Two notices were published regarding the meetings of the NOSB and deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this final rule were announced for NOSB deliberation in the following **Federal Register** notices: (1) 73 FR 18491, April 4, 2008, (Fenbendazole); (2) 69 FR 18036, April 6, 2004, (Moxidectin).

In a proposed rule published on July 17, 2006 (71 FR 40624), USDA announced its decision that moxidectin would not be proposed for inclusion on the National List because of its macrolide antibiotic classification, which was inconsistent with NOP policy prohibiting the use of antibiotics in organic livestock production. In a final rule published on December 12, 2007 (72 FR 70479), USDA responded to comments from the proposed rule and affirmed that the NOSB recommended use of moxidectin is as a parasiticide, not as an antibiotic.

The proposal to allow the emergency use of the two substances in this final rule was published as a proposed rule on May 5, 2011 (76 FR 25612).

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under section 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov*.

A. Executive Order 12866

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

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted under the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

The OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule is to allow the use of additional substances in agricultural production and handling. This action would modify the regulations published in the final rule to provide small entities with more tools to use in day-to-day operations.

AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA Economic Research Service (ERS) data based upon information from USDA-accredited certifying agents, the number of certified U.S. organic crop and livestock operations totaled nearly 13,000 and certified organic acreage exceeded 4.8 million acres in 2008.[1] ERS, based upon the list of certified operations maintained by the National Organic Program, estimated the number of certified handling operations was 3,225 in 2007.[2] AMS believes that most of the certified production operations would be classified as small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages grew from $3.6 billion in 1997 to nearly $21.1 billion in 2008. Between 1990 and 2008, organic food sales demonstrated a growth rate between 15 to 24 percent each year. In 2010, organic food sales grew 7.7 percent.[3] Sales of organic dairy products, including milk, yogurt and cheese totaled approximately $3.6 billion in 2010.[4]

In addition, USDA has accredited 93 certifying agents who provide certification services to producers and handlers under the NOP. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP web site, at *http://www.ams.usda.gov/nop*. AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

[1] U.S. Department of Agriculture, Economic Research Service. 2009. Data Sets: U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. *http://www.ers.usda.gov/Data/Organic/*.

[2] U.S. Department of Agriculture, Economic Research Service, 2009. *Data Sets: Procurement and Contracting by Organic Handlers, http://www.ers.usda.gov/Data/OrganicHandlers.*

[3] Organic Trade Association's *2010 Organic Industry Survey, http://www.ota.com.*

[4] Ibid.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, chapter 35).

E. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. Comments Received on Proposed Rule NOP–09–03

AMS received 15 comments on the proposed rule AMS–NOP–10–0078; NOP–09–03. Comments were received from large animal veterinarians, organic dairy producers and handlers, a livestock parasitologist, agricultural consultants, a trade association, an accredited certifying agent, a nonorganic beef operation, and a private citizen. Some of the comments supported the additions of fenbendazole and moxidectin to the National List as proposed. Many comments stated that fenbendazole and moxidectin were preferable to ivermectin, which is the only parasiticide currently approved for internal use in organic dairy or breeder livestock. Several comments supporting the use of fenbendazole and moxidectin asserted that under the access to pasture requirements for organic ruminants, which were fully implemented in June 2010, these livestock face an increased risk of parasite infestations which warrants greater access to synthetic parasiticides. Some comments emphasized that the restrictive annotations as proposed would ensure that use of fenbendazole and moxidectin would be used infrequently as a last resort emergency treatment when preventive practices and veterinary biologics are not effective. Two comments which opposed the use of both fenbendazole and moxidectin either disputed their necessity in organic livestock production or broadly opposed the use of animal drugs in organic production.

A number of comments expressed support for fenbendazole by comparing that substance to the parasiticide ivermectin, with respect to ecological impacts, effectiveness and parasite resistance. Some comments characterized fenbendazole as more benign towards earthworms and dung beetles than ivermectin. Commenters described ivermectin as harmful to aquatic and soil plants, micro-organisms, earthworms, and dung beetles. Several comments indicated that ivermectin has limited effectiveness. One comment specifically noted that this parasiticide does not cover all life stages of all gastro-intestinal parasites. Another comment remarked that the development of resistance to ivermectin can be attributed to the frequency of treatment in organic production due to the lack of other approved treatments for internal parasites. Finally, one comment noted that there are no ivermectin products labeled for use in female cattle of breeding age, while fenbendazole is not subject to such restriction. Support for the use of moxidectin was also framed in comparison to ivermectin. Several comments stated that moxidectin is less toxic to important soil organisms and a more effective treatment for long-term control of certain fecal parasitic eggs.

The Food and Drug Administration (FDA) regulations permit the use of topical and injectable solutions of moxidetin for both internal and external parasites, however, only the topical form is permitted in dairy cattle. In the proposed rule, AMS specifically requested comments on the moxidectin annotation which limits use for internal parasites only. One comment stated that moxidectin could be useful to treat external parasiticides, but the availability of fenbendazole would make moxidectin unnecessary for internal parasites. Some comments, however, suggested that a producer's ability to alternate parasiticides would help prevent resistance. As comments did not substantively object to the proposed use of moxidectin, the listing of moxidectin for internal parasites only has not been altered. As of this final rule, three parasiticides will be permitted for internal parasites in organic livestock production: ivermectin, fenbendazole, and moxidectin.

Changes Requested But Not Made

Reduce the Length of the Milk Withdrawal Period. A number of comments which supported the use of fenbendazole objected to the proposed 90-day milk withholding period following treatment with fenbendazole. They indicated that the use of fenbendazole would not be feasible in organic production if milk cannot be marketed as organic for 90 days following treatment. The alternatives suggested by commenters were a 30-day withholding period or no withholding period. The commenters proposed that

a 30-day withholding period would be a disincentive to routine use, but would not be excessively punitive. Other commenters argued for no withholding period to be consistent with FDA approved fenbendazole labels for use in dairy cattle.

Several commenters who supported the use of fenbendazole cited economic factors for opposing the 90-day withholding period for milk. They explained that recent amendments to the NOP regulations at section 205.239, which requires pasturing of ruminants during the grazing season, will increase livestock exposure to parasites.[5] The comments also explained that cows are at the greatest risk of parasite infection during the first 100 days of lactation which can decrease milk production, and consequently, financial returns. Other commenters argued that the risk of parasite infestation is greatest during the first year of any animal's life, when the animal is not sufficiently mature to have developed the immune responses that protect mature animals from parasites. One of these comments explained that lactating mature animals do not normally need parasiticides due to fully developed immune mechanisms, and that administration of parasiticides in early lactation could be used to increase milk production.

A number of comments cited research to assert that fenbandazole is rapidly metabolized and does not leave residues in milk. The studies cited indicated that fenbendazole degrades quickly after 48 hours and residues were undetectable after 72 hours to six days.

Under the existing NOP regulations at § 205.238(b), a 90-day milk withholding period is required after use of any synthetic parasiticide treatment approved for organic dairy animals. This has been a requirement since the NOP regulations were established in 2000. Despite objections at that time, which asserted that the provision ignored animal welfare and farm economics, the 90-day withholding period was retained in the NOP final rule. The preamble to the NOP final rule explained that the 90-day timeframe was based on a NOSB recommendation and the NOSB has the authority to reconsider this requirement (65 FR 80573).

The NOSB has the authority to recommend a change to the 90-day milk withholding period. The OFPA restricts the Secretary from adding an exemption for the use of a synthetic substance unless this has been proposed by the NOSB. A reduction in the withholding period would relax the use restrictions on a synthetic substance and would, therefore, require NOSB consideration. Any NOSB recommendation to change a withholding period for parasiticides would need to address section 205.238(b) in the Livestock Health Care practice standards as well as the listing for parasiticides at section 205.603(a)(18). AMS understands that producers may occasionally need to withhold milk from the organic market when fenbendazole is administered to lactating dairy animals that are suffering from parasite infestation. However, the routine use of parasiticides is prohibited under the NOP regulations and therefore AMS does not expect that use of fenbendazole will be widespread or frequent. Furthermore, rotating pastures and maintaining suitable stocking rates are preventative practices that can interrupt the host-parasite cycle and reduce susceptibility of livestock to infection.

Requirement for the Written Order from a Veterinarian for Fenbendazole. A comment speculated that the requirement to obtain a written veterinarian's order to administer fenbendazole may encourage the use of ivermectin and moxidectin because these do not require a veterinarian's written order in organic production. FDA requires the order of a licensed veterinarian only for the administration of 10 mg. fenbendazole suspension to beef cattle, per 21 CFR Section 520.905(2)(iii). FDA regulations do not stipulate that requirement for other fenbendazole dosage forms. The annotation requiring a veterinarian's written order for any administration of fenbendazole was recommended by NOSB to prevent non-emergency use and is only applicable to the use of the fenbendazole in organic production. AMS concurs with the NOSB's intent that organic producers have limitations on access to a synthetic parasiticide to discourage routine or indiscriminate use.

Removing the Prohibition of Parasiticide Use in Slaughter Stock. Several comments urged that parasiticides on the National List be permitted for use in both dairy and beef animals during the first year of life when an animal's immune system is more susceptible to parasites. The existing NOP regulations at section 205.238(c)(5) prohibit the administration of synthetic parasiticides to slaughter stock. A comment characterized the prohibition on parasites in meat producing animals (i.e. slaughter stock) as irrational since both meat and dairy animals can suffer from parasite infections. In addition, one comment noted that several years may pass from parasiticide treatment until slaughter.

Expanding the use of parasiticides to organic slaughter stock is broader than the scope of proposed actions considered in this rulemaking. Lifting the prohibition on the use of parasiticides in slaughter stock would merit full consideration by the NOSB since such a change would establish new uses for synthetic substances in organic livestock production.

G. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB. The substances being added to the National List were based upon petitions from the industry and were evaluated by the NOSB using criteria in the Act and the regulations. One of these recommendations was first made by the NOSB in 2004, and the substance was discussed in two subsequent **Federal Register** publications (71 FR 40624 and 72 FR 70479) prior to the recent proposed rule (76 FR 25612). Because these substances have been subject to such extensive discussion and comment and these parasiticides are considered vital as an emergency treatment in organic livestock production, AMS believes that livestock producers should be able to use them on their operations as soon as possible. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. In § 205.603, paragraph (a)(18) is revised to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

[5] Commenters were referencing amendments codified through the NOP Access to Pasture final rule. This rule was published in the **Federal Register** on February 17, 2010 (75 FR 7154).

(a) * * *

(18) Parasiticides. Prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.

(i) Fenbendazole (CAS # 43210–67–9)—only for use by or on the lawful written order of a licensed veterinarian.

(ii) Ivermectin (CAS # 70288–86–7).

(iii) Moxidectin (CAS # 113507–06–5)—for control of internal parasites only.

* * * * *

Dated: May 10, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–11722 Filed 5–14–12; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3403; File No. S7–36–10]

Political Contributions by Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is making a technical amendment to the definition of ''covered associate'' in rule 206(4)–5 under the Investment Advisers Act of 1940 (''Advisers Act'') to correct an inadvertent error in the rule as published in the **Federal Register** on July 19, 2011.

DATES: *Effective date:* May 15, 2012.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Meeks, Attorney-Adviser, or Melissa A. Roverts, Branch Chief, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission adopted rule 206(4)–5 in July 2010 to prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (''covered associates'') make a contribution to certain elected officials or candidates.[1] In November 2010, the Commission proposed new rules and rule amendments under the Advisers Act to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] In that release, the Commission also proposed several amendments to rule 206(4)–5, including a minor change to the rule's definition of a ''covered associate'' to replace the word ''individual'' with the word ''person.''[3] The proposed change would have specified that a legal entity, not just a natural person, that is a general partner or managing member of an investment adviser would meet the definition of ''covered associate.''[4]

In June 2011, the Commission adopted many of the new rules and rule amendments set forth in the Implementing Proposing Release, including amendments to rule 206(4)–5.[5] The Commission specified in the ''Discussion'' section of the Implementing Adopting Release that it was *not* adopting the proposed amendment to the definition of ''covered associate,'' i.e., that the definition would continue to use the word ''individual.''[6] However, the text of rule 206(4)–5(f)(2)(i) published in the ''Text of Rule and Form Amendments'' section of the Implementing Adopting Release, and subsequently in the **Federal Register**, incorrectly reflected the replacement of the word ''individual'' with the word ''person,'' as though that proposed change had been adopted. To correct this mistake, the Commission is making a technical amendment to rule 206(4)–5(f)(2)(i) to replace the word ''person'' with the word ''individual.''

II. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when an agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[7] The Commission is making a technical amendment to rule 206(4)–5 to reflect the Commission's stated intent in the Implementing Adopting Release. The Commission finds that because the amendment is technical and is being made solely to correct a mistake, publishing the amendment for comment is unnecessary.[8]

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[9] For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for this technical amendment to take effect on May 15, 2012.

The amendment the Commission is adopting does not make substantive or material modifications to any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[10]

The Commission is sensitive to the costs and benefits of its rules. The rule amendment the Commission is adopting today is technical and is being made solely to correct a mistake and therefore will have minimal, if any, economic effect.

III. Statutory Text and Text of Amendment

We are adopting this technical amendment to rule 206(4)–5 under the authority set forth in sections 206(4) and 211(a) of the Advisers Act.[11]

[1] *Political Contributions by Certain Investment Advisers,* Investment Advisers Act Release No. 3043 (July 1, 2010) [75 FR 41018 (July 14, 2010)].

[2] *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3110 (Nov. 19, 2010) [75 FR 77052 (Dec. 10, 2010)] (''Implementing Proposing Release'').

[3] *See id.* at section II.D.1.

[4] *Id.*

[5] *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)] (''Implementing Adopting Release'').

[6] *Id.* at n.340 (''We are not, however, adopting an amendment we proposed to specify that a legal entity, not just a natural person, that is a general partner or managing member of an investment adviser would meet the definition of ''covered associate'' in the rule. Upon reflection, it would broaden the application of the rule more than we intended.'').

[7] 5 U.S.C. 553(b).

[8] For similar reasons, the amendment does not require analysis under the Regulatory Flexibility Act (''RFA'') or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[9] *See* 5 U.S.C. 553(d)(3).

[10] 44 U.S.C. 3501, 3507.

[11] 15 U.S.C. 80b–6(4) and 80b–11(a).

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of the Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(4)–5 is amended by revising paragraph (f)(2)(i) to read as follows:

§ 275.206(4)–5 Political contributions by certain investment advisers.

* * * * *

(f) * * *

(2) * * *

(i) Any general partner, managing member or executive officer, or other individual with a similar status or function;

* * * * *

Dated: May 8, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11662 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in June 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions —including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for June 2012.[1]

The June 2012 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for May 2012, these interest assumptions represent an decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during June 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 224, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
224	6–1–12	7–1–12	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 224, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
224	6–1–12	7–1–12	1.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of May 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC32

Privacy Act; Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is revising this part by amending Subpart C to reflect changes affecting the Department's organization since January 2003.

DATES: *Effective Date:* May 15, 2012.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Department of the Treasury, at 202–622–0874, or by email at *Privacy@Treasury.gov.*

SUPPLEMENTARY INFORMATION: The Department is amending this part to reflect the transition, in 2003, of the United States Customs Service, the Federal Law Enforcement Training Center, and United States Secret Service from the Department of the Treasury to the Department of Homeland Security. In addition, the amendments reflect the 2003 transfer of certain functions of the Bureau of Alcohol, Tobacco and Firearms (ATF) to the Department of Justice, and the remaining functions reorganized as the Alcohol and Tobacco Tax and Trade Bureau (TTB) within the Department of the Treasury. The amendment conforms 31 CFR 1.36 to the changes made to the organization of the Department as set out in Treasury Order 101–05 ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, and Delegation of Certain Authority in the Department of the Treasury,'' dated January 10, 2011.

The Privacy Act authorizes the head of the agency to promulgate rules in accordance with the Administrative Procedure Act to exempt Privacy Act systems of records from certain provisions of the Privacy Act, if the system of records contains records that fall within 5 U.S.C. 552a(j) and/or (k).

No new systems of records are being exempted pursuant to this rule nor is any new exemption being added to any systems of records. The rule will update the regulations to reflect changes to the number or title of a system of records and by removing references to systems of records that have been deleted from the Department's inventory of systems of records.

For the reasons described above, this part is being amended to remove the headings, tables, and content pertaining to the following former Treasury bureaus: The U.S. Customs Service, the Federal Law Enforcement Training Center, and the U. S. Secret Service which are being deleted throughout Section 1.36.

The document also amends this part by removing sections (i) and (j) which identified the system of records and the reasons for exempting the system of records under 5 U.S.C. 552a(k)(3). The system of records was maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18. Any references to protective investigative records found in sections (c), (d) and (g) of this part have also been removed. These functions are performed by the U.S. Secret Service and were transferred to the Department of Homeland Security in 2003. The remaining sections have been re-designated.

Under provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act) certain powers and authorities of the Office of Thrift Supervision (OTS) were transferred on July 21, 2011, to other banking agencies, including the Office of the Comptroller of the Currency (OCC) and then abolished. The OCC published a notice on July 26, 2011, at 76 FR 44656 adopting the Privacy Act systems of records formerly maintained by the OTS. These systems of records will be revised, consolidated or deleted by the OCC at a later date. The headings ''Office of Thrift Supervision,'' the tables and content found at sections (c)(1)(xii), (g)(1)(xii) and (m)(1)(xii) are removed. The OTS systems of records for which an exemption has been previously claimed have been [and as] adopted by the OCC are moved to the tables under the heading ''Comptroller of the Currency'' any remaining headings and tables are re-designated

accordingly. The rule also incorporates the exemptions claimed for the revised and consolidated systems of records maintained by the IRS' Office of Chief Counsel as published on November 15, 2011, at 76 FR 70640, as well as, the final rule published on January 11, 2012, at 77 FR 1632 regarding records maintained by Treasury's Office of Civil Rights and Diversity.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public. These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedures with respect to this rule are unnecessary, and good cause for making this final rule effective on the date of publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

Dated: March 14, 2012.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 of subpart C is revised to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(a) *In General.* In accordance with 5 U.S.C. 552a(j) and (k) and § 1.23(c), the Department of the Treasury hereby exempts the systems of records identified below from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(j) and (k) and pursuant to the authority of § 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Department of the Treasury have as their principal function activities pertaining to the enforcement of criminal laws. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Treasury.

(ii) Departmental Offices:

Number	System name
DO .190	Investigation Data Management System.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(iii) Alcohol and Tobacco Tax and Trade Bureau.

(iv) Comptroller of the Currency:

Number	System name
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database.

(v) Bureau of Engraving and Printing.

(vi) Financial Management Service.

(vii) Internal Revenue Service:

Number	System name
IRS 46.002	Case Management and Time Reporting System, Criminal Investigation Division.
IRS 46.003	Confidential Informants, Criminal Investigation Division.
IRS 46.005	Electronic Surveillance Files, Criminal Investigation Division.
IRS 46.009	Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division.
IRS 46.015	Relocated Witnesses, Criminal Investigation Division.
IRS 46.022	Treasury Enforcement Communications System (TECS).

Number	System name
IRS 46.050	Automated Information Analysis System.
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.003	Chief Counsel Litigation and Advice (Criminal) Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

(viii) U.S. Mint.

(ix) Bureau of the Public Debt.

(x) Financial Crimes Enforcement Network:

Number	System name
FinCEN .001	FinCEN Database.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (x) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informants might refuse to provide criminal investigators with valuable information unless they believe that their identities will not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department maintains in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the

Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit individuals to take steps to avoid detection or apprehension.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation may assert his/her constitutional right to remain silent and refuse to supply information to criminal investigators upon request.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained from the subject of a criminal investigation or other sources.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the Department's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe are not involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information

would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Department's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination because the Department may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the Department is exempted. Exemption from this provision will also protect the Department from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.

(ii) Financial Crimes Enforcement Network:

Number	System name
FinCEN .001	FinCEN Database.

(2) The Department of the Treasury hereby exempts the systems of records listed in paragraph (e)(1)(i) and (ii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders.

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Treasury:

Number	System name
Treasury .013	Department of the Treasury Civil Rights Complaints and Compliance Review Files.

(ii) Departmental Offices:

Number	System name
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
DO .144	General Counsel Litigation Referral and Reporting System.
DO .190	Investigation Data Management System.
DO .220	SIGTARP Hotline Database.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO.225	TARP Fraud Investigation Information System.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(iii) Alcohol and Tobacco Tax and Trade Bureau:

Number	System name
TTB .001	Regulatory Enforcement Record System.

(iv) Comptroller of the Currency:

Number	System name
CC .100	Enforcement Action Report System.
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Section 914 Tracking System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.
CC .600	Consumer Complaint Inquiry and Information System.
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database.

(v) Bureau of Engraving and Printing:

Number	System name
BEP .021	Investigative files.

(vi) Financial Management Service.

(vii) Internal Revenue Service:

Number	System name
IRS 00.002	Correspondence File-Inquiries about Enforcement Activities.
IRS 00.007	Employee Complaint and Allegation Referral Records.
IRS 00.334	Third Party Contact Reprisal Records.
IRS 22.061	Wage and Information Returns Processing (IRP).
IRS 24.047	Audit Underreporter Case Files.
IRS 26.001	Acquired Property Records.
IRS 26.006	Form 2209, Courtesy Investigations.
IRS 26.012	Offer in Compromise (OIC) Files.
IRS 26.013	One-hundred Per Cent Penalty Cases.
IRS 26.019	TDA (Taxpayer Delinquent Accounts).
IRS 26.020	TDI (Taxpayer Delinquency Investigations) Files.
IRS 26.021	Transferee Files.
IRS 34.037	IRS Audit Trail and Security Records System.
IRS 37.007	Practitioner Disciplinary Records.
IRS 37.009	Enrolled Agents Records.
IRS 42.001	Examination Administrative File.
IRS 42.002	Excise Compliance Programs.
IRS 42.005	Whistleblower Office Records.

Number	System name
IRS 42.008	Audit Information Management System (AIMS).
IRS 42.016	Classification and Examination Selection Files.
IRS 42.017	International Enforcement Program Files.
IRS 42.021	Compliance Programs and Projects Files.
IRS 42.031	Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records.
IRS 44.001	Appeals Case Files.
IRS 46.050	Automated Information Analysis System.
IRS 48.001	Disclosure Records.
IRS 49.001	Collateral and Information Requests System.
IRS 49.002	Component Authority and Index Card Microfilm Retrieval System.
IRS 50.222	Tax Exempt Government Entities Case Management Records.
IRS 60.000	Employee Protection System Records.
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.002	Chief Counsel Litigation and Advice (Civil) Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

(viii) U.S. Mint:

Number	System name
Mint .008	Criminal investigation files.

(ix) Bureau of the Public Debt:

Number	System name
BPD.009	U.S. Treasury Securities Fraud Information System.

(x) Financial Crimes Enforcement Network:

Number	System name
FinCEN .001	FinCEN Database.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (x) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of the Department of the Treasury and of law enforcement agencies outside the Department to make effective use of information maintained by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension, and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be

committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informants might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, these provisions should not apply to the systems of records for the reasons set out in paragraph (h)(2) of this section.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair the Department's ability to collect, utilize and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

(i) *Specific exemptions under 5 U.S.C. 552a(k)(4).* (1) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is required by statute to be maintained and used solely as statistical records. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(4).

Internal Revenue Service:

Number	System name
IRS 70.001	Statistics of Income—Individual Tax Returns.

(2) The Department hereby exempts the system of records listed in paragraph (i)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(4): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5

U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(3) The system of records is maintained under section 6108 of the Internal Revenue Code, which provides that ''the Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.''

(j) *Reasons for exemptions under 5 U.S.C. 552a(k)(4).* The reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(k) *Specific exemptions under 5 U.S.C. 552a(k)(5).* (1) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act. This paragraph applies to the following systems of records maintained by the Department or one of its bureaus:

(i) Treasury:

Number	System name
Treasury .007	Personnel Security System.

(ii) Departmental Offices:

Number	System name
DO .306	TIGTA Recruiting and Placement.

(iii) Alcohol and Tobacco Tax and Trade Bureau.

(iv) Comptroller of the Currency.

(v) Bureau of Engraving and Printing.

(vi) Financial Management Service.

(vii) Internal Revenue Service:

Number	System name
IRS 34.021	Personnel Security Investigations, National Background Investigations Center.
IRS 34.022	Automated Background Investigations System (ABIS).
IRS 90.006	Chief Counsel Human Resources and Administrative Records.

(viii) U.S. Mint.

(ix) Bureau of the Public Debt.

(x) Financial Crimes Enforcement Network.

(2) The Department hereby exempts the systems of records listed in paragraph (k)(1)(i) through (x) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(l) *Reasons for exemptions under 5 U.S.C. 552a(k)(5).* (1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a(j)(2) or (k)(2) is hereby claimed.

(m) *Exemption under 5 U.S.C. 552a(k)(6).* (1) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(6).

Departmental Officers:

Number	System name
DO .306	TIGTA Recruiting and Placement Records.

(2) The Department hereby exempts the system of records listed in paragraphs (m)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(6): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(n) *Reasons for exemptions under 5 U.S.C. 552a(k)(6).* The reason for exempting the system of records is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(o) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

[FR Doc. 2012–11743 Filed 5–14–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS LAKE CHAMPLAIN (CG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective May 15, 2012 and is applicable beginning May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS LAKE CHAMPLAIN (CG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS LAKE CHAMPLAIN (CG 57).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS LAKE CHAMPLAIN	CG 57	.....	X	X	36.9
* *	*	*	*	*	*

Approved: May 7, 2012.

C.J. Spain,

Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Acting.

Dated: May 8, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–11759 Filed 5–14–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0378]

Drawbridge Operation Regulation; Upper Mississippi River, Hannibal, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hannibal Railroad Drawbridge across the Upper Mississippi River, mile 309.9, at Hannibal, Missouri. The deviation is necessary to allow the replacement of eight wire rope lifting cables that operate the lift span. This deviation allows the bridge to remain in the closed position while the lift cables are replaced.

DATES: This deviation is effective from 9 a.m. to 3 p.m. on or about June 5, June 7, June 12 and June 14, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0378 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0378 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 rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard telephone 314–269–2378, email *Eric.Washburn@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 Norfolk Southern Corporation requested a temporary deviation for the Hannibal Railroad Drawbridge, across the Upper Mississippi River, mile 309.9, at Hannibal, Missouri to remain in the closed-to-navigation position for four 6-hour individual closures while the eight wire rope lifting cables that operate the lift span are replaced. The closure period will be from 9 a.m. to 3 p.m. on or about June 5, June 7, June 12 and June 14, 2012.

Once the wire rope lifting cables are removed, the lift span will not be able to open, even for emergencies, until the replacement wire rope lifting cables are installed.

The Hannibal Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River. The Hannibal Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 21.1 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with the waterway users.

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

Dated: May 2, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–11538 Filed 5–14–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

Outbound International Mailings of Lithium Batteries and Other Dangerous Goods

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) part 136, to incorporate standards that prohibit the outbound international mailing of lithium batteries and devices containing lithium batteries.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Margaret Falwell at 202–268–2576.

SUPPLEMENTARY INFORMATION: The Postal Service is taking this action to bring its international mailing standards into compliance with international standards for the acceptance of dangerous goods in international mail.

International standards have recently been the subject of discussion by the International Civil Aviation Organization (ICAO) and the Universal Postal Union (UPU), and the Postal Service anticipates that on January 1, 2013, customers will be able to mail specific quantities of lithium batteries internationally, when the batteries are properly installed in the personal electronic devices they are intended to operate.

Until such time that a less restrictive policy can be implemented consistent with international standards, and in accordance with UPU Convention, lithium batteries are not permitted in international mail. The UPU Convention and regulations are consistent with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Technical Instructions). The Technical Instructions concerning the Transport of Dangerous Goods by Post do not permit ''dangerous goods'' as defined by the ICAO Technical Instructions in international mail. Currently, the only exceptions to this general prohibition relate to certain medical materials, infectious substances and radioactive materials when they are treated in accordance with additional requirements listed in the Technical Instructions. Lithium-ion cells and lithium metal batteries are listed in the Technical Instructions as Class 9 Miscellaneous Dangerous Goods. The prohibition on mailing lithium batteries and cells internationally also applies to mail sent by commercial air transportation to and from an APO, FPO, or DPO location.

This final rule describes the prohibitions established for mailpieces containing lithium metal or lithium-ion cells or batteries and applies regardless of quantity, size, watt hours, and whether the cells or batteries are packed in equipment, with equipment, or without equipment.

The Postal Service will also make parallel changes to other USPS publications that make reference to the mailing lithium batteries such as Publication 52, *Hazardous, Restricted, and Perishable Mail.*

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM),

which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended to read as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

***Mailing Standards of the United States Postal Service,* International Mail Manual (IMM)**

1 International Mail Services

* * * * *

130 Mailability

* * * * *

136 Nonmailable Goods

136.1 Dangerous Goods

[Revise the introduction to 136.1 and insert a new item i to read as follows:] Except as provided in IMM 135, ''dangerous goods'' as defined by the United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations, are prohibited in outbound international mail, regardless of mail class. Some examples of dangerous goods include:

* * * * *

i. Primary lithium metal or lithium alloy (non-rechargeable) cells and batteries, or secondary lithium-ion cells and batteries (rechargeable), regardless of quantity, size, watt hours, and regardless of whether the cells or batteries are packed in the equipment they are intended to operate, with the equipment they are intended to operate, or without equipment (individual batteries). This standard applies to all APO, FPO, or DPO locations.

Additional information can be obtained at *http://www.unece.org/trans/danger/danger.html.*

* * * * *

We will publish an amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–11483 Filed 5–14–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0642; FRL–9671–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Control of Nitrogen Oxides Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision amends Delaware's regulation that establishes controls for nitrogen oxides (NO_X) emissions from industrial boilers and process heaters at petroleum refineries. The revision is a NO_X emission limit for the fluid catalytic cracking unit carbon monoxide (CO) boiler at the Delaware City Refinery to provide for a facility-wide NOx emission cap compliance alternative. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on June 14, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0642. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through *www.regulations.gov* or in hard copy for public inspection 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2012 (77 FR 3211), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of amendments to Delaware's regulation which establishes controls for NO_X emissions from industrial boilers and process heaters at petroleum refineries. The formal SIP revision was submitted by Delaware on April 27, 2011. Additional background information behind this SIP revision is discussed in detail in the NPR.

II. Summary of SIP Revision

This SIP revision consists of providing a facility-wide emissions cap compliance alternative limit for the fluid catalytic cracking unit CO boiler at the Delaware City Refinery. This NO_X emissions cap starts out at 2,225 tons per year (tpy) and gradually decreases to 1,650 tpy. Additional information regarding the details of the SIP revision is discussed in the NPR. The rationale for EPA's proposed action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the Delaware SIP revision to amend the regulation that establishes controls for NO_X emissions from industrial boilers and process heaters at petroleum refineries. This regulation establishes a facility-wide NO_X emission cap compliance alternative for the fluid catalytic cracking unit CO boiler at the Delaware City Refinery.

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 16, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to amendments of Delaware's regulation regarding the control of NO_X emissions from industrial boilers and process heaters at petroleum refineries 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 2, 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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1142, section 2.0 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1142 Specific Emission Control Requirements				
*	*	*	*	*
Section 2.0	Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries.	4/11/11	5/15/12 [*Insert page number where the document begins*].	Addition of a NO_X emissions cap compliance alternative for the Delaware City Refinery.
*	*	*	*	*

* * * * *

[FR Doc. 2012–11656 Filed 5–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0292; FRL–9671–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permit To Construct Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to sources which are exempt from preconstruction permitting requirements under Maryland's New Source Review (NSR) program. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on July 16, 2012 without further notice, unless EPA receives adverse written comment by June 14, 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–2012–0292 by one of the following methods:

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

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0292, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, 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–2012–0292. 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: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On December 1, 2003, the Maryland Department of the Environment (MDE) submitted a formal revision (#03–11) to its State Implementation Plan (SIP). The SIP revision consists of two amendments: (A) the repeal of the exemption from permitting requirements for equipment burning solid fuel at a rate of 350,000 British thermal units per hour (Btu/hr) or less, and (B) the reduction of the cutoff level of the exemption for stationary internal combustion engines.

II. Summary of SIP Revision

Regulation .10 under COMAR 26.11.02 (Permits, Approvals, and Registration) contains exemptions for certain sources that are not required to obtain approvals or permits to construct prior to the construction or modification of the affected source. Specifically, COMAR 26.11.02.10D (as it currently exists in the Maryland SIP) provides such an exemption for fuel burning equipment using solid fuel with a heat input rate of less than 350,000 Btu/hr. This exemption led to the mistaken belief on the part of some owners/operators of such sources that this equipment was not subject to any air quality related requirements. However, the exemption from permitting requirements does not provide an exemption from other applicable air pollution requirements. No such relief exists in MDE's regulations. Fuel burning equipment must meet all applicable requirements and emissions limitations, regardless of size. In order to remove any ambiguity, COMAR 26.11.02.10D was repealed.

COMAR 26.11.02.10E provides a similar exemption for stationary combustion engines under 1,000 brake horsepower (bhp) operating under 2,000 hours per year, as well as all stationary internal combustion engines under 500 bhp. Regulation .10E was revised to remove the exemption for the larger engines, and now only applies to engines with an output less than 500 bhp, and which are not used to generate electricity for sale or load shaving (*See* COMAR 26.11.02.10E). The lower threshold allows MDE to establish permit conditions on smaller engines, and thus lower the equipment's potential to emit.

The revisions to COMAR 26.11.02.10D and .10E were effective in Maryland on November 24, 2003. The MDE submitted them to EPA for approval into the SIP on December 1, 2003. EPA's review of the SIP submittal finds the revisions consistent with CAA requirements.

III. Final Action

EPA is approving MDE's December 1, 2003 SIP submittal. 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 16, 2012 without further notice unless EPA receives adverse comment by June 14, 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 (Public Law 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 16, 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 pertaining to permit to construct exemptions under Maryland's NSR program may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

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

Dated: May 2, 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 (c) is amended by revising the entry for COMAR 26.11.02.10 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/Subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*	*	*
26.11.02 Permits, Approvals, and Registration				

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/Subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
* *	*	*	*	* *
26.11.02.10	Sources Exempt from Permits to Construct and Approvals.	11/24/03	5–15–12 [*Insert page number where the document begins*].	Removed .10D; revised .10E.
* *	*	*	*	* *

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[FR Doc. 2012–11626 Filed 5–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0253; FRL–9346–8]

RIN 2070–ZA16

Propylene Oxide; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing the tree nut crop group tolerance and separate tolerances on pistachio and pine nuts for both the fumigant propylene oxide and the reaction product from the use of propylene oxide, known as propylene chlorohydrin, to cover all registered uses on raw and processed nuts. Also, in accordance with current Agency practice, EPA is making minor revisions to tolerance expressions for propylene oxide and propylene chlorohydrin.

DATES: This regulation is effective May 15, 2012. Objections and requests for hearings must be received on or before July 16, 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–2005–0253. 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: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://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 the Federal Food, Drug, and Cosmetic Act (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–2005–0253 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 16, 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–2005–0253, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
- *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. Background

A. What action is the agency taking?

In the **Federal Register** of December 21, 2011 (76 FR 79146) (FRL–9329–8), EPA issued a proposed rule to establish specific tolerances, and make minor revisions to tolerance expressions and specific tolerance nomenclatures for the fumigant propylene oxide and the reaction product from the use of propylene oxide, known as propylene chlorohydrin. Also, the proposed rule of December 21, 2011 provided a 60-day comment period which invited public comment for consideration.

In this final rule, in order to cover all registered uses on raw and processed nuts, EPA is establishing in 40 CFR 180.491(a)(1) tolerances for propylene oxide at 300 ppm on nut, pine; nut, tree, group 14; and pistachio; and in 40 CFR 180.491(a)(2) tolerances for propylene chlorohydrin at 10.0 ppm on nut, pine; nut, tree, group 14; and pistachio. Also, in accordance with current Agency practice, EPA is making minor revisions to tolerance expressions for propylene oxide and propylene chlorohydrin.

However, the proposed tolerance terminology changes in 40 CFR 180.491(a)(1) and (a)(2) for crop group 19 (each from dried to dried leaves) would have excluded a variety of herbs and spices in crop group 19 that are not leaves, such as pepper or poppy. Therefore, EPA has decided not to amend the current tolerance terminologies in 40 CFR 180.491(a)(1) for ''herbs and spices, group 19, dried'' and in 40 CFR 180.491(a)(2) for ''herbs and spices, group 19, dried, except basil.''

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made in the Reregistration Eligibility Decision (RED) for propylene oxide to establish a tree nut crop group to address the lack of a tolerance for registered uses on raw nuts and conform the existing tolerance on ''nutmeat, processed, except peanuts'' with current Agency commodity terms. As part of the RED and tolerance reassessment processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Federal Food, Drug, and Cosmetic Act (FFDCA). The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each RED. REDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or 703–605–6000; Internet at *http://www.ntis.gov.* Electronic copies of REDs are available on the Internet at *http://www.regulations.gov* and *http://www.epa.gov/pesticides/reregistration/status.htm.*

In response to the proposed rule published in the **Federal Register** of December 21, 2011 (76 FR 79146), EPA received one comment during the 60-day public comment period, as follows:

Comment by private citizen. The commenter expressed concerns about pesticides on food and that only zero tolerance levels should be acceptable.

Agency response. The commenter did not take issue with the Agency's specific conclusions to establish certain tolerances for propylene oxide and propylene chlorohydrin. Also, the commenter did not refer to any specific studies which pertain to those conclusions. The Agency has not changed its previous determination that the tolerances in question are safe and is therefore not making any changes in response to this comment.

B. What is the agency's authority for taking this action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing tolerances to implement the tolerance recommendations made in the RED for propylene oxide.

C. When do these actions become effective?

As stated in the **DATES** section, this regulation is effective on the date of publication in the **Federal Register**. In this final rule, EPA is establishing specific tolerances and making minor revisions to tolerance expressions for propylene oxide and propylene chlorohydrin.

III. 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 United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for propylene oxide or propylene chlorohydrin.

IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted this type of action (i.e., establishment of a tolerance) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). 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.,* or 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). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to

the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, or expansion of exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis for tolerance establishments and modifications was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis and available information concerning the pesticide involved in this final rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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 27, 2012.

Steven Bradbury,

Director, 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 180.491 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fumigant propylene oxide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only propylene oxide, when used as a postharvest fumigant, in or on the commodity.

Commodity	Parts per million
Cacao bean, cocoa powder	200
Cacao bean, dried bean	200
Fig	3.0
Garlic, dried	300
Grape, raisin	1.0
Herbs and spices, group 19, dried	300
Nut, pine	300
Nut, tree, group 14	300
Nutmeat, processed, except peanuts	300
Onion, dried	300
Pistachio	300
Plum, prune, dried	2.0

(2) Tolerances are established for residues of the reaction product, propylene chlorohydrin, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of propylene chlorohydrin (1-chloro-2-propanol), and its isomer 2-chloro-1-propanol, calculated as the stoichiometric equivalent of propylene chlorohydrin (1-chloro-2-propanol), that results from the use of propylene oxide as a postharvest fumigant, in or on the commodity.

Commodity	Parts per million
Basil, dried leaves	6000
Cacao bean, cocoa powder	20.0
Cacao bean, dried bean	20.0
Fig	3.0
Garlic, dried	6000
Grape, raisin	4.0
Herbs and spices, group 19, dried, except basil	1500
Nut, pine	10.0
Nut, tree, group 14	10.0
Nutmeat, processed, except peanuts	10.0
Onion, dried	6000
Pistachio	10.0
Plum, prune, dried	2.0

* * * * *

[FR Doc. 2012–11632 Filed 5–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XC006

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit for the June through August 2012 time period, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and to Highly Migratory Species Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective June 1, 2012, through August 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations.

The 2012 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2012. The General category season, which was open January 1 through January 22, 2012, resumes on June 1, 2012, and continues through December 31, 2012. Unless changed, the General category daily retention limit would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota.

For the 2011 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for the January subquota period (75 FR 79309, December 20, 2010); three large medium or giant BFT for June through November 5 (76 FR 32086, June 3, 2011; and 76 FR 52886, August 24, 2011); and two large medium or giant BFT for November 6 through December 31, 2011 (76 FR 69137, November 8, 2011). The November 2011 adjustment was in conjunction with an inseason quota transfer of 50 mt from the Reserve category to the General category. NMFS adjusted the limit for the 2012 January subquota period from the default level of one large medium or giant BFT to two large medium or giant BFT (76 FR 76900, December 9, 2011). That retention limit was effective from January 1, 2012, until January 22, 2012, when NMFS closed the fishery because the January subquota had been met (77 FR 3637, January 25, 2012).

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the baseline 2012 General category share is 435.1 mt, and the baseline June through August General category subquota is 217.6 mt. Although NMFS has published proposed quota specifications for 2012 (77 FR 15712, March 16, 2012), the baseline General category subquota as codified would not be changed. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the June–August 2012 General category fishery. These considerations include, but are not limited to, the following. Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers, continues to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full June-August subquota without exceeding it based upon the Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems''. Migration of commercial-size BFT to the fishing grounds off the northeast U.S. coast is anticipated by early June. Lastly, based on General category landings rates during the June through August time-period over the last several years, it is highly unlikely that the June through August subquota will be filled

with the default daily retention limit of one BFT per vessel. During the June–August 2011 period, under a three-fish limit, BFT landings were approximately 140 mt. However, based on the pattern exhibited over the last few years, NMFS anticipates an increase in both landings of BFT (in number) and average fish weight for the June–August period in 2012, such that a three-fish limit may result in higher landings than in previous years.

A lower limit could result in unused quota being added to the later portion of the General category season (*i.e.,* rolling forward to the subsequent subuota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next. Increasing the daily limit from three to four or five fish may risk exceeding the available June–August subquota.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip, effective June 1, 2012, through August 31, 2012.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register** In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2012, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 9, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–11744 Filed 5–14–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120207106–2428–02]

RIN 0648–BB85 and 0648–BB27

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2012 Pacific whiting fishery under the authority of the Pacific Whiting Act of 2006, the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule establishes: The tribal allocation of 48,556 metric tons of Pacific whiting for 2012; provisions associated with the reapportionment of unused tribal whiting to the non-tribal fishery in 2012; and final allocations of Pacific whiting to the non-tribal sector for 2012.

DATES: Effective May 11, 2012.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and email: *kevin.duffy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at

http://www.gpoaccess.gov/fr/index.html. Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Copies of the final environmental impact statement (FEIS) for the 2011–2012 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Background

This rule announces the Total Allowable Catch (TAC) for whiting. This is the first year that the TAC for Pacific whiting is being determined under the terms of the Pacific Hake/Whiting Agreement with Canada (the Agreement) and the Pacific Whiting Act of 2006 (the Whiting Act), 16 U.S.C. 7001–7010. The Agreement and the Act establish bilateral bodies to implement the terms of the Agreement, each with various responsibilities, including: The Joint Management Committee (JMC), which is the decision-making body; the Joint Technical Committee (JTC), which conducts the stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC (The Agreement, Art. II–IV; 16 U.S.C. 7001–7005). The Agreement establishes a default harvest policy (F–40 percent with a 40/10 adjustment) and allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The bilateral JMC is primarily responsible for developing a TAC recommendation to the Parties (United States and Canada). The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

The JTC met three times over the last six months to prepare the stock assessment for 2012. Although the stock assessment and review was carried out with very little controversy, the 2011 acoustic survey was the topic of considerable discussion, particularly by the advisory panel members. The acoustic survey includes an index of abundance and age-compositions from 1995, 1998, 2001, 2003, 2005, 2007, 2009, and 2011. The 2011 index was the lowest of the time series, and had the second highest coefficient of variation. The stock assessment was updated in several ways this year (e.g. new version of the Stock Synthesis model, updating the historical data, updating of the 2010 and 2011 age compositions) but these did not result in a noticeable change from the prior assessment. However, adding the 2011 acoustic survey data resulted in a significant decrease in estimated current abundance from the prior assessment.

The SRG met in Seattle, Washington, from February 21–24, 2012, to review the draft stock assessment document prepared by the JTC. The SRG concluded that the current modeling approach, which implements a relatively simple base case in the Stock Synthesis model and sensitivity runs in another model, was pragmatic and conservative and resulted in a base-case assessment model whose sensitivities were thoroughly examined. The SRG concurred with the JTC perspective that the 2011 survey estimate of stock biomass is considerably lower than the 2009 survey estimate, which results in a lower estimate of terminal stock abundance from the 2012 assessment, along with correspondingly higher estimates of recent exploitation rates. The estimate of spawning stock abundance at the start of 2012 is at 33 percent of the unfished equilibrium level, which is near the long-term average expected when fishing at the default harvest rate but below the management target of 40 percent of the unfished equilibrium level. The SRG suggested precaution in setting the 2012 TAC for Pacific whiting.

The assessment from the JTC indicated that the default harvest rate could result in a stable or increasing biomass in the short term. Specifically, the assessment revealed that application of the default harvest rate for this year's fishery would result in a 50 percent probability that the median estimate of spawning stock abundance at the start of 2013 would be 34 percent of the unfished equilibrium level, a slight increase from 2012.

At its March 14–15, 2012 meeting, the JMC reviewed the advice of the JTC, SRG, and AP and agreed on a TAC recommendation for transmittal to the Parties. The JMC recommended reducing the TAC but allowing carryover such that the projected total mortality would be equal to the default harvest rate, which is inherently precautionary because of the 40–10 adjustment. This recommendation for an adjusted United States TAC of 186,037 metric tons (mt) for 2012 is consistent with the best available science, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the Parties on March 23, 2012. NMFS, under delegation of authority from the Secretary of Commerce, approved the TAC recommendation of 186,037 mt for U.S. fisheries on April 18, 2012.

Tribal Fishery Allocation

This final rule establishes the tribal allocation of Pacific whiting for 2012. NMFS issued a proposed rule for the allocation and management of the 2012 tribal Pacific whiting fishery and reapportionment provisions on February 22, 2012 (77 FR 10466). This action finalizes the allocation and management measures.

Since 1996, NMFS has been allocating a portion of the U.S. OY (now TAC) of Pacific whiting to the tribal fishery using the process established in 50 CFR 660.50(d)(1). The tribal allocation is subtracted from the total U.S. Pacific whiting TAC and the remainder, less a deduction of 2,000 mt for research and bycatch in non-groundfish fisheries, is allocated to the non-tribal sectors. The tribal Pacific whiting fishery is managed separately from the non-tribal whiting fishery, and is not governed by the limited entry or open access regulations or allocations.

The proposed rule stated that at the time it was published, only the Makah Tribe had expressed an intent to participate in the 2012 fishery and requested 17.5% of the U.S. TAC. Thus, the proposed rule described the tribal allocation as 17.5% of the range within which the TAC would likely fall (16,970 to 50,908 mt, based on a range for the TAC of 96,969 mt to 290,903 mt). During the comment period on the proposed rule, the Quileute Tribe informed NMFS of its intent to participate in the 2012 fishery, and requested 16,000 mt to facilitate the participation of two Quileute boats in the fishery.

The tribal allocation in this final rule is 48,556 mt (17.5 percent of the U.S. TAC or 32,556 mt, plus 16,000 mt), which accounts for both tribal requests. While this amount constitutes a larger proportion of the U.S. TAC than was anticipated in the proposed rule (26% rather than 17.5%), it falls within the range of potential tribal allocations described in that rule. Accounting for both tribal requests in the tribal allocation is necessary to allow for the exercise of the treaty right. While the amount of the treaty right has not yet been determined, and new scientific

information or discussions with the relevant parties may change this outcome, the best available scientific information to date suggests that 26% of the U.S. TAC is within the likely range of potential treaty right amounts.

The Quileute Tribe submitted its letter to NMFS regarding the 2012 whiting fishery to the Council, which included the letter in the briefing book for its April 2012 meeting. This information was therefore available to the public, and there was some discussion of the letter during Council deliberations at the April meeting.

In order to ensure that this rule is published before the start of the whiting fishery, and to allow for full exercise of the treaty fishing right, NMFS is publishing the tribal allocation as a final rule.

As with prior tribal whiting allocations, this final rule is not intended to establish any precedent for future Pacific whiting seasons, or for the long-term tribal allocation of whiting. Rather, this rule adopts an interim allocation, pending the determination of the long-term treaty amount. That amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and States of Washington and Oregon. This process, begun in 2008, is continuing.

Reapportionment

This final rule establishes regulatory provisions allowing NMFS to reapportion whiting from the tribal allocation to the non-tribal sectors if it appears that the tribal fishery will not use its full allocation. These basic provisions are not changed from the proposed rule, and are discussed in more detail in the preamble to that rule; as discussed below, this rule modifies the reapportionment procedures in consideration of comments received.

Non-Tribal Allocations

The 2012 fishery harvest guideline (HG) for Pacific whiting is 135,481 mt. This amount was determined by deducting from the total U.S. TAC of 186,037 mt, the 48,556 mt tribal allocation, along with 2,000 mt for research catch and bycatch in non-groundfish fisheries. Regulations at 50 CFR 660.55(i)(2) allocate the fishery HG among the non-tribal catcher/processor, mothership, and shorebased sectors of the Pacific whiting fishery. The catcher/processor sector is allocated 34 percent (46,064 mt for 2012), the mothership sector is allocated 24 percent (32,515 mt for 2012), and the shorebased sector is allocated 42 percent (56,902 mt for 2012). The fishery south of 42° N. lat. may not take more than 2,845 mt (5 percent of the shorebased allocation) prior to the start of the primary Pacific whiting season north of 42° N. lat.

The 2012 allocations of Pacific Ocean perch, canary rockfish, darkblotched rockfish, and widow rockfish to the whiting fishery were published in a final rule on December 13, 2011 (76 FR 77415). The allocations to the Pacific whiting fishery for these species are described in § 660.55(c)(1)(i) and in Table 1b, subpart C.

Comments and Responses

On February 22, 2012, NMFS issued a proposed rule for the allocation and management of the 2012 tribal Pacific whiting fishery and reapportionment of unused Pacific whiting from the tribal to the non-tribal fishery. The comment period on the proposed rule closed on March 23, 2012. During the comment period, NMFS received ten letters of comment. The U.S. Department of the Interior submitted a letter of ''no comment'' associated with their review of the proposed rule. Letters were received from the Quileute Tribe, three commercial fishing organizations, one association that represents Native Americans, and two individuals. Comments received on the proposed rule for the 2012 tribal Pacific whiting fishery are addressed below.

The Quileute Tribe

Comment 1: The tribal allocation of 17.5 percent of the TAC is inappropriate, because it is based upon the erroneous assumption that only the Makah Tribe will participate in the 2012 fishery.

Response: The final rule increases the tribal allocation to 26% of the final TAC, or 48,556 mt, to include an allocation to both the Makah and the Quileute Tribes. In the proposed rule on the issue of tribal allocation, NMFS noted that prior to publication of the regulations for the 2011–2012 harvest specification biennial cycle [in the fall of 2010], both the Quileute and Makah Tribes indicated they intended to fish in 2012. Leading up to publication of the proposed rule, NMFS also sought input from the Makah and Quileute Tribes about their intent for 2012, but only the Makah Tribe responded. Thus, NMFS proposed an allocation for the Makah Tribe of 17.5% of the TAC, or between 16,970 mt and 50,908 mt, depending on the final TAC. In response to the proposed rule, the Quileute Tribe commented that they planned to participate in the fishery in 2012, seeking an allocation of 16,000 mt. NMFS has taken this input into account in the final determination of an allocation of tribal whiting for 2012 based on a final TAC of 186,037 mt and the requests from the Makah Tribe of 17.5 percent of the TAC (32,556 mt) and the Quileute Tribe of 16,000 mt (8.5% of the TAC). The combined allocation to the Makah and Quileute Tribes, given the 2012 U.S. TAC, is 48,556 mt, within the range of amounts considered in the proposed rule.

Comment 2: Two groups commented that the proposed reapportionment of whiting from the tribal sector to the non-tribal sectors is an unacceptable abrogation of treaty rights. One states that ''Whiting are not like salmon; they live to swim another year. There is no reason why these fish cannot remain ''undepleted'' to live and spawn another day, to everyone's benefit.''

Response: NMFS does not agree with the conclusion that reapportionment is an abrogation of treaty rights. The tribal allocation under this rule allows full opportunity for the tribes to harvest whiting in the amounts requested, which as described above are likely within the total amount of the treaty right based on the information currently available. The reapportionment provision is structured to ensure that reapportionment would only take place if the tribes will not be catching their full allocation of whiting in 2012, based on discussions with all of the coastal tribes. Should it appear that the tribes might catch their full allocation, reapportionment would not take place. Thus, the reapportionment provisions are not intended to infringe on the tribes' fishing rights.

From the late 1990's through 2010, NMFS' regulatory authority to reapportion Pacific whiting from the tribal to the non-tribal fishery existed under 50 CFR 660.323(c), and NMFS exercised this authority in coordination with the coastal tribes to the extent practicable. During the development of Amendment 20 to the Pacific Coast Groundfish Management Plan for the trawl rationalization program, the Pacific Fishery Management Council (Council) selected an option that precluded any rollover or reapportionment of Pacific whiting between the non-tribal sectors as well as between the tribal and non-tribal fishery, so no mechanism was in place in 2011 for reapportionment of unused whiting. However, through further Council consideration and discussion with NMFS, the Council encouraged NMFS to reinstate regulatory provisions authorizing the reapportionment of whiting from the tribal to the non-tribal sector for 2012 and beyond. Through this rulemaking, NMFS is reinstating the

regulatory authority to reapportion Pacific whiting in order to promote full utilization of the resource.

While whiting clearly have a different life history than salmon, the statement that whiting ''live to swim another day,'' suggesting that fish not caught in a given year are available to the fishery in subsequent years, is not fully supported by the available scientific information regarding whiting. The population of Pacific whiting in any year is made up of multiple year classes. However, by age-5, the loss of animals to natural mortality outweighs the effects of individual fish growth on the overall biomass because as a cohort ages the fish suffer the same natural mortality rate of 20 percent per year, but are growing at a slower rate per year. The harvestable amount of whiting fluctuates significantly from one year to the next, as the difference between the 2011 whiting OY and the 2012 whiting TAC demonstrates. Thus fish not caught in a given year do not necessarily contribute to the fishery in subsequent years.

Comment 3: Two procedural aspects of the reapportionment provisions are inappropriate. First, by only engaging participating tribes in discussions regarding reapportionment, NMFS permits the tribal share to be given to non-tribal entities without consent of all tribes with rights to whiting. Second, to the extent reapportionment is required in the formal rule, it occurs too early in the season. A substantial amount of fishing takes place after September 1, making it difficult if not impossible to project the tribal harvest for the remainder of the season as of that date.

Response: NMFS will coordinate and consult with the coastal tribes, and will attempt to reach consensus before any reapportionment decisions are made in 2012. However, absent consensus, the NMFS Regional Administrator will make reapportionment decisions based on information obtained through discussions with the tribes. Relative to timing of any reapportionment decisions, this rule does not establishing a single date by which decisions to reapportion fish will be made. Rather, the rule contemplates that the Regional Administrator will be contacting the tribes in the September timeframe to assess tribal progress on Pacific whiting fishing activities and to obtain information on fishing plans for the remainder of the year. The rule does not require that the Regional Administrator make a decision to reapportion fish on September 15 or as soon as practical thereafter, but simply allows for such action should the available information indicate that the tribes will not use some portion of the tribal allocation by the end of the year. If the available information as of September 15 does not indicate whether any portion of the allocation will remain unused at the end of the year, reapportionment would not occur at that time.

Comment 4: The representation that the Council recommended reapportionment of unharvested tribal shares to the non-tribal shares is incorrect.

Response: Although the Council did not make a formal recommendation in the form of a motion, NMFS believes that the Council clearly articulated the desire to reinstate reapportionment provisions for Pacific whiting allocated to the tribes. In May 2011, the final rule publishing the Pacific whiting specifications indicated that the Council adopted a motion during the Amendment 20 (trawl rationalization) process that removed provisions that allowed rollover of whiting between sectors. NMFS interpreted the motion to include the tribal fishery. At that time NMFS recommended that revisions to the regulations should be dealt with through the Council process and a notice and comment rulemaking.

In November 2011 the Council further discussed reapportionment of Pacific whiting allocated to the tribes under Agenda E.2. At that time the Council and its advisory bodies identified the importance of reinstating the reapportionment provision. At this same meeting NMFS indicated that the agency's independent authority under the Magnuson-Stevens Act would be used for the development of a rulemaking that would reinstate reapportionment provisions similar to those that were in place prior to the implementation of PCGFMP Amendments 20 and 21. The action by NMFS was in response to comments received on the Pacific whiting harvest specifications in 2011 (76 FR 28897; May 19, 2011) and input from the Council and its advisory body on this issue at the November 2011 meeting and earlier meetings. NMFS believes that the Council record supports this action (See April, 2011 Agenda item I.6.B; June, 2011 Agenda Item E.6.b; September, 2011 Agenda Item G.8.b; and, November, 2011 Agenda item E.2.f).

Without reapportionment provisions there is a high likelihood that whiting harvest will be foregone which is inconsistent with National Standard 1 of the Magnuson-Stevens Act. Having the ability to reapportion the Pacific whiting allocated to the tribes allows for attainment of the Pacific whiting OY.

Comment 5: Reinstating reapportionment is in furtherance of the monetary concerns of non-tribal fishers, particularly as the rule does not provide for reapportionment from the non-tribal fishery to the tribal allocation.

Response: Given the recent history of full utilization by the non-tribal sectors and the tribal sector not using its full allocation, NMFS believes that a one-way reapportionment provision for 2012 is appropriate. NMFS does recognize that there may be years in which the non-tribal sectors do not use their full allocation, and will continue to explore, through discussion with the tribes, states, and non-tribal sectors, the possibility of a two-way reapportionment mechanism for 2013.

NMFS manages groundfish fisheries under the guidance of the PCGMP and the Magnuson-Stevens Fishery Conservation and Management Act National Standards. Obtaining the optimum yield from the fishery is an important consideration in the development of fishing regulations as described in the Magnuson Stevens Act, National Standard Guidelines, and PCGFMP. National Standard 1 states that ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The PCGFMP Goals and objectives include Management Goal 2—Economics, which is to maximize the value of the groundfish resource as a whole; and, Goal 3—Utilization, which is to achieve the maximum biological yield of the overall groundfish fishery, promote year-round availability of quality seafood to the consumer, and promote recreational fishing opportunities. NMFS also recognizes that fishing regulations must be consistent with the tribes' treaty fishing rights. NMFS believes that this action allows for the full exercise of the treaty fishing right while also being consistent with the National Standards expressed in the Magnuson Act.

Comment 6: It is not appropriate to regulate tribal fisheries in section 660.131, because tribal fisheries are regulated by a different process, as detailed in 660.50. This rule mixes governance of the state share of whiting with the tribal share, which is contrary to 50 CFR 660.50, where tribal fisheries are regulated under a different process from the non-tribal fisheries. An exchange of state/tribal shares must contemplate a two-way process.

Response: NMFS agrees that the management of tribal fisheries, regulated under 50 CFR 660.50, is separate and distinct from management of the non-tribal fisheries. Thus, the regulations pertaining to the tribal

fisheries are different from those pertaining to the non-tribal fisheries. However, the location of the reapportionment provisions in the regulations does not affect this outcome. The concept of a two-way reapportionment process is addressed in response to Comment 5.

Comment 7: NMFS did not consult with the Quileute Tribe regarding its proposal to reinstate reapportionment provisions.

Response: NMFS acknowledges that formal consultation, as envisioned by the Quileute Tribal Council, did not take place regarding the issue of reapportionment for the 2012 fishery. NMFS has met with Quileute Tribe representatives on a number of occasions to discuss the whiting fishery, including reapportionment provisions. NMFS staff specifically discussed the proposed rule with Quileute representatives prior to issuing this final rule. NMFS plans to offer formal consultation, as envisioned by the Quileute Tribal Council, over the course of the next year, and prior to the Pacific whiting fishery in 2013, in order to make progress on these issues, consistent with the provisions of 50 CFR 660.50.

Comment 8: The Tribe submitted comments on the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) prepared for this proposed rule. They state that there are a number of issues with statements, analysis and conclusions of the document which require a more complete dialogue, and they requested to extend the comment period associated with this document for an additional 30 days. Specific issues included references for Executive Order 12866, especially in relationship to the phrases ''significant regulatory action'' and ''test for no significance'', how ex-vessel value is calculated, the extent of description of Treaty Fisheries, and a request for an extension of the comment period.

Response: Executive Order 12866 can be found at 58 FR 51735 October 4, 1993 or at *http://www.plainlanguage.gov/populartopics/regulations/eo12866.pdf.* Page 51738 contains the standards for a ''significant regulatory action.'' While the Executive Order defines the standards for a significant regulatory action, NMFS Economic Guidelines provide the information, analyses and criteria by which an action is determined significant under the Executive Order or under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Guidelines can be found at: *http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf.*

Ex-vessel value is generally defined as the payments that fishermen receive for the fish, shellfish, and other aquatic plants and animals when landed at the dock. For the analysis, various levels of whiting harvests were converted into ex-vessel values using the ex-vessel prices developed by Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) database. (See for example: *http://pacfin.psmfc.org/pacfin_pub/data_rpts_pub/pfmc_rpts_pub/r058Wtwl_p11.txt*). These ex-vessel prices are based on Washington, Oregon, and California state fish tickets or fish receiving tickets as organized and summarized in PacFIN. For example, the Washington State administrative code describes these tickets at WAC 220–69–234 (Description of treaty Indian fish receiving ticket) and WAC 220–69–230 (Nontreaty fish receiving tickets).

In consideration of the extent of description of Treaty Fisheries, Quileute were not consulted regarding the information included in this report. The processes and guidelines that underlie the development of analyses to support Executive Order 12866 and the RFA do not require NMFS to consult directly with each affected party. Information used for the analysis were based on Council documents or on data reported in the Pacific States Marine Fisheries Commission PacFIN database. One of the purposes of the notice and comment processes with federal rulemaking is to provide the public, including affected entities, an opportunity to review regulations and supporting analysis. Reviewers are welcome to submit additional information relevant to the analysis. To the extent the Quileute have provided additional information, this is discussed in these responses to comments.

NMFS is not extending the public comment period. NMFS provided a 30-day comment period and promptly provided a copy of the RIR/IRFA upon request. Extending the comment period would cause a delay in the start of the fishery (May 15, 2012) which would cause hardship on the non-tribal fishery and possibly affect the ability to harvest the allocations. In the future, NMFS will list the preparer and post the economic analyses on its Web sites along with the regulations.

Comment 9: The Tribe commented that the IRFA analysis overestimated the amount of unfished tribal share because it neglected to recognize that a certain portion of the unfished tribal share would be carried over into 2012. ''The economic analysis in the report (page 6) states that the unfished tribal share of 54,000 mt had an ex-vessel value of $6 million. According to our calculations, with a TAC of 290,000 mt, of the 54,000 mt of fish left unharvested, 43,500 mt are subject to the carryover provisions in the US/Canada Hake Treaty. Utilizing numbers provided in the report (approximately $111 per mt), these carryover fish have a value of $4.8 million which could be realized in the 2012 fishery.''

Response: Commenter is referring to the following analysis: ''Unlike 2010, for 2011, NMFS was not authorized to reapportion unharvested tribal whiting to the non-tribal sectors. Tribal harvests as of October 7, 2011 were about 19 percent of the 66,908 mt allocation indicating that about 54,000 tons of the tribal allocation would go unfished. This rulemaking would reinstate the regulatory authority to reapportion whiting from the tribal set-aside to the non-tribal fishery. If NMFS was authorized in 2011 to reapportion half or more of the 54,000 mt unfished tribal allocation, the ex-vessel revenues could have increased by as much as $6.0 million.''

Commenter is also referring to the following provision of the Pacific whiting treaty:

> ''If, in any year, a Party's catch is less than its individual TAC, an amount equal to the shortfall shall be added to its individual TAC in the following year, unless otherwise recommended by the JMC. Adjustments under this sub-paragraph shall in no case exceed 15 percent of a Party's unadjusted individual TAC for the year in which the shortfall occurred.''

Such an adjustment was made for the 2012 fishery under the Treaty:

> ''Consistent with Article II 3.(e) of the Agreement, and after reviewing the advice of the Joint Technical Committee (JTC), the Scientific Review Group (SRG), and the Advisory Panel (AP), the JMC recommends a coastwide TAC of 192,746 metric tons (mt). Based on Article III 2. of the Agreement, the Canadian share of the coastwide TAC is 26.12 percent, or 50,345 mt, and the U.S. share is 73.88 percent, or 142,401 mt. Consistent with Article II 5.(b) of the Agreement, an adjustment (carryover from 2011) of 15,427 mt is added to the Canadian share, for an adjusted Canadian TAC of 65,772. In the same manner, an adjustment of 43,636 mt is added to the United States share, for an adjusted United States TAC of 186,037 mt. This results in a coastwide adjusted TAC of 251,809 mt for 2012, which is consistent with the default harvest rate of F–40 percent with a 40/10 adjustment identified in Article III 1. of the Agreement'' (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/upload/2012-TAC-rec.pdf*).

NMFS believes that the estimate of unfished tribal Pacific whiting is valid

for use in describing the value to other fishermen in 2011 had NMFS been allowed to reallocate the unfished allocation to non-tribal fishermen. NMFS notes that under the Pacific whiting Treaty, a certain portion of the allocation could be carried over into the following year. Given the process to honor tribal requests at the beginning of the year and then later in the year reallocate unfished tribal allocations to non-tribal fishermen, then it is likely that the carryover would be harvested by non-tribal fishermen. As indicated by the commenter's estimate, in this instance, non-tribal fishermen would likely gain by $4.8 million in 2012, but there would have been a permanent loss to the fishery of $1.2 million ($6.0 million minus $4.8 million) if reapportionment were not allowed because carryover is limited to 15 percent.

The Fishing Organizations

Comment 10: One organization supports the proposed allocation of 17.5 percent of the U.S. TAC (32,556 mt) to the tribal fishery, because the Makah tribe has a long history of participation in the fishery, and all three organizations strongly support reinstatement of regulatory authority to reallocate whiting that will not be harvested in the tribal sector to the non-tribal sector, consistent with National Standards included in the Magnuson Stevens Fishery Conservation and Management Act. History shows a strong likelihood that the tribes will not harvest their entire allocation, and the non-tribal fisheries should be given the opportunity to harvest the unused portion.

Response: NMFS acknowledges the support for the reapportionment process as identified in the proposed rule.

Comment 11: One organization commented that the final rule should give NMFS authority to allocate the unused tribal share without being locked into the 42 percent shoreside, 34 percent catcher-processor, and 24 percent mothership formula that governs the initial whiting allocation to the three non-tribal sectors in order to maximize the likelihood of harvesting the reallocation.

Response: NMFS believes that the most appropriate way to proceed with reapportionment is the manner described in the proposed rule which reapportions to the non-tribal sectors in a manner consistent with the initial allocations of Pacific whiting to the non-tribal sectors, and proportionally in the circumstance where one or more of the non-tribal sectors is no longer participating in the fishery for the year when a reapportionment decision is made.

Comment 12: One organization did not see the need to postpone any reapportionment to September 15 or later, and if possible, would prefer that reapportionment be done by September 1. In addition, the organization recommended that determinations on subsequent reapportionments be made such that reapportionments occur no later than December 1.

Response: NMFS is committed to checking on the status of the whiting fishery, both tribal and non-tribal, as the season progresses through the summer of 2012, to inform any reapportionment decision with the best information available. However, NMFS does not agree that reapportionment should occur earlier than September 15. NMFS believes that adequate time must be allowed for tribal participants to demonstrate the intent and ability to harvest Pacific whiting allocated to them. Regarding the recommendation that any reapportionment occur no later than December 1, NMFS agrees that this deadline should be incorporated into the regulations. Reapportionment decisions after December 1 would be problematic for NMFS relative to management of the shoreside IFQ fishery as discussed under Comment 17. Any final decisions on reapportionment will be made by the Regional Administrator by December 1 each year.

Comment 13: One organization recommends the language on ''proportions'' in the proposed rule be made explicit to provide clarity as to what standard would apply for allocating any reapportioned tribal whiting. They suggest language changes in the proposed rule regulatory text that would make it more explicit that reapportioned tribal whiting is allocated to the non-tribal sector consistent with the 42 percent to the shorebased sector, 34 percent to the catcher/processor sector, and 24 percent to the mothership sector according to initial allocations.

Response: NMFS regulatory language ''in proportion to their initial allocation'' is sufficiently clear on this point, and therefore NMFS is not modifying the regulatory language. If all three non-tribal sectors are operating at the time that a reapportionment decision is made, then the proportional allocation as described by the organization would be in effect. However, if one or more of the non-tribal sectors has ceased fishing operations for the year at the time of reapportionment, either due to bycatch considerations or because of operational decisions to declare out of the fishery, then NMFS would maintain the responsibility to reapportion unused tribal whiting proportionally to those sectors that have not ceased fishing for the year. If NMFS were required to only reapportion according to initial allocations in all circumstance, this could result in the stranding of reapportioned fish with no ability for operating non-tribal sectors to access parts of the reapportioned Pacific whiting. This result would be inconsistent with full utilization of the resource as stated in the PCGMP, which is one of the reasons why NMFS is reinstating reapportionment provisions.

Comment 14: One organization seeks confirmation that reapportioned tribal whiting would not be allowed to rollover between the three directed fishery sectors, consistent with the rules regarding allocation of Pacific whiting in the trawl rationalization program.

Response: NMFS agrees with this interpretation of the regulations governing the trawl rationalization program.

Comment 15: For the shorebased IFQ program, one organization sought clarification on its understanding that the carryover limits in effect for the shorebased IFQ program would include any quota pounds transferred into vessel accounts as a result of any reapportionment of tribal whiting.

Response: NMFS does not agree that carryover would apply to quota pounds transferred into vessel accounts as a result of reapportionment at this time, therefore NMFS disagrees that carryover limits are relevant to reapportioned quota pounds. The application of carryover to reapportioned quota pounds has policy implications that have not been fully considered to date, potentially including impacts to the exercise of tribal treaty fishing rights. Further discussion and full consideration of these implications is needed by the Council, the JMC for the Pacific whiting Treaty, and between NMFS and the coastal tribes.

Comment 16: One organization seeks clarification on the effect of tribal reapportionments on the vessel limits in the shorebased IFQ program, stating its belief that reapportionments of Pacific whiting should not be subject to vessel limits. However, it recognizes that it may not be practicable to manage annual and tribal reapportionments separately in the database system, and therefore state its understanding that the vessel limit percentage currently in effect for the shorebased IFQ program would apply to the combined initial allocations and any reapportionment of tribal whiting.

Response: The organization is correct in its understanding that vessel limits in the shorebased IFQ program apply to combined initial allocations and any reapportionment of Pacific whiting.

Comment 17: One organization seeks clarification on its understanding regarding quota share accounts in the shorebased IFQ program and transfer functions with 30 day limits which seems to indicate that tribal reapportionments would occur no later than December 1, in order to allow for activation of the transfer function in quota share accounts to be activated at the beginning of the following year.

Response: After reviewing this comment, NMFS is modifying the regulations to specify that the latest date a tribal reapportionment would occur is December 1 in any year. Reapportionments after that date would be impracticable for NMFS, given the preparations needed to be undertaken for the upcoming year, and to the industry, given the limitations on the transfer procedures for the shorebased IFQ vessel accounts. There are two dates in the existing regulations that affect the reapportionment process for the shorebased IFQ program, September 1 and December 15. All QP or IBQ pounds from a QS account to a vessel account must be transferred to one or more vessel accounts by September 1 each year. Transfers of QP or IBQ pounds into and between vessel accounts is not allowed between December 15 and the end of the year. It is beyond the scope of the rulemaking to change the regulation relating to December 15. However, the Council is considering eliminating this requirement through future rulemaking. Once a reapportionment decision is made, it may take NMFS up to 3 business days to populate the quota share accounts with quota pounds. In anticipation of the possibility of more than one reapportionment, NMFS is modifying the current regulation that prevents quota pound transfers from a QS account to a vessel account as of September 1 to allow whiting quota pounds only (both reapportioned whiting and whiting that was initially allocated to the QS account) to be transferred from a QS account to a vessel account from January 1st through December 14 each year only if a reapportionment occurs. If a reapportionment of whiting does not occur, the existing rule with a September 1 deadline will remain in effect. To reiterate, the ability to transfer QPs from a QS account to a vessel account between January 1 and December 14 would apply only to whiting and only in the case of a reapportionment, not to other IFQ or IBQ species.

Current regulations contain a provision that prohibits transfers of quota pounds of any IFQ species into or out of a vessel account beginning on December 15. If reapportioned whiting to the shorebased IFQ sector is credited to QS accounts on December 1, a transfer of whiting quota pounds would need to concluded no later than 11:59 p.m. PST on December 14, which includes any initiation of a whiting transfer by QS account holder and acceptance of such whiting transfer by the vessel account holder.

Comment 18: One organization commented that reapportionment of tribal whiting allocations should not be subject to vessel limits for the mothership coop program.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that were developed through Amendment 20 of the Groundfish Fishery Management Plan creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 19: One organization recommended that any reapportionments of tribal whiting to the mothership coop program be distributed only to the coop fishery, or each coop if more than one, but not to the non-coop fishery.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that was developed through Amendment 20 of the Groundfish Fishery Management Plan creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 20: One organization commented that current rules applicable to permitted mothership coop allocations for redistribution and for processor obligations should apply to any tribal whiting reapportionments.

Response: NMFS concurs with this perspective.

Comment 21: One organization recommended modifications to the current regulations for the mothership coop program regarding permit expiration when a whiting allocation is reached, in order to avoid a possible scenario where the coop permit may expire prior to a determination on reapportionment of Pacific whiting.

Response: Rather than modifying the regulations, NMFS believes this possible scenario can be avoided simply through enhanced communications between the agency and the coop manager during the season.

Comment 22: One organization recommended that reapportionments of tribal whiting allocations to the mothership sector should not be subject to 45 percent processing restriction or limit on the annual sector allocation.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that was developed through Amendment 20 of the PCGFMP creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 23: One organization stated their support for the proposed set aside of 17.5 percent of the U.S. Total Allowable Catch for 2012.

Response: NMFS acknowledges the support for the tribal whiting set aside or allocation as stated in the proposed rule that was the best available information on participation by the tribes in the 2012 Pacific whiting fishery; however, as explained above, the final amount includes the additional request of 16,000 mt by the Quileute tribe.

Comment 24: An individual fisherman who is a member of the Makah Tribe stated his support for the reapportionment provisions, suggesting that the reapportionment decision be made as soon as it becomes evident that members of the Tribal sector will be unable to harvest a portion of their set aside. He believes the rule should accommodate reapportionments earlier than September 15 if a decision is made by the Tribal sector to release some of its set aside.

Response: NMFS acknowledges the support for reapportionment provisions, but does not agree that reapportionment should occur earlier than September 15. NMFS plans to check on the status of all whiting fisheries during the summer months to gather the best information available, leading up to any decisions on reapportionment.

Comment 25: The individual stated it was equally important that subsequent reapportionments should be made any time it is apparent there will be unutilized tribal fish so other sectors still fishing will have enough notice to plan their fishing operations so they can catch the reapportioned fish.

Response: NMFS is aware of the importance of timely decisions on any subsequent reapportionments in order to allow for timely planning of fishing operations, and will take that into account in their decision making.

Comment 26: The individual stated that if reapportionments were done in a

timely manner, it would also benefit the tribes by providing an incentive for their processing partners to process tribal fish early rather than wait for the possible benefit of a late season rollover when they may be the only processor operating.

Response: NMFS acknowledges receipt of this perspective regarding tribal fisheries and their processing partners.

Changes From the Proposed Rule

There are four changes in the final rule that NMFS is implementing, based on comments received during the public comment period on the proposed rule, internal evaluation of procedures associated with reapportionment of Pacific whiting, and regulation housekeeping errors that were identified after publication of the proposed rule.

The first change is the final allocation to the tribal whiting fishery. Although the TAC for whiting for 2012 was not known when the proposed rule was published, NMFS stated that the tribal request was for 17.5 percent of the U.S. TAC. During the public comment period, the Quileute Tribal Council notified NMFS of their plans to participate in the fishery in 2012, with a request of 16,000 mt. The final rule has been modified to reflect this request.

The second change is to establish a final date of December 1 for any reapportionment decision by the Regional Administrator. This change was made in consideration of public comment as well as NMFS' assessment of internal procedures associated with managing the shorebased IFQ program.

The third change is associated with the Quota Share accounts for the shorebased trawl IFQ program, and how they will be managed. Under current regulations, all Quota Pounds and Individual Bycatch Quota must be transferred to one or more vessel accounts by September 1 of each year. In the proposed rule, if a reapportionment decision was made, NMFS was going to open the Quota Share account for a period of 30 days to enable the transfer of Pacific whiting Quota Pounds from a Quota Share account to a vessel account. Given that there may be one or more reapportionments of Pacific whiting under this final rule, NMFS has decided, for purposes of reapportionment of Pacific whiting, to modify the regulations to open the Quota Share account for Pacific whiting only from the time a reapportionment decision is made until December 14 at 11:59 p.m., rather than opening the Quota Share account for 30 days, as stated in the proposed rule. This change should facilitate Pacific whiting transactions in the shorebased IFQ program more efficiently, and this change will facilitate more effective management of the associated database by NMFS.

The fourth and final change occurs in § 660.55 paragraph (i) pertaining to the allocation of Pacific whiting to the commercial sectors. This paragraph incorrectly indicated that the commercial harvest guideline would be allocated among the three sectors. However, beginning in 2011 the term ''fishery harvest guideline'' was added to the regulations and is the value after deductions are made for catch during research, incidental open access fishery catch, Exempted fishing permit catch and tribal catch. For the purposes of housekeeping the term ''commercial harvest guideline'' is revised to fishery harvest guideline.

Classification

The final Pacific whiting specifications and management measures for 2012 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the PCGFMP. NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, took into account the data, views, and comments received during the comment period.

NMFS has determined that the tribal whiting fishery, conducted off the coast of the State of Washington, is consistent, to the maximum extent practicable, with the approved coastal zone management program of the State of Washington. NMFS has also determined that the Pacific whiting fishery, both tribal and non-tribal, is consistent, to the maximum extent practicable, with approved coastal zone management programs for the States of Washington, Oregon, and California.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator, NMFS, finds good cause to waive prior public notice and comment on the 2012 Pacific whiting specifications, as delaying this rule would be contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2012, or the primary whiting season will effectively remain closed. The PCGFMP requires that fishery specifications be evaluated periodically using the best scientific information available; however, Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. As a result, NMFS must use the most recent stock assessment for Pacific whiting when determining TACs.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2012 stock assessment for Pacific whiting was prepared in early 2012, as the new 2011 data—including updated total catch, length and age data from the U.S. and Canadian fisheries, and biomass indices from the Joint U.S.-Canadian acoustic/midwater trawl surveys—were not available until January, 2012. Because of the delay in obtaining the best available data for the assessment, it would not possible to allow for notice and comment before the start of the Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would shorten the primary whiting season. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2012 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. To prevent these adverse economic effects and to allow the Pacific whiting season to start on time, it is in the public interest to waive prior notice and comment.

The Assistant Administrator, NMFS, also finds good cause to waive the 30-day delay in effectiveness for the 2012 Pacific whiting tribal allocations, reapportionment provisions, and non-tribal allocations of Pacific whiting pursuant to 5 U.S.C. 553(d)(3). A 30-day delay in implementing the Pacific whiting harvest specifications would further shorten the primary whiting season and could prevent the tribal and non-tribal fisheries from attaining their 2012 allocations, resulting in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Waiving the 30-day delay in effectiveness serves the best interests of the public because it will allow for the longest possible Pacific whiting fishing

season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is made effective May 11, 2012.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/2012/index.cfm.*

Rulemaking must comply with Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA). The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

The NMFS Economic Guidelines that describe the RFA and E.O. 12866 can be found at: (*http://www.nmfs.noaa.gov/sfa/domes_fish/Economic Guidelines.pdf*).

The RFA can be found at 5 U.S.C. 601 *et seq.* (*http://www.archives.gov/federal-register/laws/regulatory-flexibility/*).

Executive Order 12866 can be found at (*http://www.plainlanguage.gov/populartopics/regulations/eo12866.pdf*).

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information and public comments. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on February 22, 2012 (77 FR 10648), with a comment period through March 23, 2012. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below. The FRFA must contain: (1) A succinct statement of the need for, and objectives of, the rule; (2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available; (4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This rule establishes the 2012 harvest specifications for Pacific whiting and the allocation of Pacific whiting for the Tribal Whiting Fishery. This rule will establish the interim 2012 tribal allocation of Pacific whiting, reinstate reapportionment provisions for unused tribal whiting, and establish 2012 allocations for the non-tribal sectors: catcher-processor, mothership, and shoreside.

There were several comments on the IRFA. Comments 8 and 9 are described and addressed above. Under the RFA, the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines small organizations as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS has reviewed analyses of fish ticket data and limited entry permit data, available employment data provided by processors, information on tribal fleets, and industry responses to a 2010 survey on ownership and has developed the following estimates for the whiting fishery. There are four affected components of this fishery: Shorebased whiting, mothership whiting, catcher-processor, and tribal. In the shorebased whiting fishery, quota shares of whiting were allocated to 138 entities, including ten shoreside processing companies. These entities can fish the quota pounds associated with their quota shares, transfer their quota pounds to others to fish, or choose not to fish their quota pounds. Whiting is landed as bycatch in other fisheries or as a target catch in the whiting fishery. To analyze the number of participants primarily affected by this rulemaking, targeted whiting trips are defined as landings that contained 5,000 pounds or more of whiting. During 2011, 62 vessels landed a total of about 200 million pounds of whiting. Of these vessels, only 26 vessels had landings greater than 5,000 pounds. Thirteen of these 26 vessels are ''small'' entities. These 26 vessels delivered their catch to 10 processing companies. These 10 processing companies, either through ownership or affiliation, can be organized into 6 entities. Four of these

6 entities are ''small'' entities. There are 37 limited entry permits that have mothership whiting catch history assignments. During 2011, these 37 permits pooled their whiting catch history assignments into a single mothership fishery co-op. Approximately half of these vessels are ''small'' entities. Vessels in the mothership co-op deliver their catch to mothership processors. There are 6 mothership processing companies; three of which are ''small'' entities. The catcher-processor fleet has ten limited entry permits and 10 vessels, owned by three companies. These three companies are considered ''large'' companies mainly because of their operations off Alaska. The tribal fleet is comprised of about 7 vessels based on expectation that 2 new tribal vessels will enter the fishery in 2012. These are considered to be ''small'' entities, while the 3 tribal governments, based on population sizes, are considered ''small'' entities.

There are no recordkeeping requirements associated with this final rule.

There are two key features of this rulemaking: Establishing the 2012 interim tribal allocation, and reinstatement of regulatory authority to reapportion whiting from the tribal to the non-tribal fishery. The basic alternatives are ''No-Action'' vs. the ''Proposed Action''. The proposed allocation, based on discussions with the tribes at the time, was for NMFS to allocate 17.5 percent of the U.S. total allowable catch for 2012. NMFS did not consider a broad range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate because it could prevent exercise of the treaty fishing right. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher allocation would be, arguably, within the scope of the treaty right. However, a higher allocation may unnecessarily limit the non-tribal fishery. A no action alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2012, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribal treaty rights. Given that there is a tribal request for allocation in 2012, this alternative received no further consideration.

In response to a request from the Quileute Tribe submitted as a public comment on the proposed rule, (See comment 1 above), the tribal allocation was revised by 16,000 metric tons. Based on a U.S. TAC of 186,037 mt, the total tribal allocation is 48,556 mt, the set-aside for research catch and whiting bycatch in the non-groundfish fisheries is 2000 mt, and the non-tribal allocation is 135,481 mt. Based on the percentage shares established in the PCGFMP, the non-tribal allocation to the shoreside sector is 56,902 mt (42.0 percent), to the catcher-processor sector 46,064 mt (34.0 percent), and to the mothership sector 32,515 mt (24 percent). The average annual ex-vessel price for whiting is $229 per ton, yielding a total ex-vessel value of the TAC at $42.6 million. *http://pacfin.psmfc.org/pacfin_pub/data_rpts_pub/pfmc_rpts_pub/r058Wtwl_p11.txt;* (PacFIN) Note that the 2011 ex-vessel price has been updated from that used in the IRFA ($232 per ton) and that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product.

The RIR/IRFA also analyzed two alternatives associated with reinstating the authority to reapportion unused Pacific whiting from the tribal fishery to the non-tribal fishery. The ''No-Action'' alternative is the authority not reinstated. The ''Proposed'' Alternative would be to reinstate the authority. The basis for reinstating this authority is found in the NMFS responses to comments 2 and 3 above. NMFS will continue to work with small entities such as the tribes to improve upon the reapportionment process as well with all entities via the Council.

This final rule directly regulates what entities can harvest whiting. This rule allocates fish between tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) and to non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries are a mixture of activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests are delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. After a review of public comments, NMFS believes this rule will not adversely affect small entities and is likely to be beneficial to both small and large entities as it allows unharvested tribal fish to be harvested by non-tribal sectors.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated consultation on the fishery to address newly listed species including Pacific eulachon and green sturgeon, and other non-salmonid listed species (marine mammals, sea birds, and turtles). On February 9, 2012, NMFS Protected Resources Division issued a Biological Opinion (BO) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific

coast groundfish fishery in 2012. In this Opinion, NMFS concluded that the proposed action is not likely to jeopardize the continued existence of green sturgeon (Acipenser medirostris), eulachon (Thaleichthys pacificus), humpback whales (Megaptera novaeangliae), Steller sea lions (Eumetopias jubatus), and leatherback sea turtles (Dennochelys coriacea). NMFS also concluded that the proposed action is not likely to destroy or adversely modify designated critical habitat of green sturgeon or leatherback sea turtles. Furthermore, NMFS concluded that the proposed action may affect, but is not likely to adversely affect the following species and designated critical habitat: Sei whales (Balaenoptera borealis); North Pacific Right whales (Eubalaena japonica); Blue whales (Balaenoptera musculus); Fin whales (Balaenoptera physalus); Sperm whales (Physter macrocephalus); Southern Resident killer whales (Orcinus orca); Guadalupe fur seals (Arctocephalus townsendi); Green sea turtles (Chelonia mydas); Olive ridley sea turtles (Lepidochelys olivacea); Loggerhead sea turtles (Carretta carretta); critical habitat of Southern Resident killer whales; and critical habitat of Steller sea lions.

On August 25, 2011, NMFS Sustainable Fisheries Division initiated consultation with U.S. Fish and Wildlife Service (USFWS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery. The Biological Assessment (BA) was revised and re-submitted to USFWS on January 17, 2012. The BA concludes that the continued operation of the Pacific Coast Groundfish Fishery is likely to adversely affect short-tailed albatross; however, the level of take is not expected to reduce appreciably the likelihood of survival or significantly affect recovery of the species. The BA preliminarily concludes that continued operation of the Pacific Coast Groundfish Fishery is not likely to adversely affect California least terns, marbled murrelets, bull trout, and Northern or Southern sea otters. USFWS formally responded with a letter dated March 29, 2012 and advised NMFS that formal consultation has been initiated.

Marine Mammal Protection Act (MMPA)

Impacts resulting from fishing activities proposed in this final rule are discussed in the FEIS for the 2011–12 groundfish fishery specifications and management measures. As discussed above, NMFS issued a biological opinion addressing impacts to ESA listed marine mammals. NMFS is currently working on the process leading to any necessary authorization of incidental taking under MMPA section 101(a)(5)(E).

Pursuant to Executive Order 13175, this final rule was developed after meaningful discussion and collaboration with tribal officials from the area covered by the PCGFMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.50, paragraph (f)(4) is revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2012 is 48,556 mt.

* * * * *

■ 3. In § 660.55 paragraph (i)(2) is revised to read as follows:

§ 660.55 Allocations.

* * * * *

(i) * * *

(2) The fishery harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shore based IFQ Program. No more than 5 percent of the Shore based IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a through c and 2a through c of this subpart. Set-asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1D and 2D of this subpart.

* * * * *

■ 4. In § 660.60 paragraphs (d)(1)(i) through (v) are revised, and paragraphs (d)(1)(vi) and (d)(2) are added to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) * * *

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached.

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached.

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(iv) Reapportionment of the unused portion of the tribal allocation of Pacific whiting to the IFQ, mothership and catcher processor Pacific whiting fisheries.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4), when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS. Actual notice to fishers and processors will be by email, Internet (*www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, or press release. Allocation reapportionments will be followed by publication in the **Federal Register**, in which public comment will be sought for a reasonable period of time thereafter.

* * * * *

■ 5. Table 2a, to Part 660, Subpart C is revised to read as follows:

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Table 2a. To Part 660, Subpart C - 2012, and beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,251	2,151	2,151		1,880
	S of 42° N. lat. c/	2,597	2,164	2,164		2,157
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	e/	e/	e/		135,481
Sablefish	N of 36° N. lat. f/	8,623	8,242	5,347	See Table 2c	
	S of 36° N. lat. g/			1,258		1,224
Cabezon	46°16' to 42° N. lat. h/	50	48	48		48
	S of 42° N. lat. i/	176	168	168		168
FLATFISH:						
Dover sole j/	Coastwide	44,826	42,843	25,000		23,410
English sole k/	Coastwide	10,620	10,150	10,150		10,050
Petrale sole l/	Coastwide	1,279	1,222	1,160		1094.6
Arrowtooth flounder m/	Coastwide	14,460	12,049	12,049		9,971
Starry Flounder n/	Coastwide	1,813	1,511	1,360		1,353
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,007	962	183	157	144.1
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	4,923	4,705	600		539.1
Canary s/	Coastwide	622	594	107		87
Chilipepper t/	S of 40°10' N. lat.	1,872	1,789	1,789		1,774
Bocaccio u/	S of 40°10' N. lat.	732	700	274		260.6
Splitnose v/	S of 40°10' N. lat.	1,610	1,538	1,538		1,531
Yellowtail w/	N of 40°10' N. lat.	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	N of 34°27' N. lat.	2,358	2,254	1,556		1,511
	S of 34°27' N. lat.			401		359
Longspine thornyhead y/	N of 34°27' N. lat.	3,483	2,902	2,064		2,020
	S of 34°27' N. lat.			366		363
Cowcod z/	S of 40°10' N. lat.	13	10	3		2.7
Darkblotched aa/	Coastwide	497	475	296		277.3
Yelloweye bb/	Coastwide	48	46	17		11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	132	126	126		124
Black	N of 46°16' N. lat. dd/	435	415	415		401
	S of 46°16' N. lat. ee/	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	Coastwide	3,820	3,414	2,227		2,116
Nearshore	N of 40°10' N. lat.	116	99	99		99
Shelf		2,197	1,948	968		925
Slope		1,507	1,367	1,160		1,092
Minor Rockfish South gg/	Coastwide	4,291	3,712	2,341		2,290
Nearshore	S of 40°10' N. lat.	1,145	990	990		990
Shelf		2,243	1,890	714		701
Slope		903	832	626		599
SHARKS/SKATES/RATFISH/MORID						
Longnose Skate hh/	Coastwide	3,006	2,873	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. ishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal

fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. The most recent stock assessment was prepared in January 2012. The 2012 Fishery Harvest Guideline (Fishery HG) is calculated as follows. U.S. TAC of 186,037 mt minus 48,556 mt for the Tribal allocation minus 2000 mt for catch in research activities and as non-groundfish bycatch, resulting in a fishery harvest guideline of 135,481 mt. The TAC for Pacific whiting is established under the provisions of the Pacific Hake/Whiting Agreement with Canada and the Pacific Whiting Act of 2006, 16 U.S.C. 7001-7010, and the international exception applies. Therefore, no OFL, ACL, or ACT values are provided for Pacific whiting.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the

stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California) - A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,826 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,843 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 10,620 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 10,150 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 10,050 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,279 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 1,222 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 1,160 mt ACL is represents an SPR harvest rate of 32.4 percent. A set-aside of 65 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 1,094.6 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 14,460 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 12,049 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 9,971 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2012, the coastwide OFL of 1,813 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,511 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,360 mt, is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt) and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,353 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,007 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 962 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 183 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.9 mt is deducted from the ACT for the Tribal fishery (10.9 mt), the incidental open access fishery (0.1 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.1 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2012 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt is deducted from the ACL for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 4,923 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,705 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch of 600 mt, which corresponds to an SPR harvest rate of 91.3 percent in 2012, will be used to rebuild consistent with the rebuilding plan and a target year to rebuild of 2010. A set-aside of 60.9 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch

(11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update was completed in 2009, based on the full assessment in 2007, and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 622 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 594 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 107 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt), resulting in a fishery HG of 87 mt. Recreational HGs are being specified as follows: Washington recreational, 2 mt; Oregon recreational 7 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.). Bocaccio rockfish are managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 732 mt is based on the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 700 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 274 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 260.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10' N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in

2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent bounded between 4 and 21 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with

a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 497 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 475 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 296 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5) and research catch (2.1 mt), resulting in a fishery HG of 277.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56'N. lat.(Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16' N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three

percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45°56′. The resulting OFL for the area south of 46°16′ N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 3,820 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,006 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,873 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equal to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

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■ 6. In § 660.131 a new paragraph (h) is added to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(h) *Reapportionment of pacific whiting.* (1) By September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation as specified at § 660.50 of Pacific whiting. That portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource. No reapportionments will occur after December 1 of the fishing year.

(2) The reapportionment of surplus whiting will be made effective immediately by actual notice under the automatic action authority provided at § 660.60(d)(1).

(3) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

■ 7. In § 660.140 paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(D), and (d)(3)(ii)(B)(*3*) are revised to read as follows:

§ 660.140 Shorebased IFQ program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.,* decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. Rounding rules may affect distribution of the entire shorebased trawl allocation. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.,* no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished, unless there is a reapportionment of Pacific whiting consistent with §§ 660.131(h) and 660.140(d)(3).

* * * * *

(D) For the 2012 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Management area	Shorebased trawl allocation (mt)
Lingcod		1,810.65
Pacific cod		1,135.00
Pacific Whiting		56,902
Sablefish	North of 36° N. lat	2,467.00
Sablefish	South of 36° N. lat	514.08
Dover sole		22,234.50
English sole		9,542.50

IFQ species	Management area	Shorebased trawl allocation (mt)
Petrale sole		1,054.60
Arrowtooth flounder		9,462.45
Starry flounder		671.50
Other flatfish		4,197.40
Pacific Ocean perch	North of 40°10′ N. lat	119.50
Widow rockfish		342.62
Canary rockfish		26.20
Chilipepper rockfish	South of 40°10′ N. lat	1,331.25
Bocaccio rockfish	South of 40°10′ N. lat	60.00
Splitnose rockfish	South of 40°10′ N. lat	1,454.45
Yellowtail rockfish	North of 40°10′ N. lat	3,107.36
Shortspine thornyhead	North of 34°27′ N. lat	1,415.45
Shortspine thornyhead	South of 34°27′ N. lat	50.00
Longspine thornyhead	North of 34°27′ N. lat	1,914.00
Cowcod	South of 40°10′ N. lat	1.80
Darkblotched rockfish		248.94
Yelloweye rockfish		0.60
Minor shelf rockfish complex	North of 40°10′ N. lat	522.00
Minor shelf rockfish complex	South of 40°10′ N. lat	86.00
Minor slope rockfish complex	North of 40°10′ N. lat	829.52
Minor slope rockfish complex	South of 40°10′ N. lat	377.37

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. If the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery after September 1 in any year, the following actions will be taken.

(*i*) NMFS will credit QS accounts with additional Pacific whiting QP proportionally, based on the whiting QS percent for a particular QS permit owner and the amount of the sector reapportionment of whiting.

(*ii*) The QS account transfer function will be reactivated by NMFS from the date that QS accounts are credited with additional Pacific whiting QP to allow permit holders to transfer only Pacific whiting QP to vessel accounts.

(*iii*) After December 15, the transfer function in QS accounts will again be inactivated.

* * * * *

[FR Doc. 2012–11735 Filed 5–11–12; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 94
Tuesday, May 15, 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 ENERGY

5 CFR Chapter XXII

10 CFR Chapters II, III, X

Reducing Regulatory Burden

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Request for information.

SUMMARY: As part of its implementation of Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued by the President on January 18, 2011, the Department of Energy (Department or DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

DATES: Written comments and information are requested on or before May 29, 2012.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Regulatory Burden RFI,'' by any of the following methods:

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

Email: Regulatory.Review@hq.doe.gov. Include ''Regulatory Burden RFI'' in the subject line of the message.

Mail: U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Room 6A245, Washington, DC 20585.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

That Department's plan for retrospective review of its regulations can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. Email: *Regulatory.Review@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that, consistent with applicable law, agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).
- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies were required to develop a plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program. DOE's plan can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system*.

The Department is committed to maintaining a consistent culture of retrospective review and analysis. DOE will continually engage in review of its rules to determine whether there are burdens on the public that can be avoided by amending or rescinding existing requirements. To that end, DOE is publishing today's RFI to again explicitly solicit public input. In addition, DOE is always open to receiving information about the impact of its regulations. To facilitate both this RFI and the ongoing submission of comments, DOE has created a link on the Web page of DOE's Office of the General Counsel to an email in-box at *Regulatory.Review@hq.doe.gov*, which interested parties can use to identify to DOE regulations that may be in need of review.

While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial step in DOE's review of its existing regulations.

List of Questions for Commenters

The following list of questions is intended to assist in the formulation of comments and not to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the

submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

(1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

(9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

(10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. Responses to this RFI do not bind DOE to any further actions related to the response. All submissions will be made publically available on. *http://www.regulations.gov*.

Issued in Washington, DC, on May 4, 2012.

Gregory H. Woods,

General Counsel.

[FR Doc. 2012–11450 Filed 5–14–12; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2012–BT–TP–0017]

Test Procedure Guidance for Room Air Conditioners, Residential Dishwashers, and Residential Clothes Washers: Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is holding a public meeting to provide a forum for manufacturers and test laboratories to discuss their respective interpretations of existing DOE test procedures, where they believe that the test procedures lack clarity, and to provide information for DOE to consider prior to publishing any proposed guidance to clarify the current test procedures for room air conditioners, residential dishwashers, and residential clothes washers.

DATES: DOE will hold a public meeting on June 1, 2012, beginning at 9:00 a.m. in Washington, DC.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Additionally, DOE plans to conduct the public meeting via webinar. To participate via webinar, participants must sign up by following the instructions at *https://www1.gotomeeting.com/register/350255376*. Participants are responsible for ensuring that their systems are compatible with the webinar software.

Docket: The docket is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket web page can be found at *www.regulations.gov*. The *www.regulations.gov* web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov* or Abigail Chingos, U.S. Department of Energy, Office of General Counsel, GC–32, 1000 Independence Avenue SW, Washington, DC 20585–0121. Phone: (202) 586–5060. Email: *Abigail.Chingos@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291 – 6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including the residential room air conditioners, residential dishwashers, and residential clothes washers that are the focus of this notice.[1] (42 U.S.C. 6292(2), (6) and (8))

Under EPCA, the program consists of four activities: (1) Testing; (2) labeling; (3) Federal energy conservation standards, and (4) certification, compliance, and enforcement. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s))

DOE's existing test procedures for residential room air conditioners, residential dishwashers, and residential

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

clothes washers adopted pursuant to these provisions appear under Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendices F (''Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners''), C (''Uniform Test Method for Measuring the Energy Consumption of Dishwashers''), and J1 (''Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers''). DOE also recently published a new test procedure for residential clothes washers (Appendix J2—''Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers''), the use of which is not required until compliance with any amended standards is required. These procedures establish the currently permitted means for determining energy efficiency and annual energy consumption of these products.

DOE has received inquiries regarding the appropriate interpretation of various provisions of the current DOE test procedures. DOE has issued guidance documents on certain aspects of testing room air conditioners, residential dishwashers, and residential clothes washers. See *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1* for additional information.

The Department is holding this public meeting and webinar to gather information regarding the current practices of manufacturer-run and private testing facilities. The Department seeks to understand how interested parties have interpreted test procedures provisions that they believe to be ambiguous absent DOE guidance. DOE plans to issue guidance, as needed and appropriate, to provide better consistency in the application of the test procedures and better clarity regarding how DOE conducts testing.

Discussion at the public meeting should focus on current test procedures (Appendices C, F, J1 and J2). Furthermore, while DOE seeks the views of all interested parties, this public meeting is not an appropriate forum for consensus building. The Department will take the information provided in the course of the public meeting into consideration when drafting DOE interpretive guidance.

In 2011, DOE launched a new Web site dedicated to DOE guidance: *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.* All test procedure guidance is now published through a public process. DOE publishes guidance in draft form on the guidance Web site. DOE accepts public comment on the draft guidance. After considering comments, DOE may take one of three courses: Publishing final guidance, publishing revised draft guidance, or withdrawing the guidance. If the Department publishes revised draft guidance, interested parties have another opportunity to provide comments.

DOE will conduct the public meeting in an informal, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the meeting, after which a transcript will be placed on the DOE Web site and made available for purchase from the court reporter.

Anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about room air conditioners, residential dishwashers, or residential clothes washers should contact Ms. Brenda Edwards at (202) 586–2945.

Dated: Issued in Washington, DC, on May 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–11732 Filed 5–14–12; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG46

Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations governing size and eligibility for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs. This proposed rule would implement provisions of the National Defense Authorization Act for Fiscal Year 2012. The proposed rule addresses ownership, control and affiliation for participants in the SBIR and STTR Programs. This includes participants that are majority owned by multiple venture capital operating companies, private equity firms or hedge funds.

DATES: You must submit your comments on or before July 16, 2012.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG46, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Carl Jordan, Office of Size Standards, or Edsel Brown, Assistant Director, Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Carl Jordan or Edsel Brown, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Edsel Brown, Assistant Director, Office of Technology, at (202) 401–6365. You may also email questions to *sizestandards@SBA.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 1982, Congress enacted and the President signed into law the Small Business Innovation Development Act of 1982, Public Law 97–219 (codified at 15 U.S.C. 638), which established the Small Business Innovation Research (SBIR) Program. The statutory purpose of the SBIR Program is to stimulate technological innovation by strengthening the role of innovative small business concerns in Federally-funded research and research and development (R/R&D).

In 1992, Congress enacted the Small Business Technology Transfer Act of 1992 (STTR Act), Public Law 102–564 (codified at 15 U.S.C. 638). The STTR Act initially established the Small Business Technology Transfer (STTR) program as a pilot program that requires Federal agencies with extramural budgets for R/R&D in excess of $1 billion per fiscal year to enter into funding agreements with small business concerns that engage in a collaborative relationship with a research institution. The purpose of the STTR program is to stimulate a partnership of ideas and technologies between innovative small business concerns and research institutions. Congress amended the Small Business Act (Act) in 2001 and

changed the status of the STTR program from a pilot program to a permanent one.

On December 31, 2011, the President signed into law the National Defense Authorization Act for Fiscal Year 2012 (Defense Reauthorization Act), Public Law 112–81. Section 5001, Division E of the Defense Reauthorization Act contains the SBIR/STTR Reauthorization Act of 2011 (SBIR/STTR Reauthorization Act), which extends both the SBIR and STTR programs through September 30, 2017, increases the percentage of each participating agency's extramural budget allocated for the programs, and increases the SBIR and STTR Phase I and Phase II award levels. In addition to the above, the SBIR/STTR Reauthorization Act contains several provisions relating to businesses majority-owned by venture capital operating companies (VCOCs), hedge funds or private equity firms. Specifically, the SBIR/STTR Reauthorization Act provides that businesses majority-owned by VCOCs, hedge funds or private equity firms may participate in the SBIR Program, under certain conditions.

At the present time, SBA's size regulations, which address ownership and affiliation of SBIR participants, do not permit business concerns majority-owned by multiple venture operating companies, hedge funds or private equity firms to participate in the program. Consequently, the SBIR/STTR Reauthorization Act requires that SBA issue a proposed rule, within 120 days of enactment of the Act, amending 13 CFR 121.103 (relating to determinations of affiliation applicable to the SBIR Program) and 13 CFR 121.702 (relating to ownership and control and size for the SBIR Program) to address ownership, control, and affiliation for businesses that are owned in majority part by VCOCs, private equity firms or hedge funds. According to the statute, the regulations must also address domestic ownership of program participants.

As a result of the abbreviated time frame set forth in the SBIR/STTR Reauthorization Act by which SBA must issue a proposed rule, the Agency was unable to conduct public outreach prior to drafting and issuing this proposed rule. However, in addition to soliciting public comments on the proposed rule, SBA plans to conduct public outreach sessions following publication of the rule, such as town hall meetings and webinars, to gather additional input on these statutory provisions and SBA's proposed implementation. SBA will release more information about these public sessions later. The information will be available at *www.SBIR.gov* and *www.sba.gov*.

II. Proposed Amendments

SBA is proposing to amend its regulations to address affiliation, ownership, and control of participants in the SBIR and STTR programs. Because these issues affect various parts of SBA's size regulations, SBA must propose amendments to several sections. In drafting these regulations, the SBA took into consideration recent Executive Orders issued by the President, including Executive Order 13563, issued on January 18, 2011. Executive Order 13563 explains that when drafting regulations, agencies must consider approaches that reduce burdens, maximize benefits and maintain flexibility; promote coordination, simplification, and harmonization; identify and assess available alternatives; and consider the costs of the regulations on the public.

SBA believes this proposed rule simplifies and streamlines the current ownership and affiliation criteria for the SBIR and STTR programs, while also ensuring that only domestic small businesses receive the benefits of these programs. Specifically, SBA's proposed rules provide a clear set of guidelines for small businesses to understand and a bright-line test by which small businesses can easily determine whether they meet the ownership, size and affiliation requirements of the programs.

When drafting the regulations, SBA considered the fact that the statutory provisions relating to majority ownership by VCOCs, hedge funds or private equity firms specifically apply to the SBIR Program. However, § 5104 of the SBIR/STTR Reauthorization Act permits a small business concern that received a Phase I award under the SBIR or STTR program to receive a Phase II award in either the SBIR or STTR program. Therefore, an SBIR Phase I awardee may be able to receive an STTR Phase II award. If that is the case, the eligibility rules of both programs should be the same and consistent. As a result, SBA's proposed amendments apply to both the SBIR and STTR programs.

The proposed amendments are set forth in a section-by-section analysis below. In each section, SBA has requested comments on specific issues. However, SBA welcomes comments on all issues arising from this proposed rule, including whether there are additional ways to simplify the current requirements, maximize benefits and increase flexibility for small businesses.

A. Section 121.701—Definitions and Programs Subject to Size Determinations

SBA is proposing to amend § 121.701, which states that the SBIR Programs of the agencies are subject to SBA's size determinations, to make it clear that the regulations apply to both the SBIR and STTR programs. In addition, SBA has added definitions applicable to the programs and set forth in statute to this section.

Section 5107(c)(3)(A) of the SBIR/STTR Reauthorization Act states that SBA's regulations addressing the participation of applicants majority-owned by multiple VCOCs, hedge funds, or private equity firms in the SBIR Program should address whether the applicant is owned by domestic business concerns. SBA therefore has proposed to define the term ''domestic business concern.'' In defining the term, SBA looked first at its regulations, which define the term ''business concern or concern.'' A ''business concern or concern'' eligible for SBA's programs is one that is for profit, has a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. SBA proposes that a domestic business concern meet this definition.

However, SBA has proposed additional criteria that a ''domestic business concern'' must meet. SBA has proposed that for purposes of the SBIR and STTR programs, the domestic business concern must also be created or organized in the United States, or under the law of the United States or of any State. SBA believes that this proposed definition not only meets statutory requirements set forth in the Act but is straightforward and easy to understand.

When drafting the proposed definition of domestic business concern, SBA reviewed other regulations, such as those implementing the Buy American Act and Berry Amendment, to determine whether they define the term. We note that the Department of Defense Federal Acquisition Regulations Supplement (DFARS) defines the term ''domestic concern'' to mean a concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern) or an unincorporated concern having its principal place of business in the United States. *See* 48 CFR 225.003. SBA did not propose this definition for the SBIR and STTR programs because

we do not believe it is sufficiently restrictive—the DFARs definition does not appear to require an incorporated concern to have a place of business in the United States.

In addition, SBA also considered whether it should include a requirement that to be considered a domestic business concern, more than 50% of the business must either directly or indirectly be owned by U.S. citizens, permanent resident aliens, or domestic corporations, partnerships or limited liability companies (LLCs). SBA did not propose this requirement in the definition of domestic business concern because we believe it adds an extra burden on the small business and an added complexity that is not necessary.

The definition proposed for the term ''domestic business concern'' has generally been utilized for SBA's programs for many years, and has ensured that domestic small business concerns receive the benefits of SBA's programs. However, SBA welcomes comments on whether the proposed definition of domestic business concern should include additional criteria to ensure that the business is truly a domestic concern. SBA also welcomes comments on whether it should adopt the more simplified definition of domestic concern used in the DFARS, which is discussed above.

In addition, the SBIR/STTR Reauthorization Act defines the terms VCOC, hedge fund and private equity firm. SBA has proposed incorporating those statutory definitions into the regulations.

SBA has also proposed to define the term ''portfolio company'' because the SBIR/STTR Reauthorization Act uses that term when referring to VCOCs, hedge funds and private equity firms, but does not define it. SBA is proposing to define the term ''portfolio company'' to mean any company owned by the VCOC, hedge fund or private equity fund. SBA reviewed the U.S. Department of Labor's definition for venture capital investment set forth in 29 CFR 2510.3–101(d)(3)(i), which defines the term as an investment in an operating company as to which the investor has or obtains management rights. However, SBA believes that the definition it has proposed is a simpler and easier definition to understand.

SBA welcomes comments on these proposed amendments.

B. Section 121.702—Ownership and Control

SBA is proposing to amend 13 CFR 121.702 to address many of the amendments to the Small Business Act set forth in the SBIR/STTR Reauthorization Act of 2011. Specifically, SBA is proposing amendments to address ownership and control of SBIR and STTR participants.

The SBIR/STTR Reauthorization Act specifically permits, in certain instances, SBIR and STTR applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms to participate in the SBIR Program. Therefore, SBA has proposed amending its regulations to address this new statutory requirement.

In addition, when drafting the proposed rule, SBA reviewed its current regulations regarding eligibility for the programs. The current regulations state that an SBIR awardee must be a business concern that is at least 51% owned and controlled by U.S. citizens or permanent resident aliens or at least 51% owned and controlled by another business that is at least 51% owned and controlled by U.S. citizens or permanent resident aliens. SBA considered retaining this ownership and eligibility criterion since it clearly ensures that there is domestic ownership and control of SBIR and STTR participants. However, SBA believes this eligibility criterion may be too restrictive and fails to provide sufficient flexibility to small businesses when creating their ownership structure.

As a result, SBA has proposed that an SBIR and STTR applicant must be:

- More than 50% owned and controlled by U.S. citizens, permanent resident aliens, or domestic business concerns (the proposed definition of domestic business concern is explained above); or
- Majority-owned by multiple domestic VCOCs, hedge funds or private equity firms.

As set forth in the SBIR/STTR Reauthorization Act, no one domestic business concern that is a VCOC, hedge fund or private equity firm may own more than 50% of the SBIR or STTR participant. Further, if the SBIR or STTR participant is majority-owned by multiple VCOCs, hedge funds or private equity firms, then it would trigger certain statutory requirements.

The SBIR/STTR Reauthorization Act also requires SBA to consider whether an applicant should be a domestic entity itself as well as a direct or indirect subsidiary of a domestic entity. In other words, this statutory provision requires SBA to consider that while an applicant could be organized and located in the United States and therefore be domestic, it might be necessary to ensure that the applicant is also owned by U.S. citizens or domestic companies.

SBA believes that the ownership requirements proposed in this rule—that the SBIR and STTR participant must be more than 50% owned by U.S. citizens, permanent resident aliens or domestic business concerns—addresses the statutory recommendation concerning domestic-owned applicants. SBA also believes that its proposed definition of domestic business concern, discussed in the section above, addresses these statutory recommendations.

In sum, when determining eligibility for the program, the proposed rule would require the applicant to consider the following (in addition to the requirements relating to size and affiliation, etc.):

1. Is the concern more than 50% owned by a single domestic business concern that is a VCOC, hedge fund or private equity firm? If yes, then it is not eligible for the SBIR or STTR program.

Example: SBIR Applicant is owned 80% by VCOC A, 10% by VCOC B and 10% by an individual. SBIR Applicant would *not* meet the ownership requirement.

2. Is the concern more than 50% owned by one or more U.S. citizens, permanent resident aliens, or domestic business concerns? If yes, then it may be eligible for the SBIR or STTR program, unless it answered yes to Question No. 1.

Example 1: SBIR Applicant is owned 40% by U.S citizens, 30% by domestic corporations, and 30% by a non-domestic corporation. The SBIR applicant would be more than 50% owned by U.S. citizens and domestic business concerns. SBIR Applicant meets the ownership criteria for the program.

Example 2: STTR Applicant is owned 49% by a domestic VCOC, 2% by an individual who is a U.S. citizen and 49% by a non-domestic corporation. STTR Applicant would be more than 50% owned by U.S. citizens and a domestic business concern that is a VCOC. The domestic business concern that is a VCOC does not own more than 50% of the applicant. STTR Applicant meets the ownership criteria for the program.

3. Is the concern more than 50% owned by multiple domestic business concerns that are VCOCs, hedge funds, or private equity firms? If yes, then it may be eligible for the SBIR or STTR program unless answered yes to Question No. 1.

SBA believes that this proposed rule satisfies the requirements for ownership set forth in statute and, at the same time, provides a straight-forward and simplified method for determining eligibility. It also provides small business with the flexibility needed in structuring their business and obtaining capital and will ensure that innovation in the United States continues to grow and flourish.

However, SBA understands that there may be alternatives to the proposal and

seeks comments, including the following: (1) Whether the eligibility criteria meets the statutory purpose of the programs with respect to domestic ownership of the applicant; (2) whether the eligibility criteria meets the statutory purpose of the programs with respect to ownership by other-than-small businesses; and (3) whether the proposed rule should address other issues besides the above with respect to ownership.

Moreover, § 5107(c)(3)(B) of SBIR/STTR Reauthorization Act requires that under the already existing authority for SBA to establish size standards, 15 U.S.C. 632(a), SBA shall establish size standards for applicants that are majority-owned by VCOCs, hedge funds or private equity firms. The current size standard for SBIR and STTR applicants is 500 employees. This means that an applicant, including its affiliates, cannot have more than 500 individual employees on a full-time, part-time or other basis, and includes employees obtained from a temporary employee agency, professional employer organization and leasing concern. SBA uses the average number of the business concern's employees based upon the number of employees for each of the pay periods for the preceding completed 12 calendar months (*see* 13 CFR 121.106(b)(1)).

SBA has reviewed the 500-employee size standard and is not proposing any changes. The 500 employee size standard is the current size standard for all R&D North American Industry Classification System (NAICS) codes, including SBIR and STTR. For example, both NAICS 541711, Research and Development in Biotechnology, and NAICS 541712, Research and Development in the Physical, Engineering and Life Sciences (except Biotechnology) have 500 employee size standards.

SBA welcomes comments on these proposed amendments to the ownership and control regulations in § 121.701.

C. Section 121.702—Affiliation

SBA's regulations, at § 121.103, address the principles of affiliation. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Affiliation is an important issue when determining size because SBA counts the receipts, employees, or other measure of the business, and includes those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit (13 CFR 121.103(a)(6)).

SBA's affiliation rules generally apply to all Federal programs for which a business must qualify as small, including SBA's Government Contracting or Business Development programs, small business loan programs and grant programs. Therefore, for purposes of the SBIR and STTR programs, an applicant for a Phase I and Phase II award must meet the 500 employee size standard, taking into consideration the employees of the applicant and all of the applicant's affiliates.

Section 5107(c)(3)(D) of the SBIR/STTR Reauthorization Act sets forth an outline for affiliation with respect to those applicants that are majority owned by VCOCs, hedge funds, or private equity firms, as well as any other business that the VCOC, hedge fund, or private equity firm has financed. After reviewing these statutory provisions, the purpose of the amendments to the SBIR and STTR programs, the purpose of the SBIR and STTR programs, and the overall goal of simplification and maximization of benefits for small businesses, SBA has proposed certain amendments to the current affiliation rules, solely with respect to these programs. As a result, SBA has proposed to address size and affiliation for the SBIR and STTR programs in § 121.702, and not in § 121.103, to avoid any confusion.

SBA believes that, in general, the principles of affiliation set forth in § 121.103 apply to the SBIR and STTR program. However, SBA believes that certain affiliation principles—such as those concerning minority stock holdings—are not necessarily applicable to SBIR or STTR applicants as a result of the general business structure and purpose of such business concerns. In addition, SBA sought to create a simple, bright-line test for SBIR and STTR applicants to apply when determining eligibility with respect to size and affiliation.

SBA's current principles of affiliation explain that if a business concern's stock is widely held and no single block of stock is large as compared to others, then the board of directors and President or Chief Executive Officer are deemed to control the business concern, unless they can present evidence showing otherwise. In addition, SBA's general principles of affiliation explain that if two or more persons own, control or have the power to control less than 50% of the concern's voting stock, but the blocks of stock are equal or approximately equal in size, then SBA presumes each person to control the business concern.

In this proposed rule, SBA has amended those principles solely for purposes of the SBIR and STTR program. Consequently, SBA's proposed rule explains that where an SBIR or STTR applicant's voting stock is widely held or two or more persons hold large blocks of voting stock but no one person owns more than 50% of the stock, then the board of directors controls the applicant. SBA believes that in these two instances (minority holdings are equal in size and voting stock is widely held), the investments are diffused. As a result, we believe that for purposes of the SBIR and STTR programs, control would rest with the board of directors since it is that body that is truly running the business.

SBA welcomes comments on this proposed rule as it relates to SBIR and STTR applicants where no one stockholder owns a majority of the applicant. For example, SBA welcomes comments on whether it should: (1) Retain the current affiliation rule with respect to minority stock holdings and if so, whether it should set forth a specific threshold by which it will find control and therefore affiliation (*e.g.,* if a person owns 33% or more of the company) in order to create a bright-line test for applicants; (2) find affiliation if two or three persons or businesses collectively own more than 50% of the applicant, and the same two or three persons or businesses collectively own more than 50% of any other company or entity; or (3) implement a rule setting forth both options (1) and (2) above.

SBA has also proposed to amend the current affiliation rules relating to identity of interest, for purposes of the SBIR and STTR programs only. Specifically, the proposed rule explains that SBA will presume affiliation based on an identity of interest between family members with identical or substantially identical business or economic interests.

SBA may also presume affiliation based on an identity of interest between business concerns that are economically dependent through contractual or other arrangements. For example, affiliation based on an identity of interest may arise if a business earns 70% of its revenues as a result of doing business with one other business concern. Affiliation based on an identity of interest may also arise where one business concern is dependent on loans supplied by another business, and the loans are made outside of arm's length transactions. Because it is not clear how often these types of situations arise for SBIR and STTR applicants, SBA requests comments on whether the

identity of interest rule relating to economic dependency should be retained for purposes of the SBIR and STTR programs.

We note that § 5107(c)(3)(D) of the SBIR/STTR Reauthorization Act states that SBA may not determine that a portfolio company of the VCOC, hedge fund, or private equity firm is affiliated with an SBIR or STTR applicant based solely on one or more shared investors. Therefore, SBA has proposed that it will not find affiliation for an SBIR or STTR applicant with a portfolio company solely because of shared investors.

Consequently, SBA's proposed rule explains that it may find affiliation for SBIR or STTR applicants in one or more of the following situations:

1. *Control of more than 50% of voting stock.* A person (individual, entity, or business concern) is an affiliate of the SBIR or STTR applicant if the person owns or controls, or has the power to control, more than 50% of the concern's voting stock.

Example: Individual A is the majority owner of SBIR Applicant B, Company C and Company D (54.5%, 81%, and 60%, respectively). Individual A has the power to control SBIR Applicant B, Company C and Company D. The companies are all affiliated. The number of employees of all will be aggregated in determining the size of the SBIR applicant.

2. *Control of less than 50% of voting stock.* If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50% of an SBIR or STTR applicant's voting stock, the board of directors controls the SBIR/STTR applicant.

Example: Domestic Business Concern A owns 20%, domestic VCOC B owns 20% and domestic VCOC C owns 20% of SBIR Application, Inc. The rest of the stock is widely held. The Board of Directors of the company controls the company for affiliation purposes.

3. *Stock options, convertible securities, and agreements to merge.* SBA treats stock options, convertible securities, and agreements to merge as though the rights granted have been actually exercised. SBA gives present effect to an agreement to merge (including an agreement in principle) or to sell stock. If these rights have been granted and they confer the power to control, affiliation exists.

Example: If VCOC A holds an option to purchase a controlling interest in Company B at the time it submits an offer for the SBIR Program, the situation is treated as though VCOC A had exercised its rights and had become owner of the controlling interests in Company B when it obtained the option.

4. *Common management.* If one or more officers, managing members, general partners, or the board of directors of an SBIR or STTR applicant also controls the management of another business concern, the concerns are affiliates.

Example: The managing member of SBIR Applicant LLC is the managing member of Company B. The two concerns are affiliated based on common management.

5. *Identity of interest between individuals or businesses, including family members, except for common investments.* Individuals or firms that have identical (or substantially identical) family or economic interest may be treated as one party unless they can demonstrate otherwise. Family members or firms that are economically dependent through contractual or financial relationships, are among those treated this way.

Example 1: SBIR Applicant A performs subcontracts for Company B, and Company B accounts for 90% of SBIR Applicant A's revenues. SBA may presume there is an identity of interest as a result of the economic dependence of the SBIR applicant on Company B and find affiliation between the two.

Example 2: SBIR Applicant A is dependent on loans provided by Company B for survival. The loans were not supplied from Company B to Applicant through arm's length transactions. Instead, the loans were poorly documented and did not follow normal business practices. SBA may presume an identity of interest between Applicant A and Company B.

6. *Newly Organized Concern.* SBA may find that an SBIR or STTR applicant is affiliated with another business concern when: (1) The former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern; (2) the new concern is in the same or related industry or field of operation; (3) the persons who organized the new concern serve as the new concern's officers, directors, principal stockholders, managing members, or key employees; and (4) the one concern is furnishing or will furnish the new concern with contracts financial or technical assistance, indemnification on bid or performance bonds and/or other facilities, whether for a fee or otherwise. This could include SBIR ''spin-offs'' or ''spin-outs.''

7. *Joint Ventures.* Business concerns submitting offers for an SBIR or STTR award as joint venturers are affiliated with each other with regard to that award, unless an exception to affiliation applies for the joint venture.

8. *Ostensible Subcontractor.* An applicant and its subcontractor are treated as joint venturers and therefore affiliates if the ostensible subcontractor will perform primary and vital requirements of the funding agreement or the applicant is unusually reliant upon the subcontractor. To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will consider whether the applicant is meeting the statutorily required percentages of work for the funding agreement.

9. *License Agreements.* There must be a license agreement concerning a ''critical operation'' of the licensee. SBA will look at this license agreement to see if the licensee possesses the right to profit or bear the risk of loss.

If SBA does find affiliation based upon one of the above with a VCOC, hedge fund, or private equity firm that owns a minority interest in the SBIR or STTR applicant, then § 5107(c) of the SBIR/STTR Reauthorization Act provides that the portfolio companies of the VCOC, hedge fund, or private equity firm will not be affiliated with the SBIR or STTR applicant unless: (1) the VCOC, hedge fund, or private equity firm owns a majority of the portfolio company; or (2) the VCOC, hedge fund, or private equity firm holds a majority of the seats on the board of directors of the portfolio company. SBA's proposed regulations set forth this statutory exception to affiliation for portfolio companies.

SBA specifically requests comments on these proposals for determining affiliation, including whether the proposed rules sufficiently prevent other-than-small businesses from controlling SBIR and STTR applicants and any other issues relating to affiliation not addressed by the proposed rule.

D. Section 121.704—When SBA Determines Size and Eligibility

SBA's current regulations for the SBIR Program state that size and eligibility are determined at the time of award for both Phase I and Phase II awards. In drafting the proposed rule, SBA considered whether it should retain this current requirement or require the SBIR or STTR applicant to meet the size and eligibility requirements at the time of submission of the application, or at both time of application and award. SBA notes that for its government contracting programs, size is determined at the time of submission of an offer (which is equivalent to the time of application for the SBIR and STTR programs). SBA uses that date because it is a date certain—the small business knows when it will submit an offer and can therefore determine with some accuracy whether it will be small at that time.

SBA has proposed that for its SBIR and STTR programs it will determine size and eligibility of the concern at the time it submits an application in response to the SBIR or STTR solicitation or announcement and at the time of award. SBA believes that this would ensure that only eligible small businesses are considered for award and actually receive the award and it will help prevent fraud, waste and abuse of the program. SBA welcomes comments on the timing of size and eligibility determinations, and specifically on the requirement that SBA determine size and eligibility of a small business concern at the time it submits an application in response to the SBIR or STTR solicitation or announcement and at the time of award.

SBA welcomes comments on any impact the proposed change may have on the SBIR and STTR programs.

E. Section 121.705—Certification of size and eligibility

Section 5107 of the SBIR/STTR Reauthorization Act requires that all small business concerns that are majority-owned by multiple VCOCs, hedge funds, or private equity firms and qualified for participation must register with SBA prior to or on the date that it submits an application in response to an SBIR solicitation or announcement. In addition, the new statutory provisions require that such small businesses indicate in any SBIR proposal that they have completed this registration. SBA has proposed to amend this section of the regulations to address these new requirements.

SBA notes that, at this time, it is considering at least two options with respect to the registration requirement. SBA will need to either maintain a separate registration for purposes of the SBIR and STTR programs only, or it will amend its current Dynamic Small Business Search (DSBS) system to see whether it can use DSBS as its registry. SBA is studying the anticipated costs and timelines for completion of this registry, but welcomes comments on these and other possible options.

Section 5107 (a) of the SBIR/STTR Reauthorization Act states that certain ''covered small business concerns'' are eligible to receive SBIR awards, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR Program at the time of award if an agency took longer than 9 months from the date applications were due to issue an award. A covered small business concern is one that was not majority-owned by a VCOC, hedge fund, or private equity firm at the time of submission of a Phase I or Phase II application (and therefore did not register), but that was majority-owned on the date of award.

The proposed regulations address covered small business concerns and explain that if a small business concern did not register as majority-owned by VCOCs, hedge funds or private equity firms at the time of application, it must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple VCOCs, hedge funds, or private equity firms.

The SBA notes that the funding agency needs this information because the statute states that if the agency made its award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR or STTR solicitation, that small business concern would be eligible to receive the award without regard to the fact that it is more than 50% owned by multiple VCOCs, hedge funds, or private equity firms at the time of award.

In addition to registration requirements, § 5143 of the SBIR/STTR Reauthorization Act requires each applicant that receives SBIR or STTR funding to certify that it is in compliance with the laws relating to the program. SBA's Administrator is required to develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for this certification after providing notice of and an opportunity for public comment on such procedures and requirements. SBA is therefore requesting public input on whether the current self-certification requirement set forth in § 121.705 is sufficient, *i.e.,*—that the business merely self-certify it meets the requirements of the program.

Further, as discussed above, SBA has proposed that the certification on eligibility (size and ownership) will occur at the time of submission of the offer or application and at the time of award. However, some have argued that these representations are necessary throughout the life of the SBIR or STTR award. As a result, SBA requests specific comment on whether the small business should also be required to represent its status at certain points in time after award, including at the time of final payment or final award allotment.

For example, with respect to small business status for government contracting (other than the SBIR Program), a small business represents its status at the time of offer only and size is determined at that time. The small business is permitted to grow to be other than small during the life of the contract and there is no need for it to re-represent its status on a particular contract. There are two exceptions to this general rule: (1) A small business must recertify its status if it has been acquired by or merged with another business concern; or (2) the contract is greater than five years. At those times, the small business must recertify its status and if it is no longer small, the contracting officer cannot count any options exercised or orders issued against the contract as an award to a small business. SBA requests comments on whether this policy and the procedures should be extended to the SBIR Program.

F. Section 121.1001(a)(4)—Initiating a Protest or Request for Formal Size Determination

Section 121.1001(a)(4) sets forth who may initiate a size protest or request a formal size determination. For purposes of the SBIR Program and STTR Program, the regulations state that a prospective offeror, the funding agreement officer, the responsible SBA Government Contracting Area Director or the Division Chief, Office of Innovation may file a protest. SBA has proposed amending this section to state that a current offeror and the Associate Administrator, Investment Division may file a protest. These proposed changes correspond to the proposed change for when an applicant must be eligible for an award (at the time of submission of offer or application and at time of award) and the move of SBA's Office of Innovation to its Investment Division. SBA welcomes comments on these proposed changes.

G. Section 121.1004—Time Limits That Apply to Size Protests

SBA is proposing to amend this section to address when a protest may be filed by the contracting officer/funding agreement officer or SBA with respect to an SBIR or STTR award. The current regulations state that the contracting officer or SBA may file a protest in anticipation of an award. SBA proposes to amend this regulation to state that SBA or the contracting officer/funding agreement officer may file a protest at any time, as long as it is not premature. This means that SBA will not accept a size protest until the awardee has been selected and notified of the award, which is consistent with current practice for its contracting programs. SBA welcomes comments on this proposed change.

III. Request for Comments

The SBIR/STTR Reauthorization Act has set forth specific provisions relating to affiliation, ownership and control of SBIR and STTR participants. These provisions open the door for more small businesses by providing them access to these programs. SBA has proposed amendments to its current regulations to implement these provisions (some amendments will have to be made to the policy directive, and not necessarily SBA's regulations). As such, SBA requests comments on each proposed amendment to the rule. We have noted above specific issues on which the agency would like to receive comments. However, SBA seeks comments on all aspects of this proposed rule.

Compliance With Executive Orders 12866, 12988, 13132, 13563, the Paperwork Reduction Act (44 U.S.C., Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule is a significant regulatory action under Executive Order 12866; however this is not a major rule under the Congressional Review Act (CRA). The Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis

1. Necessity of Regulation

This regulatory action implements the SBIR/STTR Reauthorization Act. Specifically, it implements § 5107 of the SBIR/STTR Reauthorization Act of 2011, which requires SBA to issue proposed regulations to amend 13 CFR 121.103 (relating to determinations of affiliation applicable to the SBIR Program) and 13 CFR 121.702 (relating to ownership and control and size for the SBIR Program) within 120 days of passage of the Reauthorization Act.

SBA's current regulations address affiliation, ownership and control for participants in the SBIR Program. However, the regulations do not provide specific guidance for the STTR program. In addition, the regulations must be amended to address the new statutory provisions relating to majority ownership by VCOCs, hedge funds or private equity firms; otherwise, the regulations and statute would conflict. Moreover, the SBIR/STTR Reauthorization Act requires that SBA issue a proposed, and then a final or interim final rule.

2. Alternative Approaches to Proposed Rule

SBA considered numerous alternatives when drafting this regulation. SBA considered an alternative approach with respect to ownership by U.S. citizens. For example, SBA's current regulations state that to be eligible for the SBIR Program, the business must be 51% owned and controlled by U.S. citizens or permanent resident aliens, or 51% owned and controlled by another business that is 51% owned and controlled by U.S. citizens. The SBIR/STTR Reauthorization Act requires that SBA consider whether participants to the program are at least 51% owned and controlled by U.S. citizens, domestic VCOCs, hedge funds or private equity firms. SBA considered retaining its current regulation but believes the current regulation may be too restrictive. SBA's proposed regulation permits ownership and control by U.S. citizens, permanent resident aliens *and* domestic business concerns, including domestic VCOCs, hedge funds or private equity firms.

In addition, SBA considered whether the statutory provisions relating to majority ownership by VCOCs, hedge funds, or private equity firms should also apply to STTR participants and not just SBIR participants. The SBIR/STTR Reauthorization Act is not clear on this point. However, the SBIR/STTR Reauthorization Act does permit participants in the STTR program to receive SBIR awards, and vice versa. As a result, it would seem necessary to apply the same rules for the SBIR Program to the STTR program.

Other examples of alternatives considered are discussed in the preamble above (*e.g.,* affiliation, definitions).

3. What are the potential benefits and costs of this regulatory action?

One potential benefit of the rule is to increase participation in the SBIR and STTR program by providing more businesses access to these programs. SBA believes this will increase competition, which will ultimately increase the quality of proposals and spur innovation. For example, in Fiscal Year (FY) 2010, agencies awarded 6,931 SBIR and STTR Phase I and Phase II awards for a total of over $2 billion. In FY 2003, however, agencies funded 7,419 awards for a total of over $1.8 billion. If you adjust the dollar figures for inflation, it would seem that there has been a decrease in SBIR and STTR Phase I and Phase II awards and funding. Likewise, in FY 2010, agencies awarded 4,777 Phase I SBIR and STTR awards for a total of over $596 million. In FY 2003, however, agencies funded 5,561 awards for a total of over $508 million. If you adjust the dollar figures for inflation, it would seem that there has been a decrease in Phase I SBIR and STTR awards and funding. Again, SBA anticipates that increasing competition will increase the number of awards and funding, as a result of higher quality proposals submitted.

There are a few anticipated costs with this proposed rule. The statute requires SBA to maintain a registry of businesses that are majority-owned by VCOCs, hedge funds or private equity firms. SBA will need to either maintain a separate system or will amend its current DSBS system and use it as its registry. This will result in a cost to SBA. Further, as a result of the anticipated increase in proposals for the SBIR/STTR program, we believe the agencies will have a need for additional staff. In addition, we anticipate there may be an increase in size protests, which will increase SBA's size specialists' current workload.

Executive Order 13563

The SBIR/STTR Reauthorization Act of 2011 imposes a specific statutory deadline by which SBA must issue a proposed and a final regulation. Specifically, SBA is required to issue a proposed rule by April 29, 2012. Given the time needed to comply with various administrative rulemaking requirements, it was not practicable for SBA to hold public forums prior to issuing a proposed rule, as the executive order recommends, and still be able to meet the April 29th statutory deadline. However, SBA is considering holding such public forums (*e.g.,* town hall meetings, webinars) once it issues the proposed rule to afford the public an opportunity to participate in the rulemaking process as envisioned by this executive order. SBA has also provided for a 60-day comment period and has requested comments on not just the entire rule, but specific parts of the rule where SBA considered several alternatives or options for implementation. As indicated above in the **ADDRESSES** section of this rule, the public is provided with the link to the online rulemaking Web site and is encouraged to use this medium to submit comments and view the comments of others. Where applicable, the outcome of all of these efforts will be addressed when this rule is finalized.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this proposed rule 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, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federal assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For purposes of the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35, SBA has determined that this proposed rule will impose new reporting or recordkeeping requirements. Specifically, business concerns that are majority-owned by VCOCs, hedge funds or private equity firms must register their status in a database, as required by statute. However, because the detailed procedures for meeting this requirement will be outlined in the SBIR Policy Directive, and not the rule, SBA believes it would be more meaningful and less confusing for the small business community if SBA submits the information collection to OMB when the Policy Directives are submitted for review.

Regulatory Flexibility Act, 5 U.S.C., 601–612

SBA has determined that this proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* Accordingly, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of this Rule. The IRFA examines the objectives and legal basis for this proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there are any Federal rules that may duplicate, overlap, or conflict with this proposed rule; and whether there are any significant alternatives to this proposed rule.

1. What are the reasons for, and objectives of, this proposed rule?

This regulatory action implements several sections of the SBIR/STTR Reauthorization Act. These sections of the SBIR/STTR Reauthorization Act address affiliation, ownership and control of SBIR and STTR program participants.

The objective of the rule is to implement these statutory changes by further defining terms and expanding on the concepts set forth in the SBIR/STTR Reauthorization Act.

2. What is the legal basis for this proposed rule?

The legal basis for this rule is the National Defense Authorization Act for Fiscal Year 2012, Section 5001, Division E (cited as the SBIR/STTR Reauthorization Act of 2011 or Reauthorization Act), Public Law 112–81.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

In FY 2009, for the SBIR Program, agencies received 22,444 Phase I proposals and 3,352 Phase II proposals. In FY 2009, for the STTR program, agencies received 2,804 Phase I proposals and 467 Phase II proposals. Some of the proposals submitted were by the same small business. However, using these numbers, SBA estimates that approximately 24,000 businesses could be impacted by this proposed rule. This includes those businesses that are currently not eligible under SBA's existing regulations and will become eligible as a result of implementation of the SBIR/STTR Reauthorization Act, if this rule is adopted as proposed.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance requirements?

The proposed rule does provide that businesses will need to represent their size status at the time of initial offer and award. If there is a size protest, the small business will need to ensure it has business records that verify their small business status. These are the same documents that a business would keep in the normal course of its activities (stock certificates, by-laws etc.). The SBA has explained that there is a new reporting requirement for those businesses that are majority-owned by VCOCs, hedge funds or private equity firms. However, the SBA intends to address this reporting requirement and the database used for the reporting, when it amends the SBIR policy directive.

5. What relevant federal rules may duplicate, overlap, or conflict with this rule?

This proposed rule will conflict with current provisions in SBA's SBIR and STTR Policy Directives. As a result, those directives will need to be amended.

6. What significant alternatives did SBA consider that accomplish the stated objectives and minimize any significant economic impact on small entities?

SBA discussed several alternatives in the preamble as well as the Regulatory Impact Analysis.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 638, 662, and 694a(9).

2. Amend § 121.103 as follows:
a. Add a new paragraph (a)(7); and
b. Add a new paragraph (b)(8).

§ 121.103 How does SBA determine affiliation?

(a) * * *

(7) For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, the bases for affiliation are set forth in § 121.702.

* * * * *

(b) * * *

(8) These exceptions to affiliation and any others set forth in § 121.702 apply for purposes of SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

* * * * *

3. Amend § 121.201 by revising paragraph (b) of footnote 11 at the end of the table ''Small Business Size Standards by NAICS Industry,'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Small Business Size Standards by NAICS Industry

* * * * *

Footnotes

* * * * *

11. * * *

(a) * * *

(b) For purposes of the Small Business Innovation Research (SBIR) and the

Small Business Technology Transfer (STTR) programs only, a different definition has been established by law. See § 121.702 of these regulations.

* * * * *

4. Revise the undesignated center heading immediately preceding § 121.701 to read as follows:

Size and Eligibility Requirements for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

5. Amend § 121.701 as follows:

a. Revise the section heading;

b. Revise paragraphs (a) and (b); and

c. Remove paragraph (c).

§ 121.701 What SBIR and STTR programs are subject to size and eligibility determinations and what definitions are important?

(a) These sections apply to SBA's SBIR and STTR programs, 15 U.S.C. § 638.

(b) Definitions.

(i) *Domestic business concern* means a business entity (including a venture capital operating company, hedge fund, or private equity firm) organized for profit; with a place of business located in the United States; which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor; and created or organized in the United States, or under the law of the United States or of any State.

(ii) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(iii) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the purposes of the SBIR or STTR program.

(iv) *Hedge fund* has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(v) *Portfolio company* means any company that is owned in whole or part by a venture capital operating company, hedge fund, or private equity firm.

(vi) *Private equity firm* has the meaning given the term ''private equity fund'' in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(vii) *Venture capital operating company* means an entity described in clause (i), (v), or (vi) of § 121.103(b)(5).

6. Revise § 121.702 to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

To be eligible for award of funding agreements in SBA's SBIR and STTR programs, a business concern must meet the requirements below at the time of submission of its initial proposal (or other formal response) to a Phase I or Phase II SBIR or STTR announcement or solicitation and at the time of award:

(a) *Ownership and control.*

(1) An SBIR or STTR applicant must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals who are citizens of the United States or permanent resident aliens in the United States, or by domestic business concerns; or

(ii) Be a concern which is more than 50% owned by multiple domestic business concerns that are venture capital operating companies, hedge funds, private equity firms, or any combination of these domestic business concerns.

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the SBIR or STTR applicant.

(3) If an Employee Stock Ownership Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.

(4) If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.

(b) *Joint Ventures.* If the SBIR or STTR applicant is a joint venture, each entity to the joint venture must meet the requirements set forth in paragraph (a) of this section. A joint venture that includes one or more concerns that are majority-owned by multiple domestic business concerns that are venture capital operating companies, hedge funds, or private equity firms must comply with § 121.705(b), concerning registration and proposal requirements.

(c) *Size and affiliation.* An SBIR or STTR applicant, together with its affiliates, must not have more than 500 employees. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. For the purposes of the SBIR and STTR programs, the following bases of affiliation apply:

(1) *Affiliation based on stock ownership.* For determining affiliation based on stock ownership, a concern (including an SBIR and STTR applicant) is an affiliate of a person (including any individual, concern or other entity) that owns, or has the power to control, more than 50 percent of the concern's voting stock. If no person owns or has the power to control more than 50 percent of the concern's voting stock, SBA will deem the Board of Directors to be in control of the concern.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge.* In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(i) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered ''agreements in principle'' and are thus not given present effect.

(ii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iii) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(3) *Affiliation based on common management.* Affiliation arises where the CEO or President of a concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single person or entity that controls the board of directors of one concern also controls the board of directors or management of one or more other concerns.

(4) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. An individual or firm may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

(i) SBA may presume an identity of interest between family members with identical or substantially identical business or economic interests (such as

where the family members operate concerns in the same or similar industry in the same geographic area).

(ii) An SBIR or STTR applicant is not affiliated with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, solely on the basis of one or more shared investors, though affiliation may be found for other reasons.

(5) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A ''key employee'' is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(6) *Affiliation based on joint ventures.* Concerns submitting an application as a joint venture are affiliated with each other with regard to the application. SBA will apply the joint venture affiliation exception at § 121.103(h)(3)(iii) for two firms approved to be a mentor and protégé under SBA's 8(a) program.

(7) *Affiliation based on the ostensible subcontractor rule.* An applicant and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a funding agreement, or a subcontractor upon which the applicant is unusually reliant. All aspects of the relationship between the applicant and subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the applicant and subcontractor (such as bonding assistance or the teaming agreement). To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will consider whether the applicant's proposal complies with the performance requirements of the SBIR or STTR Program.

(8) *Affiliation based on license agreements.* SBA will consider whether there is a license agreement concerning a product or trademark which is critical to operation of the licensee. The license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss. Affiliation may arise, however, through other means, such as common ownership or common management.

(9) *Exception to affiliation for portfolio companies.* If a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an applicant is a minority investor in the applicant, the applicant is not affiliated with a portfolio company of the venture capital operating company, hedge fund, or private equity firm, unless:

(i) The venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

(ii) The venture capital operating company, hedge fund, or private equity firms holds a majority of the seats of the board of directors of the portfolio company.

7. Revise § 121.704 to read as follows:

§ 121.704 When does SBA determine the size and eligibility status of an SBIR or STTR applicant?

The size and eligibility status of a concern for the purpose of a funding agreement under the SBIR and STTR programs is determined as of the date the concern submits a written self-certification that it is small and meets the eligibility requirements of the program to the Federal agency as part of its initial proposal (or other formal response) to a Phase I or Phase II SBIR or STTR announcement or solicitation and at the time of award.

8. Revise § 121.705 to read as follows:

§ 121.705 Must a business concern self-certify its size and eligibility status?

(a) In its initial proposal (or other formal response) to a Phase I or Phase II SBIR or STTR announcement or solicitation, and at the time of award, a business concern must self-certify that it currently meets the eligibility requirements set forth in § 121.702 of this title.

(b) In addition, a small business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms must be registered with SBA as of the date it submits its initial proposal (or other formal response) to a Phase I or Phase II SBIR or STTR announcement or solicitation. The concern must indicate in any SBIR or STTR proposal or application that it is registered with SBA as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(c) A small business concern that was not subject to the requirements of paragraph (b) at the time of its SBIR proposal or application must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms. If the agency made award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation, the concern is eligible to receive the award without regard to whether it meets the requirements for receiving an award as a small business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms at the time of award, if the concern meets all other requirements for the award.

(d) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR applicant.

9. Amend § 121.1001 by revising paragraph (a)(4) as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(4) For SBA's Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, the following entities may protest:

(i) An offeror or applicant;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director; the Director, Office of Government Contracting; or the Associate Administrator, Investment Division; and

(iv) Any other offeror or applicant for that solicitation.

* * * * *

10. Amend § 121.1004 by revising paragraph (b) as follows:

§ 121.1004 What time limits apply to size protests?

* * * * *

(b) *Protests by contracting officers, funding agreement officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers, funding agreement officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section, including for purposes of the SBIR and STTR programs.

* * * * *

11. Amend § 121.1008 by revising the fourth sentence of paragraph (a) to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) * * * If the protest pertains to a requirement involving SBA's SBIR Program or STTR Program, the Area Director will also notify the Associate Administrator, Investment Division. * * *

* * * * *

Dated: May 4, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–11586 Filed 5–11–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2012–0485; Notice No. 23–12–01–SC]

Special Conditions: Tamarack Aerospace Group, Cirrus Model SR22; Active Technology Load Alleviation System (ATLAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Tamarack Aerospace Group's modification to the Cirrus Model SR22 airplane. This airplane as modified by Tamarack will have a novel or unusual design feature(s) associated with Tamarack Aerospace Group's modification. The design change will install winglets and an Active Technology Load Alleviation System (ATLAS). The addition of the ATLAS mitigates the negative effects of the winglets by effectively aerodynamically turning off the winglet under limit gust and maneuver loads. This is accomplished by measuring the aircraft loading and moving a small aileron-like device called a Tamarack Active Control Surface (TACS). The TACS movement reduces lift at the tip of the wing, resulting in the wing center of pressure moving inboard, thus reducing bending stresses along the wing span. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before June 14, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0485 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: For sections 23.301 through 23.629 (structural requirements), contact Mr. Mike Reyer; telephone (816) 329–4131. For sections 23.672 through 23.701 (control system requirements), contact Mr. Ross Schaller; telephone (816) 329–4162. The address and facsimile for both Mr. Reyer and Mr. Schaller is: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, Missouri 64106; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On February 15, 2011, Tamarack Aerospace Group applied for a supplemental type certificate for installation of winglets and an Active Technology Load Alleviation System (ATLAS) on the Cirrus Model SR 22 (serial numbers 0002–2333, 2335–2419, and 2421–2437). The Cirrus model SR22 is a certified, single reciprocating engine, four-passenger, composite airplane.

The installation of winglets, as proposed by Tamarack, increases aerodynamic efficiency. However, the winglets by themselves also increase wing static loads and the wing fatigue stress ratio, which under limit gust and maneuver loads factors may exceed the certificated wing design limits. The addition of ATLAS mitigates the negative effects of the winglets by effectively aerodynamically turning off the winglet at elevated gust and maneuver loads factors.

The ATLAS functions as a load-relief system. This is accomplished by measuring aircraft loading via an accelerometer, and by moving a small aileron-like device called a Tamarack Active Control Surface (TACS) that reduces lift at the tip of the wing. Because the ATLAS compensates for the increased wing root bending at elevated load factors, the overall effect of this modification is that the winglet can be

added to the Cirrus wing without the traditionally required reinforcement of the existing structure. This is the first application of an active loads alleviation system on a part 23 aircraft and the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Type Certification Basis

Under the provisions of § 21.101, Tamarack Aerospace Group must show that the Cirrus Model SR22, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet A00009CH or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Data Sheet A00009CH (Serial Numbers (S/Ns) 0002 through 2333, 2335 through 2419, and 2421 through 2437) are as follows:

14 CFR Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by 23–1 through 23–53, except as follows:

14 CFR 23.301 through Amendment 42
14 CFR 23.855, 23.1326, 23.1359 not applicable
14 CFR Part 36, dated December 1, 1969, as amended by 36–1 through 36–22

Except for:

Increase in amendment level from the Cirrus Model SR22 certification basis for regulation 14 CFR 23.301 through Amendment 23–42 to: 14 CFR 23.301 through Amendment 23–48.

Addition of regulation 14 CFR 23.1306 through Amendment 23–61.
Addition of regulation 14 CFR 23.1308 through Amendment 23–57.
Change in Cirrus model SR22 certification basis for regulation 14 CFR 23.1359 through Amendment 23–49 from: Not Applicable to: Applicable.

Equivalent Level of Safety (ELOS) Findings

ACE–96–5 for 14 CFR Section 23.221 (Spinning); Refer to FAA Memorandum, dated June 10, 1998, for models SR20, SR22.
ACE–00–09 for 14 CFR 23.1143(g) (Engine Controls) and 23.1147(b) (Mixture Controls); Refer to FAA Memorandum, dated September 11, 2000, for model SR22.
ACE–01–01 for 14 CFR 23.1143(g) (Engine Controls) and 23.1147(b) (Mixture Controls); Refer to FAA Memorandum, dated February 14, 2001, for model SR20.

Special Conditions

23–ACE–88 for ballistic parachute, for models SR20, SR22.
23–134–SC for protection of systems for High Intensity Radiated Fields continued: (HIRF), for models SR20, SR22.
23–163–SC for inflatable restraint system. Addition to the certification basis model SR20 effective S/N 1541 and subsequent; model SR22 S/N 1500, 1520 and subsequent.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the SR22 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the SR22 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The SR22 will incorporate the following novel or unusual design features:

Winglets with an Active Technology Load Alleviation System (ATLAS) that incorporates a small aileron-like device called a Tamarack Active Control Surface (TACS).

Discussion

Tamarack has applied for a Supplemental Type Certificate to install a winglet and ATLAS. The ATLAS is not a primary flight control system, a trim device, or a wing flap. However, there is definite applicability to ATLAS for several regulations under part 23, Subpart D—Control Systems, which might otherwise be considered ''Not Applicable'' under a strict interpretation of the regulations. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer.

Special conditions are also necessary for the effect of ATLAS on structural performance. These special conditions are intended to provide an equivalent level of safety for ATLAS as intended by part 23, Subpart C—Structure, and portions of part 23, Subpart D—Design and Construction.

Applicability

As discussed above, these special conditions are applicable to the SR22 (S/Ns 0002 thru 2333, 2335 thru 2419, and 2421 thru 2437). Should Tamarack Aerospace Group apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet A00009CH to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cirrus Model SR22 airplanes (S/Ns 0002 through 2333, 2335 through 2419, and 2421 through 2437) modified by Tamarack Aerospace Group.

1. Active Load Alleviation Systems—Structural Requirements

(A) The following special conditions apply to airplanes equipped with load alleviation systems that either directly, or as a result of failure or malfunction, affect structural performance. These special conditions address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. Any statistical or probability terms used in the following special conditions apply to the structural requirements only and do not replace, remove, or supersede other requirements, including those in part 23, subpart E. These criteria are only

applicable to structure whose failure could prevent continued safe flight and landing.

(B) In addition to the requirements in 14 CFR part 23, § 23.301 Loads, comply with the following:

SC 23.301 Loads, Probability of Failure of Load Alleviation System

(a) Failures of the load alleviation system, including the annunciation system, must be immediately annunciated to the pilot or annunciated prior to the next flight. Failure of the load alleviation system, including the annunciation system, must be no greater than 1×10^{-5} per flight hour.

(b) If failure of the load alleviation system, including the annunciation system, is greater than 1×10^{-8} per flight hour, an independent system functional test must be accomplished at a periodic interval to limit time exposure to an undetected failed system. The time interval for the system functional test must be selected so that the product of the time interval in hours and the failure of the load alleviation system, including the annunciation system, is no greater than 1×10^{-5} per hour.

(c) Failures of the load alleviation system, including the annunciation system, must be reported to the FAA in a manner acceptable to the Administrator.

(C) In place of the requirements in 14 CFR part 23, 23.303 Factor of Safety, comply with the following:

SC 23.303 Factor of Safety, Load Alleviation Systems

The airplane must be able to withstand the limit and ultimate loads resulting from the following scenarios:

(a) The loads resulting from 14 CFR 23, 23.321 through 23.537, as applicable, corresponding to a fully operative load alleviation system. A factor of safety of 1.5 must be applied to determine ultimate loads.

(b) If an independent system functional test is required by SC 23.301(b), the loads resulting from 14 CFR 23, 23.321 through 23.537, as applicable, corresponding to the system in the failed state without additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.0 must be applied to determine ultimate loads.

(c) The loads corresponding to the time of occurrence of load alleviation system failure and immediately after the failure. These loads must be determined at any speed up to V_{NE}, starting from 1g level flight conditions, and considering realistic scenarios, including pilot corrective actions. A factor of safety of 1.5 must be applied to determine ultimate loads.

(d) For airplanes equipped with ''before the next flight'' failure annunciation systems, the loads resulting from 14 CFR 23, 23.321 through 23.537, as applicable, corresponding to the system in the failed state without additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.25 must be applied to determine ultimate loads.

(e) For airplanes equipped with ''immediate'' failure annunciation systems, the loads resulting from 14 CFR 23, 23.321 through 23.537, as applicable, corresponding to the system in the failed state with additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.0 must be applied to determine ultimate loads.

(D) In addition to the requirements in 14 CFR 23, 23.571 through 23.574, comply with the following:

SC 23.571 Through SC 23.574 Fatigue and Damage Tolerance

If any system failure would have a significant effect on the fatigue or damage evaluations required in §§ 23.571 through 23.574, then these effects must be taken into account. If an independent system functional test is required by SC 23.301(b), the effect on fatigue and damage evaluations resulting from the selected inspection interval must be taken into account.

(E) In addition to the requirements in 14 CFR 23, 23.629 Flutter, comply with the following:

SC 23.629 Flutter

(a) With the load alleviation system fully operative, compliance to 14 CFR 23, 23.629 must be shown. Compliance with § 23.629(f) must include the ATLAS control system and control surface.

(b) At the time of occurrence of load alleviation system failure and immediately after the failure, compliance with 14 CFR 23, 23.629 (a) and (e) must be shown up to V_D/M_D without consideration of additional operating limitations or reconfiguration of the airplane.

(c) For airplanes equipped with ''before the next flight'' failure annunciation systems and the load alleviation system in the failed state, compliance to 14 CFR 23, 23.629 Flutter, paragraphs (a) and (e), must be shown up to V_D/M_D without consideration of additional operating limitations or reconfiguration of the airplane.

(d) For airplanes equipped with ''immediate'' failure annunciation systems and the load alleviation system in the failed state, compliance to 14 CFR 23, 23.629 Flutter, paragraphs (a) and (e), must be shown with consideration of additional operating limitations or reconfiguration of the airplane at speeds up to $V_D = 1.4 \times$ maximum speed limitation selected by the applicant.

2. Active Load Alleviation Systems—Control System Requirements

(A) In place of 14 CFR part 23, § 23.672 Stability augmentation and automatic and power-operated systems requirement, comply with the following:

SC 23.672 Load Alleviation Systems

The load alleviation system must comply with the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the load alleviation system or in any other automatic system that could result in an unsafe condition if the pilot was not aware of the failure. Warning systems must not activate the control system.

(b) The design of the load alleviation system or of any other automatic system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that, while the system is active or after any single failure of the load alleviation system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual (AFM); and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

(B) In place of 14 CFR part 23, 23.677 Trim systems requirement, comply with the following:

SC 23.677 Load Alleviation Active Control Surface

(a) Proper precautions must be taken to prevent inadvertent, improper, or abrupt Tamarack Active Control Surface (TACS) operation.

(b) The load alleviation system must be designed so that, when any one connecting or transmitting element in the primary flight control system fails, adequate longitudinal control for safe flight and landing is available.

(c) The load alleviation system must be irreversible unless the TACS is properly balanced and has no unsafe flutter characteristics. The system must have adequate rigidity and reliability in the portion of the system from the tab to the attachment of the irreversible unit to the airplane structure.

(d) It must be demonstrated that the airplane is safely controllable and that the pilot can perform all maneuvers and operations necessary to effect a safe landing following any probable powered system runaway that reasonably might be expected in service, allowing for appropriate time delay after pilot recognition of the system runaway. The demonstration must be conducted at critical airplane weights and center of gravity positions.

(C) In place of 14 CFR part 23, 23.683 Operation tests requirement, comply with the following:

SC 23.683 Operation Tests

(a) It must be shown by operation tests that, when the load alleviation system is active and operational and loaded as prescribed in paragraph (b) of this section, the system is free from—

(1) Jamming;

(2) Excessive friction; and

(3) Excessive deflection.

(b) The prescribed test loads are, for the entire system, loads corresponding to the limit airloads on the appropriate surface.

(D) In place of 14 CFR part 23, 23.685 Control system details requirement, comply with the following:

SC 23.685 Control System Details

(a) Each detail of the Tamarack Active Control Surface (TACS) must be designed and installed to prevent jamming, chafing, and interference from cargo, passengers, loose objects, or the freezing of moisture.

(b) There must be means in the cockpit to prevent the entry of foreign objects into places where they would jam any one connecting or transmitting element of the system.

(c) Each element of the load alleviation system must have design features, or must be distinctively and permanently marked, to minimize the possibility of incorrect assembly that could result in malfunctioning of the control system.

(E) In place of 14 CFR part 23, 23.697 Wing flap controls requirement, comply with the following:

SC 23.697 Load Alleviation System Controls

(a) The Tamarack Active Control Surface (TACS) must be designed so that, when the surface has been placed in any position, it will not move from that position unless the control is adjusted or is moved by the automatic operation of a load alleviation system.

(b) The rate of movement of the TACS in response to the automatic device must give satisfactory flight and performance characteristics under steady or changing conditions of airspeed, engine power, and attitude.

(F) In place of 14 CFR part 23, 23.701 Flap interconnection requirement, comply with the following:

SC 23.701 Load Alleviation System Interconnection

(a) The load alleviation system and related movable surfaces as a system must—

(1) Be synchronized by a mechanical interconnection between the movable surfaces; or by an approved equivalent means; or

(2) Be designed so that the occurrence of any failure of the system that would result in an unsafe flight characteristic of the airplane is extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual movable surfaces.

Issued in Kansas City, Missouri, on May 2, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–11214 Filed 5–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0499; Notice No. 25–12–01–SC]

Special Conditions: Boeing, Model 737–800; Large Non-Structural Glass in the Passenger Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 737–800 airplane. This airplane as modified by Lufthansa Technik will have a novel or unusual design feature associated with the installation of large non-structural glass items in the cabin area of an executive interior occupied by passengers and crew. The installation of these items in a passenger compartment, which can be occupied during taxi, takeoff, and landing, is a novel or unusual design feature with respect to the material used. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before June 4, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0499 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

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

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 16, 2010, Lufthansa Technik AG, Weg Beim Jaeger 193, 22335 Hamburg Germany applied for a supplemental type certificate for the installation of large non-structural glass items in the cabin area of the executive interior occupied by passengers and crew in a Boeing Model 737–800. The Boeing Model 737–800, approved under Type Certificate No. A16WE, is a large transport category airplane that is limited to 189 passengers or less, depending on the interior configuration. This specific Boeing Model 737–800 configuration includes seating provisions for 34 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of the Federal Regulations (14 CFR) 21.101, Lufthansa Technik must show that the Boeing Model 737–800, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A16WE are as follows: 14 CFR part 25 as amended by Amendments 25–1 through 25–77 with exceptions for the Boeing Model 737–800. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–800 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–800 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737–800 will incorporate the following novel or unusual design features: The installation of large non-structural glass items, typically in the form of glass sheets in the cabin area of an executive interior occupied by passengers and crew.

These installations would be for aesthetic purposes, not for safety, in components other than windshields or windows. For these special conditions, a large glass item is 4 kg (approximately 10 pounds) and greater in mass. This limit was established as the mass at which a glass component could be expected to potentially cause widespread injury if it were to shatter or break free from its retention system.

The proposed special conditions address the novel and unusual design features for the use of large non-structural glass in the passenger cabin. These large glass items would be installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit. The installations of large non-structural glass items may include, but are not limited to, the following items:

- Glass partitions.
- Glass attached to the ceiling.
- Wall/door mounted mirrors/glass panels.

Discussion

The existing part 25 regulations only address the use of glass in windshields, instrument or display transparencies, or window applications. The regulations treat glass as unique for special applications where no other material will serve and address the adverse properties of glass.

Section 25.775, ''Window and windshields,'' provides for the use of glass in airplanes but limits glass to windshields and instrument or display transparencies. Furthermore, except for bolted-in windshields, there is limited experience with either adhesive or mechanical retention methods for large glass objects installed in an airplane subject to high loads supported by flexible restraints.

The FAA has accepted the following uses of glass in the passenger cabin under the current regulations:

1. Glass items installed in rooms or areas in the cabin that are not occupied during taxi, take off, and landing, and occupants do not have to enter or pass through the room or area to get to any emergency exit.

2. Glass items integrated into a functional device whose operation is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal display (LCD) or plasma displays. These glass items may be installed in any area in the cabin regardless of occupancy during taxi, take-off, and landing. Acceptable means for these items may depend on the size and specific location of the device.

3. Small glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit. For the purposes of these special conditions, a small glass item is less than 4 kg in mass or a group of glass items weighing less than 4 kg in mass.

The glass items in numbers one, two, and three (above) have been restricted to applications where the potential for injury is either highly localized (such as instrument faces) or the location is such that injury due to failure of the glass is unlikely (e.g., mirrors in lavatories). These glass items are subject to the inertia loads contained in § 25.561 and maximum positive differential pressure for items like monitors, but are not subject to these special conditions. They have been found acceptable through project specific means of compliance requiring testing to meet the requirement in § 25.785(d) and by adding a protective polycarbonate layer

that covers the glass exposed to the cabin.

The use of glass in airplanes utilizes the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is not a desirable material for traditional aircraft applications because, as a solo component, it is heavy (about the same density as aluminum). In addition, when glass fails, it can break into extremely sharp fragments that have the potential for injury above and beyond simple impact and have been known to be lethal.

The proposed special conditions address installing glass in much larger sizes than previously accepted and in a multitude of locations and applications, instead of using more traditional aircraft materials. In most, if not all cases, the glass will not be covered with a polycarbonate layer. Additionally, the retention of glass of this size and weight is not amenable to conventional techniques currently utilized in airplane cabins.

The proposed special conditions consider the unusual material properties of glass as an interior material that have limited or prevented its use in the past, and address the performance standards needed to ensure that those properties do not reduce the level of safety intended by the regulations. They address the use of large glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit.

The proposed special conditions define a large glass component threshold of 4 kg, which is based on an assessment of the mass dislodged during a high ''g'' level (as defined in § 25.562) event. Groupings of glass components that total more than 4 kg would also need to be included. The applicable performance standards in the regulations for the installation of these components also apply and should not adversely affect the standards provided below. For example, heat release and smoke density testing should not result in fragmentation of the component.

For large glass components mounted in a cabin occupied by passengers or crew that are not otherwise protected from the injurious effects of failure of the glass component, the following apply:

Material. The glass used must be tempered or otherwise treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. This must be demonstrated by testing to failure. Tests similar to ANSI/SAE Z26.1 section 5.7, Test 7 would be acceptable.

Fragmentation. The glass component construction must control the fragmentation of the glass to minimize the danger from flying glass shards or pieces. Impact and puncture testing to failure must demonstrate this. Tests similar to ANSI/SAE Z26.1 section 5.9, Test 9 adjusted to ensure cracking the glass would be acceptable.

Strength. The glass component, as installed in the airplane, must be strong enough to meet the load requirements for all flight and landing loads and all of the emergency landing conditions in subparts C and D of part 25. In addition, glass components that are located such that they are not protected from contact with cabin occupants must be designed for abusive loading without failure, such as impact from service carts, or occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact. This must be demonstrated by static structural testing to ultimate load except that the critical loading condition must be tested to failure. The tested glass component must have all features that affect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth.

Retention. The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. Based on the characteristics of a large glass component, dynamic tests should be performed to demonstrate that the occupants would be protected up to the load levels required by the certification basis of the airplane. A single test for the most critical loading for the installed component would be sufficient. This may be accomplished by using already accepted methods for dynamic testing.

Analysis may be used in lieu of testing if the applicant has validated the strength models and dynamic simulation models used against static tests to failure and dynamic testing to the above requirements and can predict structural failure and dynamic response and inertial load. The glass material properties must meet § 25.613, ''Material strength properties and material design values.'' The effect of design details, such as geometric discontinuities or surface finish, must be accounted for in the test/analysis.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–800. Should Lufthansa Technik apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Certification of the Boeing Model 737–800 is currently scheduled for June 2012. The substance of these special conditions has been previously subject to the notice and public-comment procedure. Therefore, because a delay would significantly affect both the applicant's installation of the system and certification of the airplane, we are shortening the public-comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 737–800 airplanes modified by Lufthansa Technik AG. For these special conditions, a large glass component is 4 kg (approximately 10 pounds) and greater in mass, or a grouping of glass components that total more than 4 kg.

1. Boeing Model 737–800 Airplane; Large Non-Structural Glass in the Passenger Compartment. The airplane is not operated for hire or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable.

2. *Material Fragmentation.* The glass used to fabricate the component must be tempered or treated to ensure that, when fractured, it breaks into small pieces with relatively dull edges. In addition, it must be shown that fragmentation of the glass is controlled to reduce the danger from flying glass shards or

pieces. This must be demonstrated by testing to failure.

3. *Component Strength.* The glass component must be strong enough to meet the load requirements for all flight and landing loads including any of the applicable emergency landing conditions in subparts C and D of part 25. Abuse loading without failure, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact, must also be demonstrated. This must be demonstrated by static structural testing to ultimate load, except that the critical loading condition must be tested to failure in the as-installed condition. The tested glass must have all features that affect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth. Glass pieces must be non-hazardous.

4. *Component Retention.* The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. A test must be performed to demonstrate that the occupants would be protected from the effects of the component failing or becoming free of restraint under dynamic loading. The dynamic loading of § 25.562(b)(2) is considered an acceptable dynamic event. The applicant may propose an alternate pulse; however, the impulse and peak load may not be less than that of § 25.562(b)(2). As an alternative to a dynamic test, static testing may be used if the loading is assessed as equivalent as or more critical than a dynamic test, based upon validated dynamic analysis. Both the primary directional loading and rebound conditions need to be assessed.

5. *Instructions for Continued Airworthiness.* The instructions for continued airworthiness will reflect the fastening method used and will ensure the reliability of the methods used (e.g., life limit of adhesives, or clamp connection). Inspection methods and intervals will be defined based upon adhesion data from the manufacturer of the adhesive or actual adhesion test data, if necessary.

Issued in Renton, Washington, on May 1, 2012.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–11697 Filed 5–14–12; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL MEDIATION BOARD

29 CFR Part 1206

[Docket No. C–7034]

RIN 3140–ZA01

Representation Procedures and Rulemaking Authority

AGENCY: National Mediation Board.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposal amends the National Mediation Board's (NMB or Board) existing rules for handling representation disputes to incorporate statutory language added to or amending the Railway Labor Act (RLA) by the Federal Aviation Administration Modernization and Reform Act of 2012. This document proposes changes to the existing regulations pertaining to run-off elections, showing of interest for representation elections, and the NMB's rulemaking proceedings.

DATES: The NMB will accept written comments that are received on or before July 16, 2012.

ADDRESSES: You may submit comments identified by Docket Number C–7034 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: www.nmb.gov.* Follow the instructions for submitting comments.
- *Email: legal@nmb.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 692–5085.
- *Mail and Hand Delivery:* National Mediation Board, 1301 K Street NW., Ste. 250E, Washington, DC 20005.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *www.nmb.gov,* including any personal information provided.

Docket: For access to the docket or to read background documents or comments received, go to *www.nmb.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION: On February 14, 2012, the President signed the Federal Aviation Administration Modernization and Reform Act of 2012, Public Law 112–095 (FAA Reauthorization) into law. The FAA Reauthorization contained, inter alia, several amendments to the RLA. The changes contained in these amendments impact the Board's current Rules relating to run-off elections, showing of interest requirements, and rulemaking. These Rules are being revised to comply with the statutory language. As discussed below, the Board invites commenters to address specific questions below, along with any other matters they consider relevant to the changes wrought by the amended statutory language. The Board is particularly interested in receiving comments regarding the effect of the amendments on the Board's policies and practices with respect to representation disputes in mergers. The NMB may incorporate any comments in a Final Rule in this proceeding. The NMB will hold an open public hearing during the comment period. A notice will be published containing the dates of the open public hearing and related information.

Run-Off Elections

Prior to the enactment of the FAA Reauthorization, under its previous practice in representation elections, the Board aggregated all votes cast for representation, including write-in votes.[1] Where a majority of employees have cast valid ballots for representation but no individual or organization received a majority of the ballots cast, the issue to be determined was which of the individuals or organizations would be the representative. Thus, the run-off election, once authorized, would be between the two individuals or organizations that received the highest number of votes. 29 CFR 1206.1. The amendments to the RLA now require that the Board no longer aggregate votes for representation and that any run-off election will be between the two ballot options that receive the most votes. This can include the ''no'' option.

The Board's Rules also required that a participant initiate a run-off election with a written request. 29 CFR 1206.1. The amended language now requires the Board to ''arrange for'' a second election when no ballot option receives a majority of the ballots cast.

Showing of Interest

Prior to these amendments, the showing of interest requirements needed to support an application under Section 2, Ninth of the RLA invoking the Board's services to investigate a representation dispute among a carrier's

[1] The NMB has a longstanding practice of allowing write-in votes for representation. *International Total Services,* 16 NMB 231, 233 (1989) (rejecting union objection to inclusion of write-in option since the provision for write-in votes in NMB elections has remained largely unchanged for over 50 years).

employees were established by the exercise of the Board's discretion under Section 2, Ninth, and by the NMB's Rules. 29 CFR 1206.2, 1206.5. The showing of interest requirements were not defined by statute. The NMB's Rules provided that an individual or organization needed to support their application with authorization cards from thirty-five percent of the craft or class if those employees were unrepresented and authorization cards from more than fifty percent of the craft or class if those employees were already represented. 29 CFR 1206.2. An intervening individual or organization needed a thirty-five percent showing of interest to get on the ballot. 29 CFR 1206.5. The amended statutory language provides that a showing of interest of not less than fifty percent is required to support an ''application requesting that an organization or individual be certified as the representative of any craft or class of employees.'' 45 U.S.C. 152, Twelfth.

The amended language is silent with regard to mergers. Courts have long recognized that the NMB, under Section 2, Ninth, has the authority to resolve representation disputes arising from a merger involving a carrier or carriers covered by the RLA. *Air Line Employees Ass'n, Int'l* v. *Republic Airlines, Inc.,* 798 F.2d 967 (7th Cir. 1986). An organization or individual initiates this process by filing an application supported by evidence of representation or a showing of interest. After the NMB determines that a single transportation system exists, the Board's investigation will proceed to address the representation of the craft or class. The Board's current policy in mergers requires that ''[i]ncumbent organizations or individuals on the affected carrier(s) must submit evidence of representation or a showing of interest from at least thirty-five (35) percent of the employees in the craft or class.'' NMB Representation Manual (Representation Manual) Section 19.601.[2] The Representation Manual further states that the ''rules regarding percentage of valid authorizations in NMB Rule 1206.2 (29 CFR 1206.2) and bar rules in NMB Rule 1206.4 (29 CFR 1206.4) do not apply to applications'' in merger situations. Representation Manual Section 19.6. The amended RLA, however, now requires at least a fifty percent showing of interest for applications to certify a representation of any craft or class. The Board's merger procedures include the filing of an application to certify a representative of the newly merged craft or class. The Board seeks comments regarding the impact of the amended language on the Board's policies and procedures with regard to mergers.

[2] The Representation Manual is an internal statement of agency policy and not a compilation of regularly promulgated regulations having the force and effect of law. *Hawaiian Airlines* v. *NMB,* 107 L.R.R.M. 3322 (D. Haw. 1979), *aff'd without op.* 659 F.2d 1088 (9th Cir. 1981).

Rulemaking Authority

The FAA Reauthorization also amends the RLA to specifically provide rulemaking under the Administrative Procedure Act (APA) with the added requirement of a hearing in addition to the notice and comment provisions of Section 553 of the APA.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The NMB certifies that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule affects only the Board's election process, the method used by the NMB to determine the outcome of a self-organization vote by employees, and internal NMB procedures. The proposed rule imposes no requirements upon carriers or derivative carriers subject to the RLA. The proposed rule would not directly affect any entities that are small businesses under the Regulatory Flexibility Act. Accordingly, the National Mediation Board certifies that it will not have a significant impact on a substantial number of small entities.

National Environmental Policy Act

This proposal will not have any significant impact on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

List of Subjects in 29 CFR Part 1206

Air carriers, Labor management relations, Labor unions, Railroads.

Accordingly, as set forth in the preamble, the NMB proposes to amend 29 CFR part 1206 as follows:

PART 1206–HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

1. The authority citation for part 1206 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

2. Section 1206.1 is revised to read as follows:

§ 1206.1 Run-off elections.

(a) If in an election among any craft or class no option receives a majority of the legal votes cast, or in the event of a tie vote, the Board shall authorize a run-off election.

(b) In the event a run-off election is authorized by the Board, the names of the two options which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which voters may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except:

(1) Those employees whose employment relationship has terminated; and

(2) Those employees who are no longer employed in the craft or class.

3. Section 1206.2 is revised to read as follows:

§ 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.

Upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

4. Section 1206.5 is revised to read as follows:

§ 1206.5 Necessary evidence of intervenor's interest in a representation dispute.

In any representation dispute under the provisions of section 2, Ninth of the Railway Labor Act, an intervening individual or organization must produce proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class of employees involved to warrant placing the name of the intervenor on the ballot.

5. Section 1206.8 is revised to read as follows:

§ 1206.8 Amendment or rescission of rules in this part.

(a) The Board may at any time amend or rescind any rule or regulation in this part by following the public rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) and after providing the opportunity for a public hearing.

(b) The requirements of paragraph (a) of this section shall not apply to any rule or proposed rule to which the third sentence of section 553(b) of the Administrative Procedure Act applies.

(c) Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation in this part. An original and three copies of such petition shall be filed with the Board in Washington, DC, and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

Dated: May 10, 2012.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. 2012–11770 Filed 5–14–12; 8:45 am]

BILLING CODE 7550–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0403]

RIN 1625–AA08

Special Local Regulations; Annual Bayview Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent Special Local Regulations to provide for the safe control of vessel movement during the start of the Annual Bayview Mackinac Race, commonly known as the Port Huron to Mackinac Sail Race. This action is necessary to provide for the safety of the general boating public and commercial shipping during the start of the race.

DATES: Comments and related materials must be received by the Coast Guard no later than June 14, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0403 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, email or call Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via email at: *frank.t.jennings@uscg.mil* or by phone at: (216) 902–6094. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Port Huron to Mackinac sail race (currently titled the ''Bell's Beer Bayview Mackinac Race'') is an annual regatta that has taken place since 1925. The race occurs in July of each year with a starting point in Port Huron, MI. It is typical for more than 200 sailboats

to take part in this annual event. The Coast Guard's Ninth District Commander has determined that the high concentration of participants and spectators at the race's starting point poses extra and unusual hazards to the boating public. The likely combination of recreational vessels and sailing vessels gathered together in high concentrations within a congested area known to have fast currents could lead to serious boating injuries or fatalities.

Discussion of Rule

In light of the extra and unusual hazards likely to occur at the starting point of the Port Huron to Mackinac sail race, the Coast Guard proposes to establish permanent Special Local Regulations. These Special Local Regulations will be enforced in July of each year, and the exact times and dates of enforcement will be published in the **Federal Register** annually via a Notice of Enforcement. This proposed Special Local Regulation will apply to the starting area of the race in the vicinity of Port Huron, MI. Specifically, this proposed regulated area will include all U.S. navigable waters of the Black River, St. Clair River and lower Lake Huron starting at: Latitude 042°58′47″ N, longitude 082°26′0″ W; then easterly to latitude 042°58′24″ N, longitude 082°24′47″ W; then northward along the International Boundary to latitude 043°2′48″ N, longitude 082°23′47″ W; then westerly to the shoreline at approximate location latitude 043°2′48″ N, longitude 082°26′48″ W; then southward along the U.S. shoreline to latitude 042°58′54″ N, longitude 082°26′1″ W; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and those vessels participating in the race, the Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so but only with prior approval of the PATCOM and only when so directed by that individual. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels allowed within the regulated area will be operated at a no wake speed and in a manner that will not endanger participants in the event or any other craft. These proposed Special Local Regulations shall not apply to vessels participating in the event or government vessels patrolling the regulated area.

In the event these proposed Special Local Regulations affect shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on Channel 16 (156.8 MHZ).

Regulatory Analyses

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

Regulatory Planning and Review

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

This proposed rule is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) 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.

This proposed rule will be enforced for only seven hours on a single day in July. Also, the regulated area will be a relatively small and only in effect at the race's starting point. Additionally, it is expected that during the annual enforcement of these proposed Special Local Regulations the majority of vessel traffic in the vicinity of the regulated area will be recreational in nature. Furthermore, some vessel traffic will be allowed to pass, albeit with caution and at a reduced speed, through the regulated area with the permission of the Coast Guard Patrol Commander. Finally, the Coast Guard expects that public awareness of this event, along with the Coast Guard's regulation of it, is particularly high. As mentioned above, this race has recurred regularly since 1925, and the Coast Guard has regulated it for many years with both permanent and temporary regulations. Despite the race's long history, the Coast Guard still intends to issue maritime advisories to current users of the affected waterways. On the whole, local maritime interests are already well familiar with the effects of this event and this proposed rulemaking.

Impact on Small Entities

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

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

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Black River, St. Clair River and lower Lake Huron during the month of July each year.

These proposed Special Local Regulations will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in above *Regulatory Planning and Review* section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please email or call Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via email at: *frank.t.jennings@uscg.mil* or by phone at: (216) 902–6094. 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 proposed rule calls for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We 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 proposed rule involves the establishment of Special Local Regulations and is therefore categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. During the annual permitting process for this event an environmental analysis will be conducted to include the effects of these proposed Special Local Regulations. Thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this proposed rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add § 100.902 to read as follows:

§ 100.902 Special Local Regulations; Annual Bayview Mackinac Race.

(a) *Regulated Area.* These Special Local Regulations apply to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58′47″ N, longitude 082°26′0″ W; then easterly to latitude 042°58′24″ N, longitude 082°24′47″ W; then northward along the International Boundary to latitude 043°2′48″ N, longitude 082°23′47″ W; then westerly to the shoreline at approximate location latitude 043°2′48″ N, longitude 082°26′48″ W; then southward along the U.S. shoreline to latitude 042°58′54″ N, longitude 082°26′1″ W; then back to the beginning [DATUM: NAD 83].

(b) *Enforcement period.* These Special Local Regulations will be enforced annually at the commencement of the Bayview Mackinac Race. The enforcement period will last approximately seven hours on a single day each July. The Coast Guard will notify the public of the exact enforcement date and times via a Notice of Enforcement published in the **Federal Register**. Also, the Coast Guard may use marine broadcasts, local notice to mariners, local news media, on-scene oral notice, and broadcasts on VHF–FM marine radio Channel 16 (156.8 MHZ) to notify the public of the exact dates and times of enforcement.

(c) *Special Local Regulations.*

(1) No vessel may enter the regulated area established in paragraph (a) without prior approval from the Coast Guard's designated Patrol Commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(2) Vessels permitted to enter this regulated area must operate at a no wake speed and in a manner that will not endanger race participants or any other craft.

(3) The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion

from the area, a Notice of Violation for failure to comply, or both.

(4) If it is deemed necessary for the protection of life and property, the PATCOM may terminate at any time the marine event or the operation of any vessel within the regulated area.

(5) In accordance with the general regulations in section 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.''

(6) The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

Dated: May 4, 2012.

J.R. Bingaman,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 2012–11679 Filed 5–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2012–2018]

Request for Comments on the Recommendation for the Disclosure of Sequence Listings Using XML (Proposed ST.26)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (Office) is seeking comments to obtain views of the public on the international effort to revise the standard for the presentation of nucleotide and/or amino acid sequences and the consequent changes to the United States rules of practice. The standard is being revised to require the use of extensible mark-up language (XML) format, to update the standard, and to more closely align requirements of the standard with those of public sequence database providers. Comments may be offered on any aspect of this effort.

DATES: Written comments must be received on or before July 16, 2012 to ensure consideration. No public hearing will be held.

ADDRESSES: Comments concerning this notice should be sent by electronic mail message over the Internet addressed to *seq_listing_xml@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susan C. Wolski, Office of Patent Cooperation Treaty Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Internet (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Susan C. Wolski, Office of Patent Cooperation Treaty Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–3304, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susan C. Wolski.

SUPPLEMENTARY INFORMATION:

1. Background Information

Patent applicants are currently required to submit biological sequence data in a standardized electronic format in accordance with World Intellectual Property Organization (WIPO) Standard ST.25, both within the framework of the Patent Cooperation Treaty (PCT) (Annex C of the Administrative Instructions) and under most national and regional provisions. The Rules of Patent Practice in the United States (37 CFR 1.821–1.825) are substantively consistent with WIPO ST.25.

WIPO ST.25, which became effective in 1998 and has not been revised since that time, requires a flat file structure of numeric identifiers using a limited set of character codes. In October 2010, the Committee on WIPO Standards (CWS) established a Task Force, designating the European Patent Organization (EPO) as the lead, to propose a revised standard for the filing of nucleotide and/or amino acid sequence listings in XML format (hereinafter referred to as ''the XML standard''). The work of the Task Force is accomplished through online collaboration, restricted to Task Force members only, via the WIPO Web site. The XML standard (tentatively designated WIPO ST.26) is composed of three documents, namely, the main body of the standard, a first annex setting forth the controlled vocabularies for use with the sequence part of the standard, and a second annex setting forth the Document Type Definition (DTD) for the standard. Five rounds of comment/revision have taken place since March 2011, and discussion of the documents is ongoing.

It is expected that the XML standard will be adopted at a meeting of the CWS in early 2013. However, no decision has been made as to when it will enter into force for PCT purposes, and consequently, for national and regional offices. The work of the Task Force and issues pertaining to transitioning to the XML standard were discussed at the Nineteenth Session of the Meeting of International Authorities (MIA)(February 8–10, 2012). The Meeting agreed that the Task Force will look at the feasibility of developing a tool that would allow for the easy and complete conversion of sequence listings filed in one format (ST.25 or XML) into the other. Thereafter, the appropriate PCT bodies should commence a discussion on the most appropriate mechanism for transition from ST.25 to the XML standard. See the Meeting Summary available at *http://www.wipo.int/edocs/mdocs/pct//en/pct_mia_19/pct_mia_19_13.pdf.*

2. Request for Comments

The Office, leading the negotiations for the United States, is seeking public comment on the current version of the main body of the standard and its two annexes. The text of the current draft of the proposed main body of the sequence listing standard, with its associated Annexes, is available via the Office's Web site at *http://www.uspto.gov/patents/law/comments/sequence_listings.jsp.* The documents are: Recommmendation for the disclosure of sequence listings using XML (Proposed ST.26); Annex B.1. Controlled vocabularies; and ST26SequenceListing–v1–0.

In light of the likely adoption of this standard in early 2013, the Office desires to ensure that the XML standard is disseminated as widely as possible and the opportunity to provide comments is correspondingly comprehensive. Written comments may be offered on any aspect of the proposed standard or Annexes, transition issues, or expected implementation in the United States. Comments are specifically requested on the following issues:

(1) *Comprehensiveness and Clarity.* One goal of the development of a WIPO Standard for sequence listings is to allow patent applicants to draw up a single sequence listing in a patent application that would be acceptable for the purposes of both international and national or regional prosecution. Any new standard should represent the maximum requirements for any sequence listing submission, and each national and regional office requiring compliance with the XML standard should have consistent interpretations of the standard.

The Office invites comments on whether the main body of the standard is sufficiently comprehensive and clear to achieve this goal, and in particular welcomes suggestions to add details or clarify the language as appropriate.

(2) *Absence of PCT Procedure.* Currently, ST.25 includes both substantive and procedural requirements for sequence listings because it fully incorporates PCT Adminstrative Instructions Annex C. The XML standard will be limited to substantive requirements, consisting of a general information part (to include information sufficient to identify the application of which it is a part) and a sequence data part (to include technical information pertaining to each sequence in the listing). It is expected that the PCT Administrative Instructions will be revised to separately specify procedural requirements pertaining to sequence listings filed under the XML standard in international applications. As an example, the XML standard itself will not require translation of free text that is in a non-English language to be included within the text of the application disclosure. However, international, national and regional offices would be free to make such a requirement.

The Office invites comments as to whether the XML standard includes any unnecessary procedural requirements or excludes any procedural requirements that should be retained.

(3) *Feature Keys and Qualifiers.* ST.25 uses a controlled vocabulary of feature keys to describe nucleic acid and amino acid sequences, with a very limited set of controlled vocabulary to further describe certain features. The XML standard includes, in addition to feature keys, a significant number of the qualifiers for the description of nucleotide sequences agreed upon by the International Nucleotide Sequence Database Collaboration (INSDC). Note that the XML standard does not include feature keys and qualifiers that are not relevant for patent data purposes. The XML standard also includes four qualifiers for amino acids. These feature keys and qualifiers form part of Annex B.1.

The INSDC revises feature keys and qualifiers on an occasional basis (i.e., there is no set schedule). While the goal of requiring INSDC feature keys and qualifiers is to improve compatibility with the public sequence database providers, it is not clear how often the international, national, and regional offices will be able to update submission software and procedures or rules to accommodate such changes.

Public comment is invited with regard to any feature keys or qualifiers that are not clear, or that are optional and should be mandatory (or vice versa). Comments are also welcome regarding how frequently WIPO should consider updating these feature keys and qualifiers, recognizing the impact this will have on the Office rules.

(4) *Definition of a Sequence for which a Sequence Listing is Required.* The XML standard revises the definition of a sequence for which a sequence listing is required. The following list sets forth the more significant differences from ST.25.

(a) *Prohibited sequences.* ST.25 describes sequences for which a sequence listing is not required, but does not specifically prohibit the presentation of such sequences. In contrast, the XML standard (paragraph 4) prohibits the inclusion of any branched nucleotide or amino acid sequences or any sequences with fewer than ten specifically defined nucleotides or fewer than four specifically defined amino acids.

(b) *Modified nucleotides.* ST.25 specifies that sequences comprising nucleotides other than those listed in Appendix 2, Tables 1 and 2, are specifically excluded from the definition of sequences for which a sequence listing must be provided. In contrast, the XML standard (paragraph 5) does not contain this exclusion, and specifies inclusion of sequences containing any nucleotides that can be represented using any of the symbols set forth in Annex B.1, paragraph 1, Table 1. This includes nucleotides that may contain, *inter alia,* a modified or synthetic purine or pyrimidine base; a modified or synthetic ribose or deoxyribose, or a modified or synthetic 3′ to 5′ internucleotide linkage, i.e., any chemical moiety that provides the same structural function as the phosphate moiety of DNA or RNA.

(c) *D-amino acids.* ST.25 specifies that sequences containing at least one D-amino acid are specifically excluded from the definition of sequences for which a sequence listing must be provided. In contrast, pursuant to the XML standard (paragraph 6), any unbranched sequences containing four or more specifically defined amino acids would be required to be included in a sequence listing, regardless of whether that sequence contains any D-amino acids.

(d) *Variants.* ST.25 does not specifically address how variants are to be represented in a sequence listing. The XML standard specifies how variants are to be represented. See paragraph 58 which reads as follow:

> 58. A variant sequence disclosed by enumeration of its residues and encompassed by paragraph 4 must be assigned its own sequence identification number and be presented in the sequence listing. A specific variant, i.e., deletion, addition, or substitution, disclosed only by reference to a disclosed primary sequence in the sequence listing, must be presented in the sequence listing either as a separate sequence assigned its own sequence identification number or by annotation of the primary sequence with appropriate feature keys and qualifiers. A specific variant containing multiple variations from the primary sequence at distinct locations, where the variations at each location only occur together, must be presented in the sequence listing as a separate sequence assigned its own sequence identification number.

The Office requests comments on whether these changes as set forth in paragraphs (a) through (d) above are desirable, and what difficulties, if any, are likely to be faced in complying with the definition in the XML standard.

(5) *Publications (references).* ST.25 provided for the inclusion of publication information (*i.e.,* references to relevant prior publications) in numeric identifiers <300>–312>. The XML standard does not provide for such references.

The Office invites comments as to whether there is any perceived detriment due to the non-inclusion of such publications or references in the sequence listing.

(6) *Transition Issues.* Transition to the XML standard will require Office analysis of the time frame required to update systems to receive, process, and search sequence listings filed under the standard. The date of entry into force may be as long as two or three years after adoption of the new standard; however, as noted above, discussions within the Task Force and WIPO are continuing. Current thinking in the Office is that it would be preferable to have a clean transition from current WIPO Standard ST.25 to the XML Standard. This would be accomplished by having the XML Standard enter into force for PCT purposes (and correspondingly, for US applications at

the same time) at a particular date in the future (*e.g.,* after such date, all sequence listings filed for the first time in an application (including a continuation, continuation-in-part, and a divisional) would have to be filed in compliance with that new standard).

(a) The Office invites comments regarding how much time is likely to be needed for applicants to transition to the XML standard (with the assumption that sequence listing authoring software will be publicly available).

(b) Given the divergent requirements of the proposed XML standard and ST.25 as described above, the Office invites comments on what difficulties an applicant should anticipate if national or regional offices required compliance with different standards (*i.e.,* ST.25 and XML). Will the existence of separate authoring tools for each of the standards mitigate such difficulties?

Dated: May 9, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–11755 Filed 5–14–12; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0292; FRL–9671–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permit To Construct Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland pertaining to sources which are exempt from preconstruction permitting requirements under Maryland's New Source Review (NSR) program. 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 14, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0292 by one of the following methods:

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

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0292, Ms. Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, 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–2012–0292. 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: Mr. David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, also entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permit to Construct Exemptions,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 2, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–11625 Filed 5–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 171

Nationwide Health Information Network: Conditions for Trusted Exchange

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: The nationwide health information network is defined as the set of standards, services, and policies that enable secure health information exchange over the Internet. Enacted in February 2009, the Health Information Technology for Economic and Clinical Health (HITECH) Act requires the

National Coordinator for Health Information Technology to establish a governance mechanism for the nationwide health information network (section 3001(c)(8) of the Public Health Service Act (PHSA)). This request for information (RFI) is being issued to request public comment on draft proposals the Office of the National Coordinator for Health Information Technology (ONC) is considering in anticipation of developing a notice of proposed rulemaking (NPRM) to establish such a governance mechanism. This RFI seeks broad input on a range of topics, including: The creation of a voluntary program under which entities that facilitate electronic health information exchange could be validated with respect to their conformance to certain ONC-established ''conditions for trusted exchange (CTEs);'' the scope and requirements included in the initial CTEs; the processes that could be used to revise, adopt new, and retire CTEs, including but not limited to the standards development and adoption process provided in section 3004 and other relevant sections of the PHSA; and a process to classify the readiness for nationwide adoption and use of technical standards and implementation specifications to support interoperability related CTEs.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on June 14, 2012.

ADDRESSES: You may submit comments identified by any of the following methods below (please do not submit duplicate comments). Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word or Excel, Adobe PDF; however, we prefer Microsoft Word. *http://www.regulations.gov.*
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: Governance RFI, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office of the National Coordinator for Health Information Technology, Attention: Governance RFI, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: a person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered to be proprietary. We will post all comments received before the close of the comment period at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection).

FOR FURTHER INFORMATION CONTACT: Steven Posnack, Director, Federal Policy Division, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations

ACO Accountable Care Organization
ARRA American Recovery and Reinvestment Act
CDA Clinical Document Architecture
CEHRT Certified EHR Technology
CTEs Conditions for Trusted Exchange
DURSA Data Use and Reciprocal Support Agreement
EHR Electronic Health Record
FIPPS Fair Information Practice Principles
HIPAA Health Insurance Portability and Accountability Act of 1996
HIT Health Information Technology
HITECH Health Information Technology for Economic and Clinical Health
IEC International Electrotechnical Commission
IIHI Individually Identifiable Health Information
ISO International Organization for Standardization
NVEs Nationwide Health Information Network Validated Entities
NCVHS National Committee on Vital and Health Statistics
NPRM Notice of Proposed Rulemaking
PHSA Public Health Service Act
PHI Protected Health Information
OCR Office for Civil Rights
OIG Office of the Inspector General
ONC Office of the National Coordinator for Health Information Technology
RFI Request for Information
RFP Request for Proposal
RLS Record Locator Services
S&I Standards and Interoperability
S/MIME Secure/Multipurpose Internet Mail Extensions
SMTP Simple Mail Transport Protocol
XDM Cross-Enterprise Document Media Interchange
XDR External Data Representation

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I. Background

A. Introduction

Electronic health information exchange (referred to as ''electronic exchange'' in the text that follows) addresses a critical need in our healthcare system and provides the foundation for improved care coordination and quality improvement. However, absent a common set of rules to guide its development and nationwide expansion, electronic exchange has been governed by a patchwork of contractual relationships, procurement requirements, State and Federal laws, and industry self-regulation through accreditation and certification. Consequently, this ad-hoc governance approach has led to asymmetries in the policies and technical standards, which are evident in the various local, regional and State electronic exchange activities. Because of the expected increase in demand for electronic exchange capacity to support innovative care and payment models now underway as well as proposed meaningful use Stage 2 objectives and measures, stakeholders have communicated to the Office of the National Coordinator for Health Information Technology (ONC) that a consistent, baseline set of ''rules of the road'' for electronic exchange is desirable, and perhaps necessary.

We believe that this is an opportune time to solicit input on how the governance mechanism for the nationwide health information network should be shaped and how we could effectively use our statutory authority to complement existing Federal regulations to support and enable nationwide electronic exchange. We also believe that a properly crafted governance mechanism could yield substantial public benefits, including: reduced burden and costs to engage in electronic exchange; added protections for consumers and health care providers; and, in the long-run, a more innovative, and efficient electronic exchange marketplace that would ultimately create an environment where electronic exchange is commonplace and ''worry-free.''

For individual consumers, one of the governance mechanism's potential benefits could be the establishment of additional safeguards specific to electronic exchange that are not addressed by other Federal laws, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules, or State laws. For example, the governance mechanism could include more prescriptive and/or more stringent policies for entities that facilitate electronic exchange than are included in the HIPAA Privacy and Security Rules. From a health care provider's perspective, we anticipate that the governance mechanism could provide assurances to all electronic exchange parties that a specified set of requirements have been met. In turn, we believe these assurances could help spur greater trust and confidence in electronic exchange among providers and ease concerns associated with sharing patient information. Finally, for the entities that facilitate electronic exchange, we believe that the governance mechanism could enable a more competitive and open electronic exchange market and make it more efficient for these entities to exchange electronic health information.

B. Governance Mechanism Overview

This request for information (RFI) reflects ONC's current thinking regarding the approach ONC should take to establish a governance mechanism for the nationwide health information network. It frames many of the draft proposals and concepts ONC is considering, and depending on comments ONC receives, many of these concepts could be included in a future notice of proposed rulemaking. We seek public comment on whether it is timely for ONC to act to establish a governance mechanism; the advantages, disadvantages, and anticipated market impact of the potential proposals we discuss; and whether we should consider any alternatives in place of, or in combination with, the proposals discussed in this RFI.

Overall, we believe that it would be impracticable and imprudent to establish through regulation a ''one-size fits all'' approach to governance. Given the constantly evolving technical and policy landscape applicable to electronic exchange, it would be onerous and perhaps unachievable to specify up front all forms of electronic exchange to which the governance mechanism could apply. Rather, we view the nationwide health information network as a continually expanding ecosystem of electronic exchange activities for which stakeholders would be able to select the appropriate set of standards, services, and policies to meet their electronic exchange needs. This ecosystem would encompass many forms of electronic exchange, ranging from simple forms (such as when the electronic exchange of health information is planned and sent to a known destination) to more sophisticated forms (such as when the electronic exchange is unplanned meaning the data source is unknown beforehand and query and response techniques are utilized). It would also accommodate emerging exchange activities as they gain policy and technical maturity, such as the use cases being proven by the participants in the nationwide health information network Exchange initiative.[1] Thus, just as the nationwide health information network is defined by the evolving set of standards, services, and policies of which it is comprised, so too, we believe, should its governance mechanism.

In rulemaking, we would seek to launch the structures, processes, and initial requirements that would be necessary for the governance mechanism to operate. In subsequent rulemakings, we anticipate addressing evolving electronic exchange requirements and the standards and policies necessary to effectively govern new and perhaps more complex forms of electronic exchange. Below, we briefly summarize the proposals this RFI covers and provide more detailed explanations for each proposal in the sections that follow.

- *Adoption of ''conditions for trusted exchange'' (CTEs).* CTEs would reflect the nationwide health information network's portfolio of standards, services, and policies and would be incrementally added to and refined over time. The initial set of CTEs included in this RFI conceptually represent many of the CTEs that we believe are foundational for enabling trusted nationwide electronic exchange to occur, regardless of the form of electronic exchange in which one engages. CTEs would be established under three categories: interoperability; safeguards; and business practices. We believe that CTEs generally would constitute ''standards'' and ''implementation specifications'' as described in the HITECH Act for purposes of conducting electronic exchange under the auspices of the nationwide health information network.
- *Establishment of a voluntary framework for entities that facilitate electronic exchange to be validated to CTEs adopted for the electronic exchange services or activities they are capable of supporting.* This framework would be similar to the health information technology (HIT) certification programs ONC has already

[1] Additional information on the Exchange can be found on ONC's Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__nhin_exchange/1407.*

established via regulation (76 FR 1262),[2] but would focus on the services and activities the entities perform in facilitating electronic exchange and not exclusively on HIT itself. Upon successful validation to adopted CTEs an entity would be recognized as a nationwide health information exchange network validated entity (NVE) and thus become responsible for performing electronic exchange services in accordance with the adopted CTEs.

• *Approaches for monitoring and transparent oversight.* Such approaches would seek to ensure the integrity of the governance mechanism by protecting consumer rights, instilling industry-wide confidence in the services performed by NVEs, and provide a way to receive and address complaints as well as a process to revoke an NVE's validation status.

• *Establishment of processes that could be used to adopt, revise, and retire CTEs that are no longer appropriate.* This would entail developing a CTE maturity lifecycle process to identify, modify, and retire CTEs over time.

• *Establishment of a process to classify the readiness for nationwide adoption and use of technical standards and implementation specifications to support interoperability related CTEs.* Due to their rapidly evolving nature, we believe an annual review process to assess and classify the maturity and adoptability of technical standards and implementation specifications would be beneficial.

We have intentionally presented many details of our considerations in this RFI. We hope that this level of detail will generate more specific and insightful comments and a more comprehensive dialogue. In establishing a governance mechanism, ONC is committed to obtaining ongoing public input, and we are consequently also relying heavily on the HIT Policy Committee[3] and HIT Standards Committee recommendations related to governance of the nationwide health information network.[4] Our overall objectives for establishing a governance mechanism for the nationwide health information network are, among others, to improve the efficiency of electronic exchange among providers, reduce provider implementation costs (such as the cost of interfaces), and assure the privacy and security of the data being exchanged. Furthermore, we anticipate that an entity's validation to the CTEs could be leveraged by others to accomplish other policy and programmatic objectives. For example, Federal programs that participate in electronic exchange could require the use of entities that are validated in accordance with the CTEs adopted as part of the nationwide health information network governance mechanism.

C. Historical Context

1. Statutory Authority

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), was enacted on February 17, 2009. The HITECH Act amended the Public Health Service Act (PHSA) and established ''Title XXX—Health Information Technology and Quality'' to improve health care quality, safety, and efficiency through the promotion of HIT and the electronic exchange of health information. More specifically, section 3001(c)(8) of the PHSA, requires the National Coordinator for Health Information Technology (National Coordinator) to ''establish a governance mechanism for the nationwide health information network.'' Thus we interpret section 3001(c)(8) of the PHSA with sufficient breadth to enable the National Coordinator to establish a mechanism for governing the nationwide health information network, which we define as the set of standards, services, and policies that enable secure health information exchange over the Internet.[5]

We note that Congress in section 3001(b) of the PHSA directed the National Coordinator to perform his duties under section 3001(c) in a manner ''consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information'' and that accomplishes the eleven outcomes specified in PHSA section 3001(b) for which the National Coordinator is responsible. Moreover, we believe the authority granted to the National Coordinator at section 3001(c)(1)(A) to ''review and determine whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Standards Committee under section 3003 for purposes of adoption [by the Secretary] under section 3004'' as well as the National Coordinator's authority to consider policy recommendations from the HIT Policy Committee as described in section 3002(b) of the PHSA would support the approach we are considering to establish for the nationwide health information network governance mechanism.

Section 3002(b)(2)(A) of the PHSA authorizes the HIT Policy Committee to ''recommend the areas in which standards, implementation specifications and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption under section 3004 and [to] recommend an order of priority for the development, harmonization, and recognition of standards, specifications, and certification criteria * * *.'' Section 3002(b)(3) states ''[t]he HIT Policy Committee shall serve as a forum for broad stakeholder input with specific expertise in policies relating to the matters described in paragraphs (1) and (2).''

Section 3003(b)(1)(A) of the PHSA states that ''[t]he HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria described in subsection (a) that have been developed, harmonized, or recognized by the HIT Standards Committee * * *.'' Section 3003(b)(2) directs the HIT Standards Committee to ''serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and certification criteria necessary for the development and adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.''

Lastly, section 3004 of the PHSA in turn identifies a process for the adoption of HIT standards, implementation specifications, and certification criteria and authorizes the Secretary to adopt such standards, implementation specifications, and certification criteria.

[2] Information on ONC's Permanent Certification Program for HIT can be found on ONC's Web site at: *http://origin.www.gpo.gov/fdsys/pkg/FR-2011-01-07/pdf/2010-33174.pdf.*

[3] Additional information on the HIT Policy and Standards Committees can be found on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__federal_advisory_committees_%28facas%29/1149.*

[4] The HIT Policy Committee and HIT Standards Committee were established in law by the HITECH Act and advise and issue recommendations to the National Coordinator on issues concerning HIT policy and standards.

[5] Overview information of the nationwide health information network can be viewed on ONC's Web site at: *http://healthit.hhs.gov/portal/server.pt?open=512&objID=1142&parentname=CommunityPage&parentid=4&mode=2.*

2. Overview of Select Existing Federal Health Information Privacy and Security Standards

The success of electronic exchange under the auspices of the nationwide health information network depends, in large part, on assurances that personally identifiable health information will remain confidential and secure. Existing Federal standards governing the privacy and security of health information establish an essential baseline of protection on which we anticipate building through nationwide health information network governance.

The Privacy and Security Rules issued under HIPAA established the first generally applicable Federal protections for health information maintained by certain key segments of the health care industry: health care providers who transmit health information electronically in connection with a transaction for which the Secretary has adopted a standard, health plans, and health care clearinghouses (collectively called ''covered entities''). The HIPAA Privacy Rule sets the standards and implementation specifications for the use and disclosure of individually identifiable health information (IIHI) held by these covered entities (called protected health information or PHI). It is notable that the HIPAA Privacy Rule was not intended to establish best practices with which covered entities could voluntarily comply; rather, it establishes a baseline of enforceable Federal regulatory protections upon which the States or covered entities (as a matter of organizational policy) are free to expand.[6]

The HIPAA Security Rule requires covered entities to establish specific administrative, physical, and technical safeguards [7] for electronic protected health information (as such term is defined at 45 CFR 160.103). The HIPAA Security Rule is scalable and flexible to account for the varying size, resources, technology and security risks faced by covered entities as they protect the electronic health information for which they are responsible.[8] The HIPAA Security Rule includes both standards and implementation specifications, which provide instructions for implementing certain of the standards. The implementation specifications set out in the Security Rule fall into two categories: Those that are ''required'' and those that are ''addressable.'' An entity must implement a ''required'' implementation specification. In contrast, an entity has some flexibility in implementing an ''addressable'' implementation specification based on a variety of factors, such as, among others, the entity's risk analysis, risk mitigation strategy, what security measures are already in place, and the cost of implementation.[9] Encryption, for example, is an addressable implementation specification.

Subtitle D of the HITECH Act (sections 13400–13424) expanded the protections afforded by HIPAA by requiring, among other things, business associates (generally, persons or entities that create, receive, maintain, or transmit PHI on behalf of, or in the provision of certain services to, a covered entity) to comply with certain HIPAA Privacy Rule provisions and the standards and implementation specifications of the Security Rule.

3. Health Information Exchange and the Nationwide Health Information Network in Brief

Over the past decade the nationwide health information network has been conceptualized in several different ways. The following provides a brief history of the major activities, events, and milestones that have shaped our understanding and conceptualization of the nationwide health information network.

a. 2001–2004: Conceptualization and Request for Information

In 2001, the National Committee on Vital and Health Statistics (NCVHS) issued recommendations on nationwide electronic health information exchange within a report titled ''Information for Health, A Strategy for Building the National Health Information Infrastructure.'' In this report, NCVHS outlined three dimensions of health information infrastructure (Personal Health; Healthcare Provider; and Population Health) that would be important for ''conceptualizing the capture, storage, communication, processing, and presentation of information.'' NCVHS also recognized that ensuring the confidentiality and security of personal health information was paramount in developing the infrastructure to enable nationwide electronic health information exchange. Noting that the HIPAA Privacy Rule provided strong protections for individually identifiable health information, the NCVHS also forecasted that additional protections would be needed to extend across all the users, technologies, and functions envisioned by the nationwide health information network.

Since 2004, when the Office of the National Coordinator for Health Information Technology (ONC) was created under Executive Order 13335, ONC has supported the development of standards, services, and policies to support nationwide electronic exchange. ONC's first formal step was the publication of a request for information in November 2004 which sought public input on the development of the nationwide health information network which was originally characterized as a ''network of networks.'' ONC received 512 comments in response to the RFI and published a report summarizing the comments the following year.[10] Comments addressed a number of issues such as governance, financing, and how the nationwide health information network could be coordinated along with local and regional health information exchange projects. With respect to governance, comments indicated that ''a well-built governance model was needed to develop, set policies and standards for, operate, and promote the adoption of a nationwide health information network'' and discussed the merits of governance options that ranged from significant Federal involvement to a State government-sponsored approach to an approach that involved public-private collaboration.

b. 2005–2008: Nationwide Health Information Network Exchange—Prototypes and Trial Implementations

In June 2005, ONC took another step forward toward the development of the nationwide health information network when it issued a request for proposals (RFP) for the development of nationwide health information network prototype architectures. The prototypes sought to test a range of services including the capabilities to query and

[6] (2000) The HIPAA Privacy Final Rule, published at 65 FR 82462 at 82471.

[7] (2010) The regulatory references to administrative, physical, and technical safeguards can be found, respectively, at part 164, sections 308, 310, and 312 of title 45 of the CFR.

[8] More information on the HIPAA Security Rule can be found on the Office for Civil Rights Web site at: *http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/index.html*.

[9] An addressable implementation specification requires an assessment to determine whether implementation would be reasonable and appropriate safeguard in the particular entity's environment. Following the assessment, the entity must implement the specification if it finds it to be reasonable and appropriate. If the outcome of the assessment is that implementing the specification would not be reasonable and appropriate, then the entity must (1) document why it would not be reasonable and appropriate to implement the specification; and (2) implement an equivalent alternative measure if reasonable and appropriate.

[10] (2005) ONC. ''Summary of Nationwide Health Information Network (NHIN) Request for Information (RFI) Responses.'' Available at: *http://www.hhs.gov/healthit/rfisummaryreport.pdf*.

retrieve health information from health information exchange organizations; the delivery of new data to appropriate recipients; patient identification and matching; information locator services; and user authentication, access control and other security protections.[11] The prototypes also explored the feasibility and scalability of potential nationwide health information network models. In fall 2005, ONC awarded four organizations contracts based on the RFP.[12]

In October 2006, NCVHS issued recommendations to ONC on a minimum, but critical, set of functional requirements for nationwide electronic health information exchange to take place. These recommendations sought to accommodate diverse architectures across networks and systems[13] and followed a report issued by NCVHS earlier in the year regarding privacy and confidentiality considerations for the nationwide health information network.[14]

In fall 2007 and spring 2008, building on the experiences gained and lessons learned in the prototype phase, ONC awarded contracts and grants to organizations to conduct nationwide health information network trial implementations.[15] Among these organizations' accomplishments in the context of the trial implementations was the development of data and interface specifications, testing materials, and a draft model data use and reciprocal support agreement (DURSA).[16] The DURSA, a single, multi-party agreement, specified the rules of engagement and obligations to which all participants in the trial implementations agreed to adhere. It also underscored a framework for broad-based information exchange among a set of trusted entities, reflecting consensus (among the signatories) on policies such as: Privacy and security obligations; duties of requesting and responding participants; responding participants' legal requirements; and the allocation of liability risk.

Also during this time, NCVHS published informative reports with recommendations related to how entities engaged in electronic exchange activities but who are not covered by HIPAA should be treated and the policy issues associated with consent and secondary uses of IIHI.[17] [18] [19]

The prototype and trial implementation phases produced important insights. Most significantly, they identified areas where further technical and policy work would be needed to enable query and retrieve-based electronic health information exchange and they highlighted the potential limitations of a single, multi-party data use agreement. As a result of these insights, ONC shifted its approach from a singular vision focused on the establishment of a network of networks to one in which the Federal government could serve as the facilitator of diverse approaches to electronic exchange through the specification of nationally-accepted standards, services, and policies. This transition was based in part on the recognition that there could be multiple types of electronic exchange networks all built on the same foundational building blocks of standards, services, and policies.

c. 2009–Present: Nationwide Health Information Network Production and Governance

Beginning in 2009, Federal and non-Federal entities participating in the trial implementations began securely exchanging health information bound by the parameters established in a ''production DURSA.'' This confederation of entities is referred to as the ''Nationwide Health Information Network Exchange'' or ''the Exchange,'' and relies on the DURSA to help structure a governance framework. To become a participant in the Exchange, an organization must sign the DURSA and also must pass an ''onboarding''[20] test to demonstrate capacity to meet the DURSA's technical interoperability requirements.

Presently, a growing number of organizations are exchanging health information as part of the Exchange. Participants in the Exchange are engaged in production activities that include: The exchange of summary patient records for care coordination, including health information that is part of the Virtual Lifetime Electronic Record and which is jointly sponsored by the Departments of Defense and Veterans Affairs; the exchange of summary patient records for Social Security Administration disability determination purposes; and biosurveillance and case reporting to the Centers for Disease Control and Prevention. These use cases have helped to define and evolve a set of specific standards, services, and policies included in the nationwide health information network's growing electronic exchange portfolio.

Many lessons can be learned from the Exchange's production activities. For instance, the Exchange identified one type of governance model for nationwide electronic health information exchange with the DURSA, which relies upon a ''Coordinating Committee'' and ''Technical Committee,'' to develop exchange policies and technical interoperability requirements for the participants. Another important lesson learned was that the member organizations identified a need for more specific policies and greater consistency in implementing the HIPAA Privacy and Security Rules in order to engender sufficient trust among parties with which data would be shared. The Exchange's efforts have aided in the early identification and resolution of policy and technical challenges and helped tee up issues that require broad stakeholder dialogue, such as the policy and technical requirements related to matching patients to their health information.

d. Private Sector Electronic Exchange

Payment and delivery reforms—from accountable care organizations (ACOs)[21] to bundled payments and medical homes—are creating a compelling business case for electronic exchange. As a result, innovative approaches to electronic exchange are emerging, including private networks advanced by hospital systems pursuing ACO status, exchange services offered by electronic health record (EHR) vendors, and regional and state-level

[11] More information on the prototype architectures can be viewed on ONC's Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov_nhin_historical_;background_information/1409.*

[12] (2005) The archived announcement can be viewed on the HHS Web site at: *http://archive.hhs.gov/news/press/2005pres/20051110.html.*

[13] (2006) The NCVHS recommendations can be viewed on the NCVHS Web site at: *http://www.ncvhs.hhs.gov/061030lt.pdf.*

[14] (2006) ''Privacy and Confidentiality in the Nationwide Health Information Network.'' NCVHS, available at: *http://www.ncvhs.hhs.gov/060622lt.htm.*

[15] (2007) The announcement can be viewed on the HHS Web site at: *http://www.hhs.gov/news/press/2007pres/10/pr20071005a.html.*

[16] Additional information on the DURSA can be viewed on the S&I Framework Web site at: *http://jira.siframework.org/wiki/display/OBTI/DURSA+Overview.*

[17] (2007) NCVHS. ''Update to privacy laws and regulations required to accommodate NHIN data sharing practices.'' Available at: *http://ncvhs.hhs.gov/070621lt2.pdf.*

[18] (2007) NCVHS. ''Enhanced Protections for Uses of Health Data: A Stewardship Framework for 'Secondary Uses' of Electronically Collected and Transmitted Health Data.'' Available at: *http://ncvhs.hhs.gov/071221lt.pdf.*

[19] (2008) NCVHS. ''Individual control of sensitive health information accessible via the Nationwide Health Information Network.'' Available at: *http://ncvhs.hhs.gov/080220lt.pdf.*

[20] More information regarding onboarding procedures can be viewed on the S&I Framework Web site at: *http://jira.siframework.org/wiki/display/OBTI/Home.*

[21] More information on accountable care organizations can be viewed on the CMS Web site at: *https://www.cms.gov/ACO/.*

health information exchange initiatives. According to a recent KLAS survey, the number of active private health information exchange entities tripled from 52 in 2009 to 161 in 2010.[22]

e. The Direct Project

Stage 1 of the Medicare and Medicaid EHR Incentive Programs included several objectives and measures that required or encouraged electronic exchange as an efficient means for an eligible professional, eligible hospital, or critical access hospital to satisfy the objective and measure (e.g., ''exchange key clinical information;'' ''incorporate clinical lab test results;'' and ''submission to immunization registries''). As we reviewed our standards portfolio in terms of its ability to support meaningful use Stage 1, we determined that we were missing a simple and easily adoptable approach to enable electronic exchange to occur. While many HIT vendors supported some kind of planned electronic exchange capability prior to meaningful use Stage 1, many did not follow a common set of standards or included a proprietary mechanism that would make it difficult for providers using different systems to easily exchange clinical information to support patient care.

In March 2010, after public meetings held by the HIT Policy Committee, ONC coordinated the launch of the ''Direct Project'' to identify the standards, services, and policies necessary to enable a simple, secure, scalable, standards-based way for participants to send authenticated, encrypted health information directly to known, trusted recipients over the Internet. The Direct Project focused on what would be necessary to transport health information regardless of the clinical content of the information to be exchanged. A primary goal of the Direct Project was to support secure, efficient, and low cost exchange of health information and to make it possible for eligible health care providers to satisfy some of the meaningful use Stage 1 objectives and associated measures that require electronic exchange.

Unlike the Exchange, the Direct Project cannot rely on a governance framework provided by the DURSA and ''onboarding'' procedures. While both initiatives are considered part of ONC's nationwide health information network activities, each was established to address different electronic exchange requirements and contribute different standards, services, and policies to the nationwide health information network's portfolio. A basic analogy that may help explain the relationship between the nationwide health information network, the Exchange, and the Direct Project is as follows: The nationwide health information network is akin to the ''Internet''—an electronic environment in which the use of a common set of standards, services, and policies will allow a group of entities to exchange information. The nationwide health information network comprises multiple approaches that one could use to electronically exchange electronic health information among a variety of stakeholders. The Exchange could be compared to a consortium using a secure ''Intranet,'' in which only approved members can gain access after receiving the appropriate security credentials and agreeing to the Intranet's terms of use. Continuing this analogy, the Direct Project is like secure email or even secure instant messaging, whereby two entities that already share a trust relationship with each other can use relatively simple technical means to electronically exchange health information.

f. The Health Information Technology Policy and Standards Committees' Work on the Nationwide Health Information Network.

In September 2010, the HIT Policy Committee, which is one of two statutorily established Federal Advisory Committees that provide advice to the National Coordinator, formed the nationwide health information network Governance Workgroup (Governance Workgroup) and charged it with ''draft[ing] a set of recommendations on the scope and process of governance for nationwide health information exchange, including measures to ensure accountability and oversight.'' [23] When developing its recommendations for the HIT Policy Committee, the Governance Workgroup held a series of public meetings and received testimony from diverse stakeholders.[24] After receiving the Governance Workgroup's recommendations, the HIT Policy Committee deliberated on them, concurred with them, and formally transmitted them to the National Coordinator for consideration in December 2010.[25] The following bullets summarize the recommendations to the National Coordinator. The recommendations:

- Identified nine core principles according to which the nationwide health information network should be governed. These principles included: transparency and openness; inclusive participation and adequate representation; effectiveness and efficiency; accountability; federated governance and devolution; clarity of mission and consistency of actions; fairness and due process; promote and support innovation; and finally, evaluation, learning and continuous improvement.
- Emphasized that the nationwide health information network should be considered a preferred approach for nationwide health information exchange.
- Identified the responsibilities for the Federal government in governance of the nationwide health information network. These should include: (1) Leading the development of fundamental ''conditions'' to facilitate greater trust and interoperability in an electronic health information exchange environment and promote the adoption of those conditions through various policy levers; (2) Recognizing existing state authorities across all relevant domains and facilitating coordination and harmonization with states and other entities as needed; (3) Requiring exchange with Federal agencies to be conditioned on compliance with the conditions; and (4) Sharing the responsibility of governance with other entities to reflect a ''governance of governances.''
- Optimize broad stakeholder input, including consumers, to facilitate the conditions needed for greater trust and interoperability in electronic exchange.
- Establish an initial set of conditions and a process to incrementally add to or modify the conditions over time. Establish a process to validate [26] the adopted conditions accounting for the cost and burden, and to leverage existing validation methods, processes, and entities where appropriate.
- Ensure accountability through oversight.

[22] (2011) KLAS Research. ''Health Information Exchanges: Rapid Growth in an Evolving Market.''

[23] The complete list of Governance Workgroup members can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3080.*

[24] As background, ONC also provided prior NCVHS reports and a 2009 whitepaper developed by the National eHealth Collaborative which framed certain governance functions.

[25] The complete set of recommendations can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_0_6011_1815_17825_43/http%3B/wci-pubcontent/publish/onc/public_communities/_content/files/hitpc_transmittal_letter_gov_wg_dec2010.pdf.*

[26] The HIT Policy Committee noted that the term ''validation'' was used to generally refer to the process of verifying compliance and may include a broad array of possible methods (e.g., self-attestation, testing, certification of systems, accreditation of entities). In our use of the term validation throughout this document, we mean it to encompass both accreditation and certification.

Most recently, the HIT Standards Committee established a subcommittee, the nationwide health information network Power Team, in June 2011.[27] The Power Team was charged with: (1) Creating a draft set of criteria for evaluating standards, including factors such as adoptability and scalability: (2) evaluating the specifications developed for the Exchange and Direct Project initiatives with respect to their ability to support nationwide health information exchange; and 3) recommending those specifications that could be integrated and deployed to support the secure transport and exchange of electronic health information on a national scale, and identifying where further work may be needed. The Power Team held a series of public meetings and drafted a set of recommendations [28] for the HIT Standards Committee, noting that while neither the Exchange nor the Direct Project's specifications have been proven at scale, there was minimal risk in adopting transport mechanisms based on the Direct Project specifications. They also recommended simplifying existing specifications for the Exchange and investing in pilots for representational state transfer (REST) or ''RESTful'' approaches to electronic exchange. On September 28, 2011, the HIT Standards Committee transmitted a letter to the National Coordinator reflecting the analysis conducted by the Power Team.

II. Request for Information

A. Establishing a Governance Mechanism

As we consider how best to implement our statutory authority to establish a governance mechanism for the nationwide health information network, we believe it would be critical to adopt a suite of conditions for trusted exchange (CTEs) to serve as the ''rules of the road'' for trusted, secure, and interoperable electronic exchange, nationwide. We believe that the CTEs could serve as a foundational set of requirements that could be used in one or more combinations to support many different forms of electronic exchange. CTEs appear to best be grouped into three categories: safeguards, interoperability, and business practices.

- *Safeguards CTEs* would focus on the protection of IIHI to promote its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure.
- *Interoperability CTEs* would focus on the technical standards for the exchange and integration of electronic health information so that it is useful for the recipient.
- *Business Practices CTEs* would focus on the operational and financial practices or standards to which NVEs would need to adhere in support of trusted electronic exchange.

Question 1: *Would these categories comprehensively reflect the types of CTEs needed to govern the nationwide health information network? If not, what other categories should we consider?*

An important component of the governance mechanism we are considering would be the establishment of a voluntary framework for entities that facilitate electronic exchange to be validated to CTEs adopted for the exchange services or activities they are capable of supporting. Upon successful validation to the CTEs, an entity would be recognized as a NVE and thus would be recognized as an entity that would be accountable for the electronic exchange services or activities it performs in accordance with the CTEs. Given the incremental CTE adoption approach we expect to take, we also anticipate that the recognition of NVEs would incrementally expand along with the diversity of the electronic exchange services or activities they are able to perform. Thus, we could see providing NVEs or new entities with other categorical recognition(s) for the electronic exchange services or activities they are capable of supporting in accordance with subsequently adopted CTEs. Additionally, this validation process would support an evolution, in the U.S. and internationally, towards engaging accountability agents as a supplemental means for ensuring that organizations and providers involved in the management, storage, and transport of IIHI adhere to policies and practices that protect the privacy and security of information.

It is also our expectation that validation would be voluntary. In other words, the validation process established as part of the governance mechanism would not be mandatory and would only apply in so far as an entity deciding that there would be value (e.g., prestige, competitive advantage) in seeking validation. That said, once the validation process is established, much like other government programs on which subsequent policy objectives could be leveraged, it would be possible for other public and private organizations to specify NVE recognition as a condition in awarding contracts, procurements and/or in other situations where validation would be beneficial.

Question 2: *What kind of governance approach would best produce a trusted, secure, and interoperable electronic exchange nationwide?*

Question 3: *How urgent is the need for a nationwide governance approach for electronic health information exchange? Conversely, please indicate if you believe that it is untimely for a nationwide approach to be developed and why.*

Question 4: *Would a voluntary validation approach as described above sufficiently achieve this goal? If not, why?*

Question 5: *Would establishing a national validation process as described above effectively relieve any burden on the States to regulate local and regional health information exchange markets?*

Question 6: *How could we ensure alignment between the governance mechanism and existing State governance approaches?*

Question 7: *What other approaches to exercising our authority to establish a governance mechanism for the nationwide health information network should we consider?*

B. Actors and Associated Responsibilities

We intend to use notice and comment rulemaking to establish the structures, processes, and initial requirements that would be necessary for the governance mechanism to operate. Under the governance mechanism we are considering, ONC would retain certain responsibilities to ensure the governance mechanism's proper implementation, but would also seek to delegate, where possible and appropriate, certain other responsibilities that we believe can best be performed by the private sector.

1. ONC

Generally speaking, we anticipate that the National Coordinator's and ONC's responsibilities as part of the governance mechanism would include:

- Endorsing and adopting CTEs, in accordance with the National Coordinator's authority at section 3001(c)(1)(A) and processes identified at section 3004 under the PHSA, and publishing interpretative guidance on the means to comply with adopted CTEs;
- Facilitating the receipt of input from the HIT Policy and Standards Committees and other interested parties

[27] The complete list of Workgroup members can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3850.*

[28] The complete set of recommendations can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__standards_recommendations/1818.*

on revisions to CTEs, new CTEs, and the appropriate retirement of CTEs in accordance with processes identified at sections 3002(b)(3) and 3003(b)(2) of the PHSA;

- The selection and oversight processes for an accreditation body that would be responsible for accrediting organizations interested in becoming validation bodies;
- Authorizing and overseeing validation bodies which would be responsible for validating that eligible entities have met adopted CTEs;
- Administering a process to classify the readiness for nationwide adoption and use of technical standards and implementation specifications to support interoperability related CTEs; and
- Overall oversight of all entities and processes established as part of the governance mechanism.

Question 8: *We solicit feedback on the appropriateness of ONC's role in coordinating the governance mechanism and whether certain responsibilities might be better delegated to, and/or fulfilled by, the private sector.*

2. The Accreditation Body and Validation Bodies

Similar to the roles and responsibilities we established under the permanent certification program for HIT (76 FR 1262), we could see establishing a process by which the National Coordinator would approve a single body to accredit and oversee ''validation bodies.'' The process considered in this RFI, however, would differ from the HIT certification programs in that validation would evaluate an entity's conformance to adopted CTEs as opposed to a particular product's (*e.g.,* EHR technology) certification to certification criteria. We could envision, however, certified HIT (in other venues referred to as commercial off-the-shelf software) being used by an entity as a way to demonstrate conformance with certain adopted CTEs. For this to occur, we anticipate that we would have to adopt specific certification criteria that could be used to subsequently certify other types of HIT through our already established HIT certification program. The accreditation body would be expected to conform to internationally accepted standards for accreditation bodies, and in particular, the standard ISO/IEC 17011: 2004, jointly published by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), which specifies requirements for assessing and accrediting certification bodies. The validation bodies (upon accreditation by the accreditation body and authorization from the National Coordinator) would subsequently perform the validation of entities' conformance to adopted CTEs. Ultimately, we believe that validation could encompass many different methodologies (e.g., self-attestation; laboratory testing for standards conformance; certification; and accreditation) and could vary depending on the type of CTE and the potential burden the validation methodology would impose.

Question 9: *Would a voluntary validation process be effective for ensuring that entities engaged in facilitating electronic exchange continue to comply with adopted CTEs? If not, what other validation processes could be leveraged for validating conformance with adopted CTEs? If you identify existing processes, please explain the focus of each and its scope.*

Question 10: *Should the validation method vary by CTE? Which methods would be most effective for ensuring compliance with the CTEs? (Before answering this question it may be useful to first review the CTEs we are considering to adopt, see section ''VI. Conditions for Trusted Exchange.'')*

Question 11: *What successful validation models or approaches exist in other industries that could be used as a model for our purposes in this context?*

Question 12: *What would be the potential impact of this accreditation/validation body model on electronic health information exchange, in particular, on the volume and efficiency of exchange in local health care markets and provider confidence? What is the best way to maximize the benefit while minimizing the burden on providers or other actors in the market?*

3. Entities Eligible for Validation

a. Eligible Entities

We anticipate that potential NVEs could include, but would not be limited to, the following types of entities that provide services to facilitate electronic health information exchange: EHR developers; regional, state, local or specialty-based health information exchanges; health information service providers; State agencies; Federal agencies, and integrated delivery networks.

b. Eligibility Criteria

In order to provide a baseline level of trust in NVEs, we think that it could be helpful to establish upfront eligibility criteria such as the ones discussed below. We are considering that entities interested in becoming NVEs would need to:

- Meet all solvency and financial responsibility requirements imposed by the statutes and regulatory authorities of the State or States in which it, or any subcontractor performing some or all of its functions, would serve. We are considering requiring a prospective NVE make some type of financial disclosure filing as well as provide evidence that it has a surety bond or some other form of financial security.
- Have the overall resources and experience to fulfill its responsibilities in accordance with the CTEs when performing health information exchange services. We are considering whether an entity would need to have at least one year of experience.
- Serve a sufficient number of providers to permit a finding of effective and efficient administration. Under this criterion, however, no prospective NVE would be deemed ineligible if it only served providers located in a single State.
- Have to be a valid business or governmental entity operating in the United States.
- Have not had civil monetary penalties, criminal penalties, or damages imposed, or have been enjoined for a HIPAA violation (by HHS, the Department of Justice, or State Attorneys General) within two years prior to seeking validation.
- Not be listed on the Excluded Parties List System maintained by the General Services Administration which includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits.
- Not be listed on the List of Excluded Individuals and Entities maintained by the Office of Inspector General (OIG). The OIG has the authority to exclude individuals and entities from Federally funded health care programs pursuant to sections 1128 and 1156 of the Social Security Act and maintains a list of all currently excluded individuals and entities called the List of Excluded Individuals and Entities.

We include the HIPAA civil money penalty criterion as we expect that most entities that would qualify as NVEs would be business associates of covered entities as defined in the HIPAA Rules, or in some cases covered entities themselves, and therefore, would be directly subject to the requirements and standards of the HIPAA Privacy,

Security and Breach Notification Rules. Additionally, we do not believe that it would be appropriate to have an eligibility criterion that limits eligible entities to only those that are tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC). Finally, in the case of Federal or State governmental entities seeking to become an NVE, we anticipate that some of the eligibility criteria we are considering may be inapplicable.

Question 13: *Should there be an eligibility criterion that requires an entity to have a valid purpose (e.g., treatment) for exchanging health information? If so, what would constitute a ''valid'' purpose for exchange?*

Question 14: *Should there be an eligibility criterion that requires an entity to have prior electronic exchange experience or a certain number of participants it serves?*

Question 15: *Are there other eligibility criteria that we should also consider?*

Question 16: *Should eligibility be limited to entities that are tax-exempt under section 501(c)(3) of the IRC? If yes, please explain why.*

4. Stakeholders

Throughout the history of the nationwide health information network, a strong emphasis has been placed on ensuring broad stakeholder participation in the network's development and governance.

Question 17: *What is the optimum role for stakeholders, including consumers, in governance of the nationwide health information network? What mechanisms would most effectively implement that role?*

C. Monitoring and Transparent Oversight

As the HIT Policy Committee and stakeholder feedback over time have indicated, any governance mechanism established for the nationwide health information network would need to include some method for monitoring and transparent oversight. To mitigate confusion in the marketplace, protect consumer rights, and help ensure health care provider satisfaction, we believe a process to receive and address complaints as well as a process to revoke an NVE's status would need to exist. While the revocation of an NVE's status may be the most severe ''penalty'' ONC could impose, we also realize that when a penalty is so substantial there can be a tendency to pursue other measures to correct an identified issue except in the case of severe violations.

We also anticipate that monitoring and transparent oversight could be conducted by different stakeholders as part of nationwide health information network governance. While ONC could retain overall authority for monitoring and oversight, we also believe that the accreditation body and validation bodies involved in determining compliance with the adopted CTEs could also play oversight roles. For example, validation bodies would be responsible for monitoring and overseeing the NVEs they have validated. Furthermore, other modes of monitoring and enforcement could also play a role, such as: voluntary industry self-policing, a complaint/ombudsman role for a non-governmental entity, civil lawsuits. That said, we do not believe that some of these enforcement or monitoring methods would necessarily be effective, particularly in light of the voluntary validation framework we are considering. Moreover, Federal agencies including the Federal Trade Commission (FTC) and the HHS Office for Civil Rights (OCR) have enforcement authority within their regulatory jurisdictions and can already act on complaints of certain improper conduct. For instance, the FTC could investigate alleged misconduct related to validation status through the Federal Trade Commission Act (15 U.S.C. 45(a) and 52). A negative determination could lead to revoking an NVE's public representation of conformance to the adopted CTEs. Similarly, OCR, which enforces the HIPAA Privacy and Security Rules, could investigate alleged violations of the HIPAA Rules, the outcome of which could impact an NVE's validation of conformance to certain CTEs.

Question 18: *What are the most appropriate monitoring and oversight methods to include as part of the governance mechanism for the nationwide health information network? Why?*

Question 19: *What other approaches might ONC consider for addressing violations of compliance with CTEs?*

If we were to pursue a validation approach, we believe that entities that have been successfully validated in accordance with the CTEs should be able to publicly represent themselves in some manner as complying with the adopted CTEs. We think this public representation could stimulate market demand for NVE services in the health information exchange marketplace.

We assume that NVEs would need to conform to some CTEs regardless of the specific electronic health information exchange service(s) or activities provided. We believe this approach could create a core trust baseline for all NVEs and that such commonality could strengthen the public's trust of NVEs and NVEs' trust of other NVEs. Finally, we assume that some NVEs could perform services or activities unrelated to adopted CTEs. In such cases, we believe it would be necessary for there to be a clear distinction between the recognition an NVE receives under the governance mechanism and the other services or activities it supports but for which validation has not been provided.

Question 20: *What limits, if any, would need to be in place in order to ensure that services and/or activities performed by NVEs for which no validation is available are not misrepresented as being part of an NVE's validation? Should NVEs be required to make some type of public disclosure or associate some type of labeling with the validated services or activities they support?*

Question 21: *How long should validation status be effective?*

D. Conditions for Trusted Exchange (CTEs)

We recognize and expect that electronic health information exchange capacity will continue to accelerate over the coming years. With this additional capacity, new ways for individuals to fully participate in their health care, and activities to harness this capacity to improve population health and develop a ''learning health care system'' will be available. As we closely watch other activities in the public and private sectors, we anticipate that the CTEs we are considering in this first rulemaking will need to be revised, that other CTEs will need to be retired to reflect the changing electronic health information exchange landscape, and that new CTEs will be needed. Our goal in discussing this initial set of CTEs is to identify a starting point, and then eventually support as broad a range of electronic exchange activities as practicable given the maturity of technical standards and policies for electronic exchange. The following discussion reflects ONC's current thinking regarding a first set of CTEs that could be adopted to support a variety of electronic exchange activities, nationwide.

1. Safeguards CTEs

A Code of Fair Information Practice was first articulated by an Advisory Committee to the Secretary of the US Department of Health, Education, and Welfare in a 1973 report, *Records, Computers, and the Rights of Citizens.* The Code is well accepted as a foundation for protecting the privacy of individually identifiable information, and many privacy laws are based on it, both in the United States and abroad.

The principles that underlie the Code also served in part as the bases on which HHS developed its 2008 Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information (Privacy and Security Framework).[29] The Privacy and Security Framework includes eight principles that are expected to guide the actions of all persons and entities that participate in a network for the purpose of electronic exchange of IIHI. Wherever applicable, we have endeavored to represent these principles within the Safeguard CTEs we discuss. We have also attempted to reflect principles underlying the HIT Policy Committee recommendations in the relevant CTEs.

We assume that most NVEs will perform services involving the use or disclosure of IIHI on behalf of health plans and health care providers. Accordingly, we believe that nearly all NVEs would be HIPAA business associates of health plans and health care providers and, pursuant to the HITECH Act, subject to the use and disclosure standards and implementation specifications of the HIPAA Privacy Rule as well as the security standards and implementation specifications in the HIPAA Security Rule. We expect these NVEs would comply with these rules.

Although the HIPAA Privacy and Security Rules would apply to nearly all NVEs in some way, the governance mechanism and specifically the CTEs would, in part, serve to address limited instances of electronic exchange not covered under the privacy and security protections afforded by the HIPAA Privacy and Security Rules. First, the CTEs would extend privacy and security requirements to non-HIPAA-covered entities and non-HIPAA-business associates that engage in nationwide electronic exchange. Second, the CTEs would establish additional requirements not currently addressed by the HIPAA Privacy and Security Rules. Finally, the HIPAA Privacy Rule sets required baseline protections and was not necessarily intended to reflect best practices[30] and the HIPAA Security Rule is scalable and flexible to account for the varying size, resources, technology and security risks faced by covered entities.[31] However, given the nature of the services NVEs will be performing, we believe that it would be appropriate and justified in the context of electronic exchange for NVEs to be held to a more uniform set of practices and policies than those that may be adopted to comply with the HIPAA Privacy and Security Rules.

• *Condition [S–1]: An NVE must comply with sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations as if it were a covered entity, and must treat all implementation specifications included within sections 164.308, 164.310, and 164.312 as ''required.''*

For most health care organizations in the United States, the HIPAA Security Rule is the preeminent framework for securing electronic health information. Published in February 2003, the HIPAA Security Rule sets forth a flexible and scalable approach to apply to a broad range of HIPAA covered entities, including covered provider practices (large and small), payers, and health care clearinghouses, all of which have different needs and resources with respect to securing electronic health information in their environments. In providing this flexibility, the HIPAA Security Rule provides both ''required'' and ''addressable'' implementation specifications. Covered entities must meet the ''required'' implementation specifications, but are permitted to take equivalent, alternative approaches to ''addressable'' implementation specifications if the covered entity has determined that such implementation specifications would not be reasonable or appropriate for the entity's particular environment. In 2009, with the enactment of the HITECH Act, Congress specified that sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations shall apply to business associates in the same manner as they apply to covered entities. Accordingly, and because we believe that nearly all NVEs will be business associates of covered entities (or covered entities themselves), we believe that mirroring this statutory requirement is the best starting point for NVEs' overall security practices. That being said, one of our main goals in establishing a governance mechanism for the nationwide health information network is to establish a consistent trust baseline for electronic exchange. Thus, we believe that in order to strengthen the public's trust of NVEs and NVEs' trust of other NVEs that all of the HIPAA Security Rule's ''addressable'' implementation specifications should be required for all NVEs. We believe that this approach provides greater certainty and more uniformity with respect to the security practices NVEs would need to follow.

Question 22: *Are there HIPAA Security Rule implementation specifications that should not be required of entities that facilitate electronic exchange? If so, which ones and why?*

Question 23: *Are there other security frameworks or guidance that we should consider for this CTE? Should we look to leverage NISTIR 7497 Security Architecture Design Process for Health Information Exchanges?*[32] *If so, please also include information on how this framework would be validated.*

• *Condition [S–2]: An NVE must only facilitate electronic health information exchange for parties it has authenticated and authorized, either directly or indirectly.*

We believe that it is important for an NVE to offer the parties for which it facilitates exchange a high degree of certainty that only authorized parties are able to use its exchange services. The requirement to authenticate and authorize the parties for which the NVE facilitates exchange could be accomplished either directly or indirectly by the NVE. In the case of the latter, the NVE would need to require the party for which it facilitates electronic exchange to perform authentication and authorization in order to be in compliance with this CTE. We believe that if an NVE cannot directly authenticate and authorize the parties for which it facilitates exchange (which could be at an organizational level), that it would be critical for the NVE to ''flow down'' these responsibilities and obtain reasonable assurance from the party(ies) for which it facilitates exchange that only authenticated and authorized personnel are able to access electronic exchange services it facilitates. For example, if the NVE were to facilitate an electronic exchange for a hospital, it would be able to satisfy this CTE (indirectly) by ensuring that the hospital had a process in place to authenticate and authorize its own personnel's use of the exchange services provided by the NVE. In proposing the adoption of this CTE, we would also look to NIST SP800–63(v1.02) ''Electronic Authentication Guideline'' and any other best practices

[29] (2008) ONC. ''Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information.'' Available at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov_privacy_security_framework/1173.*

[30] (2000). Final Rule. 65 FR 82462 at 82471. Available at: *http://www.gpo.gov/fdsys/pkg/FR-2000-12-28/pdf/FR-2000-12-28.pdf.*

[31] (2003). Final Rule. 68 FR 8335. Available at: *http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/securityrulepdf.pdf.*

[32] (2010) NIST. ''Security Architecture Design Process for Health Information Exchanges (HIEs).'' Available at: *http://csrc.nist.gov/publications/nistir/ir7497/nistir-7497.pdf.*

available to determine the appropriate authentication requirements NVEs would need to satisfy in facilitating electronic exchange.

Question 24: *What is the most appropriate level of assurance that an NVE should look to achieve in directly authenticating and authorizing a party for which it facilitates electronic exchange?*

Question 25: *Would an indirect approach to satisfy this CTE reduce the potential trust that an NVE could provide? More specifically, should we consider proposing specific requirements that would need to be met in order for indirect authentication and authorization processes to be implemented consistently across NVEs?*

Question 26: *With respect to this CTE as well as others (particularly the Safeguards CTEs), should we consider applying the ''flow down'' concept in more cases? That is, should we impose requirements on NVEs to enforce upon the parties for which they facilitate electronic exchange, to ensure greater consistency and/or compliance with the requirements specified in some CTEs?*

• *Condition [S–3]: An NVE must ensure that individuals are provided with a meaningful choice regarding whether their IIHI may be exchanged by the NVE.*

In considering the recommendations that we received from the HIT Policy Committee,[33] we believe that individuals should be able to exercise meaningful choice with respect to how their electronic health information is exchanged. The HIT Policy Committee explained that ''meaningful choice'' could be either an opt-in or opt-out model,[34] or more granular consents so long as individuals or their legal designees are adequately and clearly informed about how and why their information will be exchanged, in advance of making a decision whether to participate in electronic exchange. The HIT Policy Committee also stated that the process of providing meaningful choice should include communicating to an individual the following: 1) that choice is not a condition of receiving medical treatment; 2) that the choice will be commensurate with the circumstances for why IIHI is being exchanged; 3) that the choice is consistent with reasonable patient privacy, health, and safety expectations; and 4) that the choice is revocable—that is it can be retracted.

In terms of providing meaningful choice, we believe that an NVE should be required to do the following to satisfy this CTE, either: directly provide the patient with meaningful choice regarding the exchange of their IIHI; or ensure (with some means of verification) that the health care provider for which it facilitates electronic exchange has provided individuals with meaningful choice regarding the exchange of their IIHI.

Mindful that the HIT Policy Committee's recommendations are premised on the belief that different means of exchange may invoke different privacy and security concerns, we are considering, within the context of Interoperability CTE I–1,[35] what exceptions to the provision of meaningful choice would be prudent. We are considering the following three situational exceptions within this specific context: (1) When the NVE is engaging in the exchange of IIHI for purposes of medical treatment; (2) when information exchange is mandatorily required under law; or (3) the NVE is acting solely as a conduit and not accessing or using IIHI beyond what is required to encrypt and route it to its intended destination. For example, if we were to adopt a CTE that excluded those purposes it would mean that no patient choice would be required when one provider purposefully elects to electronically exchange health information directly with another provider for treatment purposes (e.g., sending a referral to a specific provider, transmitting a prescription) beyond what is required in current law or what has been customary practice. The HIT Policy Committee has yet to assess and provide recommendations to the National Coordinator on the circumstances under which meaningful choice should be required for other electronic exchange purposes. We note, however, that the HIPAA Privacy Rule sets a baseline that requires express authorization (an opt-in approach) for certain purposes, such as marketing with very limited exceptions.

Question 27: *In accommodating various meaningful choice approaches (e.g., opt-in, opt-out, or some combination of the two), what would be the operational challenges for each approach? What types of criteria could we use for validating meaningful choice under each approach? Considering some States have already established certain ''choice'' policies, how could we ensure consistency in implementing this CTE?*

Question 28: *Under what circumstances and in what manner should individual choice be required for other electronic exchange purposes?*

Question 29: *Should an additional ''meaningful choice'' Safeguards CTE be considered to address electronic exchange scenarios (e.g., distributed query) that do not take place following Interoperability CTE I–1?*

Question 30: *The process of giving patients a meaningful choice may be delegated to providers or other users of NVE services (as opposed to the patient receiving the choice from the NVE directly). In such instances, how would the provision of meaningful choice be validated?*

• *Condition [S–4]: An NVE must only exchange encrypted IIHI.*

Encryption is often regarded as a best practice for maintaining the confidentiality of IIHI transmitted across networks. To satisfy this condition, we believe that an NVE would need to be able to either (1) exchange already encrypted IIHI, (2) encrypt IIHI before exchanging it, or (3) establish and make available encrypted channels through which electronic exchange could take place (or do any combination of the above). We would expect NVEs to implement industry best practices for doing so. In order to provide some degree of flexibility, we would establish a general CTE for encryption of data in motion and publish more specific guidance on best practices. These requirements and guidelines would be consistent with the guidance provided by HHS' OCR related to breach notification and standards for rendering unsecured protected health information unusable, unreadable, or indecipherable to unauthorized individuals.[36]

Question 31: *Should there be exceptions to this CTE? If so, please describe these exceptions.*

• *Condition [S–5]: An NVE must make publicly available a notice of its data practices describing why IIHI is collected, how it is used, and to whom and for what reason it is disclosed.*

Under the HIPAA Privacy Rule (45 CFR 164.520), individuals have the right

[33] (2010). The complete set of recommendations can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_0_6011_1815_17825_43/http%3B/wci-pubcontent/publish/onc/public_communities/_content/files/hitpc_transmittal_p_s_tt_9_1_10.pdf.*

[34] In an opt- out model, by default, all or some predefined set of data is automatically eligible for exchange, with a provision that patients must be given the opportunity to request that their data not be eligible for exchange. In contrast, in an opt-in model, by default, no patient data is automatically eligible for exchange. Patients wishing to make all, or a pre-defined set, of their information available must actively express their desire to make their data eligible for exchange.

[35] *An NVE must be able to facilitate secure electronic health information exchange in two circumstances: (1) When the sender and receiver are known; and (2) when the exchange occurs at the patient's direction.*

[36] (2009). Interim Final Rule. 74 FR 42740. Available at: *http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html.*

to adequate notice of the uses and disclosures of their protected health information, a right which a covered entity fulfills by furnishing a notice of privacy practices (NPP). Generally speaking, the HIPAA Privacy Rule NPP must include a description of the types of uses and disclosures a HIPAA covered entity is permitted to make for treatment, payment, and health care operations, as well as a description of other uses and disclosures which are permitted without the individuals' written authorization.

The type of notice contemplated by this CTE would differ in certain aspects from a HIPAA Privacy Rule NPP. First, rather than a notice directed only to consumers whose health information is being used or disclosed, we believe that NVEs should clearly give advance notice to those who use their services, as well as to the general public, why they collect IIHI, how it is used, and to whom and for what reason it is disclosed. Second, with the goal of increasing public trust and enabling electronic exchange, we believe that an NVE should give notice about what it actually does do, rather than what it is legally permitted to do, with the IIHI for which it is responsible for exchanging. Third, we believe a NVE should give explicit and specific notice about certain uses and disclosures of health information, such as the specific circumstances when it will de-identify health information and provide it to third parties. For example, if the NVE de-identifies IIHI and then provides such de-identified information to pharmaceutical or research companies, it would need to include a description of this action in its notice to satisfy the CTE described above. This would address the concerns of some stakeholders, including certain members of the HIT Policy Committee, that certain persons and organizations may not be fully aware that an entity transmitting data on their behalf may de-identify their data and then share such de-identified data with third parties. We also believe this CTE is consistent with the privacy and security ''core values'' recommended by the HIT Policy Committee on September 1, 2010.

Question 32: *Are there specific uses or actions about which we should consider explicitly requiring an NVE to be transparent?*

Question 33: *Would an NVE be able to accurately disclose all of the activities it may need to include in its notice? Should some type of summarization be permitted?*

Question 34: *What is the anticipated cost and administrative burden for providing such notice?*

Question 35: *Should this CTE require that an NVE disclose its activities related to de-identified and aggregated data?*

Question 36: *Should this CTE require that an NVE just post its notice on a Web site or should it be required to broadly disseminate the notice to the health care providers and others to which it provides electronic exchange services?*

- *Condition [S–6]: An NVE must not use or disclose de-identified health information to which it has access for any commercial purpose.*

As noted above, some stakeholders, as well as the HIT Policy Committee, have expressed concern that certain persons may not be fully aware that someone transmitting data on their behalf may use de-identified data for profit seeking opportunities. This scenario appears to have raised two concerns: the potential that certain recipients of de-identified data possess their own established databanks and may be able to re-identify the data by comparing it to existing data; and providers' losing trust in a system in which the data for which they are responsible, although de-identified, is monetized. We recognize that under the HIPAA Privacy Rule, a provider could prohibit a business associate in its business associate agreement from de-identifying data and then subsequently using the de-identified data. However, we are aware of circumstances where certain business associates have drafted business associate agreements that allow for such de-identification of data for the business associates' purposes. Additionally, smaller covered entities may lack the economic resources and expertise necessary to effectively negotiate business associate agreements, in particular with respect to preventing the commercialization of health information. We believe that having a CTE prohibiting NVEs from using or disclosing de-identified health information for economic gain would alleviate the concerns that have been raised about potential re-identification of the data.[37] We also believe that such a prohibition would increase providers' trust in exchanging their data through an NVE.

Question 37: *What impact, if any, would this CTE have on various evolving business models? Would the additional trust gained from this CTE outweigh the potential impact on these models?*

Question 38: *On what other entities would this have an effect?*

- *Condition [S–7]: An NVE must operate its services with high availability.*

We are considering requiring NVEs to demonstrate that the systems and processes they have in place can assure users that its services will be available when needed. We consider high availability to mean near 24 hours a day, 7 days a week availability. In other words, to demonstrate compliance with this CTE, an NVE would need to ensure its services would be available at all times, except for very limited, scheduled periods of time. We believe such a requirement is necessary because the need to engage in electronic exchange may occur at any time. In cases where two or more NVEs are necessary to route health information from the source to its ultimate destination, NVEs should have reasonable assurances that the other parties on which they depend to route health information will be available for electronic exchange.

Question 39: *What standard of availability, if any, is appropriate?*

- *Condition [S–8]: If an NVE assembles or aggregates health information that results in a unique set of IIHI, then it must provide individuals with electronic access to their unique set of IIHI.*

The HIPAA Privacy regulations at 45 CFR 164.524 provide individuals with a right to access information maintained in a Designated Record Set (as defined at 45 CFR 164.501). However, this right may not extend to all IIHI that is used or assembled by NVEs to facilitate electronic exchange. Consistent with the ''Access'' principle expressed in the Privacy and Security Framework, we are considering adopting a CTE that would require an NVE to provide individuals with access to any information the NVE creates that results in a unique set of IIHI. In this context, and for the purpose of this CTE, we consider the IIHI that an NVE assembles or aggregates itself and retains on an individual to constitute a ''unique set of IIHI'' because the NVE would be the only party through which this information could be accessed (i.e., the individual would not be able to readily recreate the NVE's unique set of IIHI by requesting access to the information held by each of his or her providers that have a relationship with the NVE). For example, if multiple health care providers seek to electronically exchange health information for a given patient, then the NVE facilitating these exchanges would be in a position to aggregate the patient data it receives thus generating a unique

[37] We believe that the risks for re-identification are somewhat exaggerated, but recognize that public concerns about this issue may undermine trust and impede the development of the standards, services, and policies that define the nationwide health information network.

set of IIHI. This CTE would require that an individual have access to this unique set of IIHI if he or she is unable to access the same set of information through some other singular channel (e.g., by making a standard HIPAA access request to a single health care provider).

Question 40: *What further parameters, if any, should be placed on what constitutes a ''unique set of IIHI''?*

• *Condition [S–9]: If an NVE assembles or aggregates health information which results in a unique set of IIHI, then it must provide individuals with the right to request a correction and/or annotation to this unique set of IIHI.*

Building on the Safeguard CTE [S–8] above and consistent with the ''Correction'' principle in the Privacy and Security Framework, we believe that any NVE that must provide an individual with the right to access the unique set(s) of IIHI it maintains, should also be required to provide individuals with the right to request a correction and/or annotation to this unique set of IIHI.

Question 41: *If an NVE were to honor an individual's request for a correction to the unique set of IIHI that it maintains, what impact could such a correction have if the corrected information was accessible by health care providers and not used solely for the NVE's own business processes?*

Question 42: *Are there any circumstances where an NVE should not be required to provide individuals with the ability to correct their IIHI?*

• *Condition [S–10]: An NVE must have the means to verify that a provider requesting an individual's health information through a query and response model has or is in the process of establishing a treatment relationship with that individual.*

The HIPAA Privacy Rule does not set specific requirements for when a health care provider may request information maintained by other providers for treatment purposes. The duty to protect health information is placed almost exclusively on the discloser, and the requester bears little responsibility.[38] More specifically, the HIPAA Privacy Rule permits providers to request and disclose information about a patient ''to carry out treatment'' without qualifying that the information must be for the treatment of that particular patient. This means that providers who may participate in health information exchange through an NVE based on the query and response model are permitted by HIPAA to disclose an individual's information for treatment purposes, and to have the NVE make the disclosure on their behalf, even if the recipient is treating a patient that is not the subject of the record.

In theory, a query and response model would allow a provider to seek records of unknown individuals by querying on a particular diagnosis or demographic information and retrieve all records responsive to the query.[39] If the provider had any treatment purpose for such a query, even if she lacked an actual treatment relationship with each patient whose record she received, there would not be a violation of the HIPAA Privacy Rule. We believe that in order to ensure trust in the query and response model, that: (1) As a business practice, the NVE should restrict access to patient data for treatment purposes to providers who have or are in the process of establishing a treatment relationship with the patient; and (2) that as a safeguard CTE, the NVE be required to have mechanisms in place to verify that such a relationship exists.

Question 43: *What method or methods would be least burdensome but still appropriate for verifying a treatment relationship?*

Question 44: *Are there circumstances where a provider should be allowed access through the NVE to the health information of one or more individuals with whom it does not have a treatment relationship for the purpose of treating one of its patients?*

2. Interoperability CTEs

As previously described, Interoperability CTEs would focus on the technical conditions for electronic exchange. This would include the standards and implementation specifications needed to ensure that electronic health information can be exchanged in a manner that allows for consistent and meaningful interpretation across systems. While this initial set of Interoperability CTEs primarily focuses on transport standards and conditions needed to support planned electronic exchange, we believe that they could also include, where appropriate or necessary for electronic exchange to take place, additional specificity in the form of content exchange standards and vocabulary/code set standards.

Condition [I–1]: An NVE must be able to facilitate secure electronic health information exchange in two circumstances: (1) When the sender and receiver are known; and (2) when the exchange occurs at the patient's direction.

This Interoperability CTE would address ''planned'' electronic exchange scenarios when the sender and receiver are known (*e.g.,* public health reporting, transitions of care) and scenarios when the exchange occurs at the patient's direction or with the patient's knowledge. An NVE seeking validation to facilitate planned electronic exchange would need to be able to do so according to secure specifications. We anticipate that this first governance rulemaking would focus solely on the specifications NVEs would need to be able to use to transport electronic health information for planned electronic exchange and would not focus on content exchange or vocabulary standards which we have largely addressed through our regulations related to EHR technology certification.

To satisfy this CTE, we are considering requiring an NVE to implement and use one of two types of transport specifications. The first type includes the transport specifications developed under the Direct Project, which are the Applicability Statement for Secure Health Transport, and the Cross-Enterprise Document Reliable Interchange (XDR) and Cross-Enterprise Document Media Interchange (XDM) for Direct Messaging. The second type includes the transport specification developed under the Exchange, SOAP–Based Secure Transport RTM version 1.0.[40] [41]

The Applicability Statement for Secure Health Transport specification describes how electronic health information can be securely transported using simple mail transport protocol (SMTP), Secure/Multipurpose Internet Mail Extensions (S/MIME), and X.509 certificates. The XDR and XDM for Direct Messaging specification describes the use of XDR and XDM as a means to transport electronic health information and would serve as a bridge between entities using/following web services and SMTP transport methods. We believe these two options would make it possible for a majority, if not all,

[38] A covered entity requesting protected health information from another covered entity must adhere to the minimum necessary standard with respect to what information is requested; however, disclosures to or requests by a health care provider for treatment purposes are not subject to these minimum necessary restrictions. 45 CFR 164.502(b).

[39] The President's Council of Advisors on Science and Technology report, *Realizing the Full Potential of Health Information Technology to Improve Healthcare for Americans: The Path Forward,* (Dec. 2010), for example, proposes a Google-like search engine for health information that would facilitate such queries.

[40] The specification document can be viewed on The Direct Project Web site at: *http://wiki.directproject.org/Documentation+Library.*

[41] The specification document can be viewed on the S&I Framework Web site at: *http://modularspecs.siframework.org/NwHIN+SOAP+Based+Secure+Transport+Artifacts.*

interested entities who facilitate planned electronic exchange to satisfy this CTE.

Question 45: *What types of transport methods/standards should NVEs be able to support? Should they support both types of transport methods/standards (i.e., SMTP and SOAP), or should they only have to meet one of the two as well as have a way to translate (e.g., XDR/XDM)?*

Question 46: *If a secure ''RESTful'' transport specification is developed during the course of this rulemaking, should we also propose it as a way of demonstrating compliance with this CTE?*

• *Condition [I–2]: An NVE must follow required standards for establishing and discovering digital certificates.*

Digital certificates are used to create a high-level assurance that an organization exchanging electronic health information is the entity it claims to be. Therefore, having common baseline expectations for establishing digital certificates and making the public keys discoverable are foundational elements for rapid, scalable electronic exchange. In this regard, in April 2011, the HIT Standards Committee approved and transmitted a set of recommendations on digital certificates for the National Coordinator to consider. Digital certificates are used both as part of the transport specifications developed under the Direct Project as well as the Exchange to authenticate entities involved in electronic exchange. For the purposes of this CTE, we are considering adopting as requirements the recommendations expressed by the HIT Standards Committee, specifically its recommendations on the requirements and evaluation criteria for digital certificates. We are also considering its second recommendation with respect to cross-certifying with the Federal Bridge Certificate Authority (the Federal Bridge).

Question 47: *Are the technical specifications (i.e., Domain Name System (DNS) and the Lightweight Directory Access Protocol (LDAP)) appropriate and sufficient for enabling easy location of organizational certificates? Are there other specifications that we should also consider?*

Question 48: *Should this CTE require all participants engaged in planned electronic exchange to obtain an organizational (or group) digital certificate consistent with the policies of the Federal Bridge?* [42]

• *Condition [I–3]: An NVE must have the ability to verify and match the subject of a message, including the ability to locate a potential source of available information for a specific subject.*

The intent of this CTE is to provide guidance for NVEs to verify and match message subjects (*i.e.,* patients) using a record locater services, master patient index, or another approach. In February 2011, the Privacy and Security Tiger team issued a set of recommendations to the HIT Policy Committee regarding patient matching. The recommendations centered on standardizing demographic data fields, evaluating matching consistency, accountability, developing and disseminating best practices, and supporting the role of the individual patient. Subsequently, the HIT Standards Committee formed the Patient Matching Power Team to further explore these recommendations. The Patient Matching Power Team focused specifically on the use case of near time, direct patient care.[43]

Before exploring the specifications for patient matching, the Power Team first developed a set of baseline assumptions around the appropriate levels of specificity and sensitivity. For this use case, the Power Team assumed that specificity was more critical than sensitivity and that specificity of at least 99.9% and sensitivity of 95% would be an appropriate range for ensuring a high level of matching accuracy and accountability. These levels were used because sensitivities lower than 95% could result in incomplete views of the patient's record and specificities lower than 99.9% could result in incorrect matching, putting both the patient and the inappropriately matched individual at risk.

In August 2011, the Patient Matching Power Team presented several recommendations relating to patient matching to the HIT Standards Committee, which were considered, adopted and submitted to the National Coordinator. Its recommendations included a general principle regarding matching sensitivity and specificity and suggested that a base set of patient attributes should be selected based on demonstrated achievement of those levels. The HIT Standards Committee also recommended that health care providers give patients more of a role in verifying attributes used for matching and that HIT developers should provide a method for identifying missing or unavailable data to be identified and further, that basic validity checks be performed on patient attributes (such as only accepting dates in the past for dates of birth, no more than six 9s or six 0s in a row in the Social Security Number). Finally, the HIT Standards Committee recommended that patient query patterns should follow the ''Exchange patient query implementation guide'' and that the CDA R2 header formats should be used to represent patient attributes. It was also noted that responses to patient queries should not return any patient attributes that were not included in the original query, but that it may be appropriate for the response to indicate other data that could be useful in matching this patient.

Question 49: *Should we adopt a CTE that requires NVEs to employ matching algorithms that meet a specific accuracy level or a CTE that limits false positives to certain minimum ratio? What should the required levels be?*

Question 50: *What core data elements should be included for patient matching queries?*

Question 51: *What standards should we consider for patient matching queries?*

3. Business Practice CTEs

The third category of CTEs we are considering would focus on an NVE's business practices, including the operational and financial practices to which an NVE would need to adhere. We believe this category of CTEs would be necessary in order to ensure electronic exchange among NVEs takes place unimpeded.

• *Condition [BP–1]: An NVE must send and receive any planned electronic exchange message from another NVE without imposing financial preconditions on any other NVE.*

Generally speaking, this CTE expresses our belief that any health care provider using an NVE should be able to engage in unimpeded, planned electronic health information exchange with another health care provider using a different NVE. We believe that requiring NVEs to meet this CTE would instill greater confidence in planned electronic health information exchange and among health care providers who would rely on NVEs. In satisfying this CTE, an NVE could not impose business requirements on other NVEs, such as fees that would otherwise prevent another NVE from exchanging electronic

[42] Additional information on the Federal Bridge can be viewed at: *http://www.idmanagement.gov/pages.cfm/page/Federal-PKI.*

[43] The complete set of recommendations can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__standards_recommendations/1818.*

health information on behalf of its customer (*e.g.,* a doctor). We believe this CTE would be especially relevant in preventing instances where an NVE with a significant share of the market would try to leverage their market dominance to impose an economic ''rent'' on other NVEs (e.g., excessive fees), resulting in market distortions. It would also prevent an NVE from making it difficult for their customers—those using the services offered by the NVE—to conduct electronic exchange with another NVE.

Question 52: *Should this CTE be limited to only preventing one NVE from imposing a financial precondition on another NVE (such as fees), or should it be broader to cover other instances in which an NVE could create an inequitable electronic exchange environment?*

Question 53: *Should this CTE (or another CTE) address the fees an NVE could charge its customers to facilitate electronic exchange or should this be left to the market to determine?*

Question 54: *Under what circumstances, if any, should an NVE be permitted to impose requirements on other NVEs?*

- *Condition [BP–2]: An NVE must provide open access to the directory services it provides to enable planned electronic exchange.*

In order for planned electronic exchange to take place, and to satisfy this CTE, NVEs would need to make openly available to other NVEs or NVE customers certain services they offer. For example, for electronic exchange to take place following the Direct Project specifications, it would be necessary for an NVE to make openly available a directory of addresses of potential recipients and locatable public keys. While we recognize that the industry is still building its capacity to address this CTE, we believe that it is achievable.

- *Condition [BP–3]: An NVE must report on users and transaction volume for validated services.*

In order to assess our progress towards nationwide availability and use of health information exchange, it would be useful to have data about the use of NVE services, the types of users, and transaction volume for their validated services. The data should be collected and made available at the aggregate level so as not to expose information about specific customers or patients.

Question 55: *What data would be most useful to be collected? How should it be made available to the public? Should NVEs be required to report on the transaction volume by end user type (e.g., provider, lab, public health, patient, etc)?*

E. Request for Additional CTEs

Stakeholders are encouraged to provide feedback on this initial set of CTEs and in submitting comments suggest other CTEs that we should also consider. The following table summarizes the CTEs as presented in this RFI.

CTE Category	CTE
Safeguards	[S–1]: An NVE must comply with sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations as if it were a covered entity, and must treat all implementation specifications included within sections 164.308, 164.310, and 164.312 as ''required.''
Safeguards	[S–2]: An NVE must only facilitate electronic health information exchange for parties it has authenticated and authorized, either directly or indirectly.
Safeguards	[S–3]: An NVE must ensure that individuals are provided with a meaningful choice regarding whether their IIHI may be exchanged by the NVE.
Safeguards	[S–4]: An NVE must only exchange encrypted IIHI.
Safeguards	[S–5]: An NVE must make publicly available a notice of its data practices describing why IIHI is collected, how it is used, and to whom and for what reason it is disclosed.
Safeguards	[S–6]: An NVE must not use or disclose de-identified health information to which it has access for any commercial purpose.
Safeguards	[S–7]: An NVE must operate its services with high availability.
Safeguards	[S–8]: If an NVE assembles or aggregates health information that results in a unique set of IIHI, then it must provide individuals with electronic access to their unique set of IIHI.
Safeguards	[S–9]: If an NVE assembles or aggregates health information which results in a unique set of IIHI, then it must provide individuals with the right to request a correction and/or annotation to this unique set of IIHI.
Safeguards	[S–10]: An NVE must have the means to verify that a provider requesting an individual's health information through a query and response model has or is in the process of establishing a treatment relationship with that individual.
Interoperability	[I–1]: An NVE must be able to facilitate secure electronic health information exchange in two circumstances: 1) when the sender and receiver are known; and 2) when the exchange occurs at the patient's direction.
Interoperability	[I–2]: An NVE must follow required standards for establishing and discovering digital certificates.
Interoperability	[I–3]: An NVE must have the ability to verify and match the subject of a message, including the ability to locate a potential source of available information for a specific subject.
Business Practices	[BP–1]: An NVE must send and receive any planned electronic exchange message from another NVE without imposing financial preconditions on any other NVE.
Business Practices	[BP–2]: An NVE must provide open access to the directory services it provides to enable planned electronic exchange.
Business Practices	[BP–3]: An NVE must report on users and transaction volume for validated services.

One approach for implementing nationwide electronic exchange can be observed through the Nationwide Health Information Network Exchange. As we described in the background section of this RFI, the Exchange is a confederation of trusted entities that have passed certain requirements for participation. One such requirement includes signing the DURSA, which serves as a legal framework for sharing electronic health information among participants in the Exchange. The DURSA includes ''performance and service specifications'' which the participating members agree to use in implementing secure electronic exchange. The most recent specifications used by participants in the Exchange can be found on ONC's Web site.[44] These specifications focus on a range of different electronic exchange activities, including

[44] The Exchange specifications can be viewed on the ONC Web site at: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__nhin_resources/1194.*

specifications for: ''Patient Discovery;'' ''Query for Documents;'' ''Retrieve Documents;'' ''Authorization Framework;'' ''Web Services Registry;'' ''Access Consent Policies;'' and other such specifications with a yet to be determined effective date.

Question 56: *Which CTEs would you revise or delete and why? Are there other CTEs not listed here that we should also consider?*

Question 57: *Should one or more of the performance and service specifications implemented by the participants in the Exchange be included in our proposed set of CTEs? If so, please indicate which one(s) and provide your reasons for including them in one or more CTEs. If not, please indicate which one(s) and your reasons (including any technical or policy challenges you believe exist) for not including them in one or more CTEs.*

Question 58: *In the notice of proposed rulemaking (NPRM) we intend to subsequently issue, should the above CTEs as well as any others we consider for the NPRM be packaged together for the purposes of validation? In other words, would it make sense to allow for validation to different bundles of safeguard, interoperability, and business practice CTEs for different electronic exchange circumstances?*

Question 59: *Should we consider including safe harbors for certain CTEs? If so, which CTEs and what should the safe harbor(s) be?*

F. CTE Processes and Standards and Implementation Specification Classifications

1. CTE Life Cycle

Assuming we were to pursue an approach that includes the adoption of CTEs as part of a governance mechanism for the nationwide health information network, we expect that additional CTEs and revisions to CTEs would be necessary to accommodate policy maturity and technical changes over time. We believe that an inclusive and transparent process to identify, modify, and retire CTEs would be needed to engage stakeholders and would result in more refined and widely accepted CTEs. The purpose of this process would be to identify and assess current electronic exchange needs and to provide a path for determining how best to address them through the CTEs. We envision that rulemaking could be necessary every two years, most likely on years that would alternate with regulations published for EHR Incentive Programs, to keep the CTEs up-to-date and to permit entities to seek validation to new CTEs for other more complex forms of electronic exchange.

We believe that an approach to a CTE maturity life cycle could start with the identification of ''emerging'' CTEs, followed by the identification of ''pilot'' CTEs, followed by ''national'' candidate CTEs which we would consider sufficiently mature to propose for adoption. We believe that the ''pilot'' stage could empower greater stakeholder participation in governance and could permit the direct submission of best practices to ONC or through one of our advisory committees. It could also potentially enable validation bodies to provide for validation to pilot CTEs which would provide further input in terms of the CTEs' readiness to be identified as national candidate CTEs. We could see using the HIT Policy Committee and HIT Standards Committee to provide a forum to solicit public input on identifying best practices and piloting CTEs in a manner consistent with their statutory authority. We would further envision that this process would follow the procedures and comport with the requirements of section 3004 and other relevant sections of the PHSA, for the development and adoption of standards, implementation specifications, and certification criteria.

Question 60: *What process should we use to update CTEs?*

Question 61: *Should we expressly permit validation bodies to provide for validation to pilot CTEs?*

Question 62: *Should we consider a process outside of our advisory committees through which the identification and development to frame new CTEs could be done?*

2. Interoperability Conditions for Trusted Exchange—Technical Standards and Implementation Specifications Classification Process

We believe that it would benefit the industry to include as part of the governance mechanism, a formal and transparent process to classify technical standards and implementation specifications that could ultimately be adopted within the Interoperability category of CTEs.[45] This process would be informed by the priorities set by ONC based in part on recommendations from the HIT Policy and Standards Committees through an annual review and assessment process.

Through this process, technical standards and implementation specifications could be assigned to one of three classifications:

- ''*Emerging*''—This classification would refer to the technical standards and implementation specifications that still require additional specification and vetting by the standards development community, have not been broadly tested, have no or low adoption, and have only been implemented within a local or controlled setting.
- ''*Pilot*''—This classification would refer to the technical standards and implementation specifications that have reached a level of specification maturity and adoption by different entities such that some entities are using them to exchange health information either in a test mode or in a limited production mode.
- ''*National*''—This classification would refer to the technical standards and implementation that have reached a high-level of specification maturity and adoption by different entities such that most entities are using or are readily able to adopt and use them to exchange health information to conduct business. These technical standards would also be candidates for inclusion in applicable regulations, such as being referenced in an Interoperability CTE.

We believe the governance mechanism can and should be used to promote innovation in the health information exchange market. Therefore, we believe with the identification of the Emerging and Pilot standards and implementation specifications, the governance mechanism could encourage groups of HIT stakeholders to test, learn about, and provide feedback on those standards and implementation specifications and their readiness to be promoted to the next classification.

Question 63: *What would be the best way(s) ONC could help facilitate the pilot testing and learning necessary for implementing technical standards and implementation specifications categorized as Emerging or Pilot?*

The following figure generally illustrates the classifications discussed above. The upper right hand corner of the figure denotes standards classified as ''National,'' indicating readiness for national adoption. We highlight the fact that a technical standard could be considered highly mature, albeit, not very adoptable (upper left portion of the figure), or conversely, a standard could also be determined to be highly adoptable, but not very technically mature (lower right portion of the figure). In such instances we would task the HIT Policy and Standards Committees with providing advice on policy and technical justifications for whether a standard with these

[45] Examples of technical standards include SMTP, S/MIME and X.509 which form one of the transport specifications we identify for satisfying CTE I–1.

characteristics should be put on a path toward national adoption.

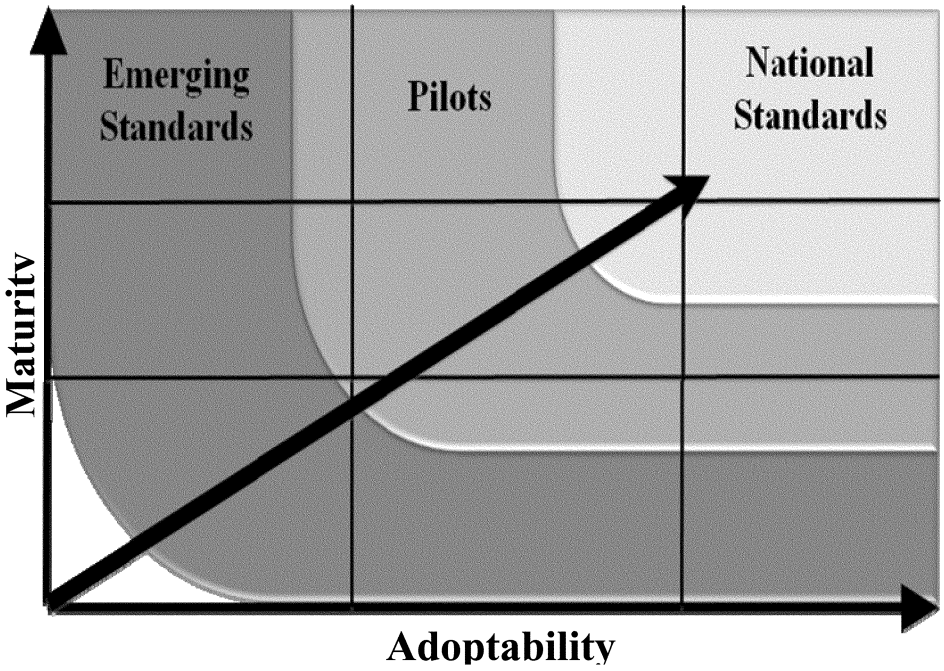

Figure 1. Standards and Implementation Specifications Classification Grid.

Technical Standards and Implementation Specifications Classification Criteria

Coupled with the annual process to identify, review, and assess standards and implementation specifications, we assume that a discrete set of objective criteria would be necessary to assess whether and when a technical standard or implementation specification should be classified differently. We believe the HIT Policy Committee would have a key role in prioritizing technical standards and implementation specifications needs and the HIT Standards Committee could have an integral role in advising ONC about how to classify such technical standards and implementation specifications. The HIT Standards Committee has had initial discussions on what classification criteria could look like, such as: maturity; market adoption, need; deployment complexity; and the maturity of the underlying technology for a given standard.

Question 64: *Would this approach for classifying technical standards and implementation specification be effective for updating and refreshing Interoperability CTEs?*

Question 65: *What types of criteria could be used for categorizing standards and implementation specifications for Interoperability CTEs? We would prefer criteria that are objective and quantifiable and include some type of metric.*

G. Economic Impact

As part of an NPRM, we would perform a regulatory impact analysis consistent with Executive Order 12866 and other applicable requirements. The focus of the RFI is to obtain public comment on what would be necessary to launch the structures, processes, and initial requirements to establish a governance mechanism for the nationwide health information network, but also interested in public comment on any publicly available data that we could subsequently use in a future NPRM's regulatory impact statement to determine the costs and benefits of such a governance mechanism.

Question 66: *We encourage comment and citations to publicly available data regarding the following:*

1. The potential costs of validation;
2. The potential savings to States or other organizations that could be realized with the establishment of a validation process to CTEs;
3. The potential increase in the secure exchange of health information that might result from the establishment of CTEs;
4. The potential number of entities that would seek to become NVEs; and
5. The NVE application and reporting burden associated with the conceptual proposals we discuss.

Dated: May 10, 2012.

David S. Muntz,

Principal Deputy National Coordinator, Office of the National Coordinator for Health IT.

[FR Doc. 2012–11775 Filed 5–11–12; 11:15 am]

BILLING CODE 4150–45–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 110908576–1029–01]

RIN 0648–BB44

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 11 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). If implemented, this rule would limit spiny lobster fishing in certain areas in the exclusive economic zone (EEZ) off the Florida Keys to protect threatened species of corals. The intent of this proposed rule is to protect threatened coral colonies and address the requirements of a 2009 Endangered Species Act (ESA) biological opinion on the spiny lobster fishery.

DATES: Written comments must be received on or before June 14, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0223'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2011–0223'' in the search field and click on ''search.'' After you locate the document ''Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11,'' click the ''Submit a Comment'' link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of documents supporting this proposed rule, which include a draft supplemental environmental impact statement and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/Final_Spiny_Lobster_Amend_11_April_05_2012.pdf.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico (Gulf) and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR parts 622 and 640 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The ESA requires analyses to determine whether, and to what extent, fishing operations impact threatened species including threatened staghorn and elkhorn corals. A 2009 biological opinion on the continued authorization of the spiny lobster fishery contained specific terms and conditions required to implement the prescribed reasonable and prudent measures (*http://sero.nmfs.noaa.gov/pr/esa/Fishery%20Biops/Final%20SL%20BO.pdf*). The 2009 biological opinion requires NMFS and the Councils to work together to protect areas of staghorn and elkhorn coral. Required measures in the 2009 ESA biological opinion include (1) the creation of new or expansion of existing closed areas for lobster trap fishing where colonies of these threatened species are present, and (2) implementing spiny lobster trap line marking requirements. These actions were originally included in Amendment 10 to the FMP. However, in Amendment 10 to the FMP, the Councils chose to take no action on these measures to allow for additional stakeholder input.

Management Measures Contained in This Proposed Rule

This rule proposes to prohibit spiny lobster trap fishing in 60 closed areas that cover a total of 5.9 mi^2 (15.3 km^2), distributed throughout the South Atlantic EEZ off the Florida Keys. Staff from the Councils and NMFS worked with various stakeholders to develop the proposed areas that would be closed to lobster trap gear. These areas were chosen to protect coral colonies with high conservation value and areas of high coral density. The proposed closed areas are intended to protect threatened coral species and meet the applicable requirements of the 2009 biological opinion.

Measure in Amendment 11 That Is Not Contained in This Rulemaking

Amendment 11 also contains an action to consider a spiny lobster trap line marking requirement. The Councils considered alternatives under this management action but chose to take no action at this time to allow time for additional testing of line marking methods. The Florida Fish and Wildlife Conservation Commission is currently conducting a study of various methods for marking lobster trap lines that should be completed during 2013. The Councils intend to revisit the requirement to mark spiny lobster trap gear when the results of that study are available. The biological opinion, as amended, requires implementation of the terms and conditions regarding lobster trap line marking by August 6, 2017.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of this proposed rule is to implement conservation measures to help protect threatened coral species in a manner that complies with measures established in the 2009 biological opinion on the spiny lobster fishery. The 2009 biological opinion was prepared in accordance with the ESA. The Magnuson-Stevens Act and the ESA provide the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

This proposed rule, if implemented, would be expected to affect all vessels that engage in commercial trap fishing for spiny lobster in certain parts of the South Atlantic EEZ off Monroe County, Florida, as managed under the FMP. Landings of spiny lobster occur predominantly in the Florida Keys (Monroe County) and elsewhere in south Florida. A relatively small amount of spiny lobster landings have been reported for other states in the Gulf and South Atlantic since 1977. Fishing for spiny lobster in Florida is managed cooperatively by the Councils and the State of Florida. Florida collects the data used to analyze spiny lobster activity in the commercial and recreational sectors.

Commercial and for-hire fishing vessels that fish for spiny lobster in state and Federal waters off Florida must have the applicable Florida permits/licenses. For commercial vessels that want to tail lobster in Federal waters, a Federal lobster tailing permit is additionally required. On average, during 2006–2010, 776 vessels per year landed spiny lobster commercially in Florida. These 776 vessels averaged $47,274 per vessel annually in gross revenue for all species landed, with $28,489 for spiny lobster, while the remainder of their revenue came from the harvest of other species including stone crab, snapper-grouper, king mackerel, and shrimp. Among the 776 vessels, 271 landed spiny lobster from the EEZ. Out of the 271 vessels landing spiny lobster from the EEZ, there were 128 vessels that landed spiny lobster from the Florida Keys within the South Atlantic EEZ using trap gear, and they averaged $98,845 in gross revenue per vessel.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in commercial shellfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114112, shellfish fishing) for all its affiliated operations worldwide. A for-hire business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire fishing vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This proposed rule, if implemented, would prohibit the commercial harvest of spiny lobster using trap gear in certain areas of the South Atlantic EEZ off Florida (off Monroe County) to protect threatened species of coral. The commercial harvest of spiny lobster utilizing types of gear other than traps, notably diving gear, would not be prohibited through this proposed rule; however, the commercial harvest of spiny lobster using diving gear is estimated to be minimal in the proposed lobster trap gear closed areas. For-hire fishing for spiny lobster in the affected areas of the EEZ has not been quantified. For-hire activity is not subject to these proposed regulations; however, this activity could increase in the proposed closed areas as a result of the absence of commercial trap fishing.

For the approximately 128 vessels that land spiny lobster from the Florida Keys within the South Atlantic EEZ using trap gear, the proposed closure would reduce their gross revenue by an estimated 0.19 to 0.35 percent, annually. A reduction in gross revenue of .35 percent or less is generally not considered a significant economic impact. Because the reduction in gross revenue is the only anticipated economic impact from this action, the proposed closure would therefore not be expected to have a significant economic impact on the approximately 128 vessels that land spiny lobster from the Florida Keys within the South Atlantic EEZ using trap gear.

Because this action is not expected to have a significant impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 640 is proposed to be amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

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

2. In § 640.7, paragraph (y) is added to read as follows:

§ 640.7 Prohibitions.

* * * * *

(y) Fish for a spiny lobster using trap gear in the areas specified in § 640.22(b)(4).

3. In § 640.22, paragraph (b)(4) is added to read as follows:

§ 640.22 Gear and diving restrictions.

* * * * *

(b) * * *

(4) Fishing with spiny lobster trap gear is prohibited year-round in the following areas bounded by rhumb lines connecting, in order, the points listed.

(i) Lobster Trap Gear Closed Area 1.

Point	North lat.	West long.
A	24°31′15.002″	81°31′00.000″
B	24°31′15.002″	81°31′19.994″
C	24°31′29.999″	81°31′19.994″
D	24°31′29.999″	81°31′00.000″
A	24°31′15.002″	81°31′00.000″

(ii) Lobster Trap Gear Closed Area 2.

Point	North lat.	West long.
A	24°31′20.205″	81°30′17.213″
B	24°31′17.858″	81°30′27.700″
C	24°31′27.483″	81°30′30.204″
D	24°31′29.831″	81°30′19.483″
A	24°31′20.205″	81°30′17.213″

(iii) Lobster Trap Gear Closed Area 3.

Point	North lat.	West long.
A	24°31′42.665″	81°30′02.892″
B	24°31′45.013″	81°29′52.093″
C	24°31′34.996″	81°29′49.745″
D	24°31′32.335″	81°30′00.466″
A	24°31′42.665″	81°30′02.892″

(iv) Lobster Trap Gear Closed Area 4.

Point	North lat.	West long.
A	24°31′50.996″	81°28′39.999″
B	24°31′50.996″	81°29′03.002″
C	24°31′56.998″	81°29′03.002″
D	24°31′56.998″	81°28′39.999″
A	24°31′50.996″	81°28′39.999″

(v) Lobster Trap Gear Closed Area 5.

Point	North lat.	West long.
A	24°32′20.014″	81°26′20.390″
B	24°32′13.999″	81°26′41.999″
C	24°32′27.004″	81°26′45.611″
D	24°32′33.005″	81°26′23.995″
A	24°32′20.014″	81°26′20.390″

(vi) Lobster Trap Gear Closed Area 6.

Point	North lat.	West long.
A	24°32′30.011″	81°24′47.000″

Point	North lat.	West long.
B	24°32′23.790″	81°24′56.558″
C	24°32′45.997″	81°25′10.998″
D	24°32′52.218″	81°25′01.433″
A	24°32′30.011″	81°24′47.000″

(vii) Lobster Trap Gear Closed Area 7.

Point	North lat.	West long.
A	24°32′46.834″	81°27′17.615″
B	24°32′41.835″	81°27′35.619″
C	24°32′54.003″	81°27′38.997″
D	24°32′59.002″	81°27′21.000″
A	24°32′46.834″	81°27′17.615″

(viii) Lobster Trap Gear Closed Area 8.

Point	North lat.	West long.
A	24°33′10.002″	81°25′50.995″
B	24°33′04.000″	81°26′18.996″
C	24°33′17.253″	81°26′21.839″
D	24°33′23.254″	81°25′53.838″
A	24°33′10.002″	81°25′50.995″

(ix) Lobster Trap Gear Closed Area 9.

Point	North lat.	West long.
A	24°33′22.004″	81°30′31.998″
B	24°33′22.004″	81°30′41.000″
C	24°33′29.008″	81°30′41.000″
D	24°33′29.008″	81°30′31.998″
A	24°33′22.004″	81°30′31.998″

(x) Lobster Trap Gear Closed Area 10.

Point	North lat.	West long.
A	24°33′33.004″	81°30′00.000″
B	24°33′33.004″	81°30′09.998″
C	24°33′41.999″	81°30′09.998″
D	24°33′41.999″	81°30′00.000″
A	24°33′33.004″	81°30′00.000″

(xi) Lobster Trap Gear Closed Area 11.

Point	North lat.	West long.
A	24°33′50.376″	81°23′35.039″
B	24°33′27.003″	81°24′51.003″
C	24°33′40.008″	81°24′54.999″
D	24°34′03.382″	81°23′39.035″
A	24°33′50.376″	81°23′35.039″

(xii) Lobster Trap Gear Closed Area 12.

Point	North lat.	West long.
A	24°34′00.003″	81°19′29.996″
B	24°34′00.003″	81°20′04.994″
C	24°34′24.997″	81°20′04.994″
D	24°34′24.997″	81°19′29.996″
A	24°34′00.003″	81°19′29.996″

(xiii) Lobster Trap Gear Closed Area 13.

Point	North lat.	West long.
A	24°35′19.997″	81°14′25.002″
B	24°35′19.997″	81°14′34.999″
C	24°35′29.006″	81°14′34.999″
D	24°35′29.006″	81°14′25.002″
A	24°35′19.997″	81°14′25.002″

(xiv) Lobster Trap Gear Closed Area 14.

Point	North lat.	West long.
A	24°44′37.004″	80°46′47.000″
B	24°44′37.004″	80°46′58.000″
C	24°44′47.002″	80°46′58.000″
D	24°44′47.002″	80°46′47.000″
A	24°44′37.004″	80°46′47.000″

(xv) Lobster Trap Gear Closed Area 15.

Point	North lat.	West long.
A	24°49′53.946″	80°38′17.646″
B	24°48′32.331″	80°40′15.530″
C	24°48′44.389″	80°40′23.879″
D	24°50′06.004″	80°38′26.003″
A	24°49′53.946″	80°38′17.646″

(xvi) Lobster Trap Gear Closed Area 16.

Point	North lat.	West long.
A	24°53′32.085″	80°33′22.065″
B	24°53′38.992″	80°33′14.670″
C	24°53′31.673″	80°33′07.155″
D	24°54′24.562″	80°33′14.886″
A	24°53′32.085″	80°33′22.065″

(xvii) Lobster Trap Gear Closed Area 17.

Point	North lat.	West long.
A	24°53′33.410″	80°32′50.247″
B	24°53′40.149″	80°32′42.309″
C	24°53′32.418″	80°32′35.653″
D	24°54′25.348″	80°32′43.302″
A	24°53′33.410″	80°32′50.247″

(xviii) Lobster Trap Gear Closed Area 18.

Point	North lat.	West long.
A	24°54′06.317″	80°32′34.115″
B	24°53′59.368″	80°33′41.542″
C	24°54′06.667″	80°33′48.994″
D	24°54′13.917″	80°32′41.238″
A	24°54′06.317″	80°32′34.115″

(xix) Lobster Trap Gear Closed Area 19.

Point	North lat.	West long.
A	24°54′06.000″	80°31′33.995″
B	24°54′06.000″	80°31′45.002″
C	24°54′36.006″	80°31′45.002″
D	24°54′36.006″	80°31′33.995″
A	24°54′06.000″	80°31′33.995″

(xx) Lobster Trap Gear Closed Area 20.

Point	North lat.	West long.
A	24°56′21.104″	80°28′52.331″
B	24°56′17.012″	80°29′05.995″
C	24°56′26.996″	80°29′08.996″
D	24°56′31.102″	80°28′55.325″
A	24°56′21.104″	80°28′52.331″

(xxi) Lobster Trap Gear Closed Area 21.

Point	North lat.	West long.
A	24°56′53.006″	80°27′46.997″
B	24°56′21.887″	80°28′25.367″
C	24°56′35.002″	80°28′36.003″
D	24°57′06.107″	80°27′57.626″
A	24°56′53.006″	80°27′46.997″

(xxii) Lobster Trap Gear Closed Area 22.

Point	North lat.	West long.
A	24°57′35.001″	80°27′14.999″
B	24°57′28.011″	80°27′21.000″
C	24°57′33.999″	80°27′27.997″
D	24°57′40.200″	80°27′21.106″
A	24°57′35.001″	80°27′14.999″

(xxiii) Lobster Trap Gear Closed Area 23.

Point	North lat.	West long.
A	24°58′58.154″	80°26′03.911″
B	24°58′48.005″	80°26′10.001″
C	24°58′52.853″	80°26′18.090″
D	24°59′03.002″	80°26′11.999″
A	24°58′58.154″	80°26′03.911″

(xxiv) Lobster Trap Gear Closed Area 24.

Point	North lat.	West long.
A	24°59′17.009″	80°24′32.999″
B	24°58′41.001″	80°25′21.998″
C	24°58′57.591″	80°25′34.186″
D	24°59′33.598″	80°24′45.187″
A	24°59′17.009″	80°24′32.999″

(xxv) Lobster Trap Gear Closed Area 25.

Point	North lat.	West long.
A	24°59′44.008″	80°25′38.999″
B	24°59′27.007″	80°25′48.997″
C	24°59′32.665″	80°25′58.610″
D	24°59′49.666″	80°25′48.612″
A	24°59′44.008″	80°25′38.999″

(xxvi) Lobster Trap Gear Closed Area 26.

Point	North lat.	West long.
A	25°01′00.006″	80°21′55.002″
B	25°01′00.006″	80°22′11.996″
C	25°01′18.010″	80°22′11.996″

Point	North lat.	West long.
D	25°01′18.010″	80°21′55.002″
A	25°01′00.006″	80°21′55.002″

(xxvii) Lobster Trap Gear Closed Area 27.

Point	North lat.	West long.
A	25°01′34.997″	80°23′12.998″
B	25°01′18.010″	80°23′44.000″
C	25°01′22.493″	80°23′46.473″
D	25°01′36.713″	80°23′37.665″
E	25°01′46.657″	80°23′19.390″
A	25°01′34.997″	80°23′12.998″

(xxviii) Lobster Trap Gear Closed Area 28.

Point	North lat.	West long.
A	25°01′38.005″	80°21′25.998″
B	25°01′28.461″	80°21′46.158″
C	25°01′45.009″	80°21′53.999″
D	25°01′54.553″	80°21′33.839″
A	25°01′38.005″	80°21′25.998″

(xxix) Lobster Trap Gear Closed Area 29.

Point	North lat.	West long.
A	25°01′53.001″	80°23′08.995″
B	25°01′53.001″	80°23′17.997″
C	25°02′01.008″	80°23′17.997″
D	25°02′01.008″	80°23′08.995″
A	25°01′53.001″	80°23′08.995″

(xxx) Lobster Trap Gear Closed Area 30.

Point	North lat.	West long.
A	25°02′20.000″	80°22′11.001″
B	25°02′10.003″	80°22′50.002″
C	25°02′22.252″	80°22′53.140″
D	25°02′32.250″	80°22′14.138″
A	25°02′20.000″	80°22′11.001″

(xxxi) Lobster Trap Gear Closed Area 31.

Point	North lat.	West long.
A	25°02′29.503″	80°20′30.503″
B	25°02′16.498″	80°20′43.501″
C	25°02′24.999″	80°20′52.002″
D	25°02′38.004″	80°20′38.997″
A	25°02′29.503″	80°20′30.503″

(xxxii) Lobster Trap Gear Closed Area 32.

Point	North lat.	West long.
A	25°02′34.008″	80°21′57.000″
B	25°02′34.008″	80°22′14.997″
C	25°02′50.007″	80°22′14.997″
D	25°02′50.007″	80°21′57.000″
A	25°02′34.008″	80°21′57.000″

(xxxiii) Lobster Trap Gear Closed Area 33.

Point	North lat.	West long.
A	25°03′11.294″	80°21′36.864″
B	25°03′02.540″	80°21′43.143″
C	25°03′08.999″	80°21′51.994″
D	25°03′17.446″	80°21′45.554″
A	25°03′11.294″	80°21′36.864″

(xxxiv) Lobster Trap Gear Closed Area 34.

Point	North lat.	West long.
A	25°03′30.196″	80°21′34.263″
B	25°03′39.267″	80°21′29.506″
C	25°03′35.334″	80°21′19.801″
D	25°03′26.200″	80°21′24.304″
A	25°03′30.196″	80°21′34.263″

(xxxv) Lobster Trap Gear Closed Area 35.

Point	North lat.	West long.
A	25°03′26.001″	80°19′43.001″
B	25°03′26.001″	80°19′54.997″
C	25°03′41.011″	80°19′54.997″
D	25°03′41.011″	80°19′43.001″
A	25°03′26.001″	80°19′43.001″

(xxxvi) Lobster Trap Gear Closed Area 36.

Point	North lat.	West long.
A	25°07′03.008″	80°17′57.999″
B	25°07′03.008″	80°18′10.002″
C	25°07′14.997″	80°18′10.002″
D	25°07′14.997″	80°17′57.999″
A	25°07′03.008″	80°17′57.999″

(xxxvii) Lobster Trap Gear Closed Area 37.

Point	North lat.	West long.
A	25°07′51.156″	80°17′27.910″
B	25°07′35.857″	80°17′37.091″
C	25°07′43.712″	80°17′50.171″
D	25°07′59.011″	80°17′40.998″
A	25°07′51.156″	80°17′27.910″

(xxxviii) Lobster Trap Gear Closed Area 38.

Point	North lat.	West long.
A	25°08′12.002″	80°17′09.996″
B	25°07′55.001″	80°17′26.997″
C	25°08′04.998″	80°17′36.995″
D	25°08′22.000″	80°17′20.000″
A	25°08′12.002″	80°17′09.996″

(xxxix) Lobster Trap Gear Closed Area 39.

Point	North lat.	West long.
A	25°08′18.003″	80°17′34.001″
B	25°08′18.003″	80°17′45.997″
C	25°08′29.003″	80°17′45.997″
D	25°08′29.003″	80°17′34.001″
A	25°08′18.003″	80°17′34.001″

(xl) Lobster Trap Gear Closed Area 40.

Point	North lat.	West long.
A	25°08′45.002″	80°15′50.002″
B	25°08′37.999″	80°15′56.998″
C	25°08′42.009″	80°16′00.995″
D	25°08′48.999″	80°15′53.998″
A	25°08′45.002″	80°15′50.002″

(xli) Lobster Trap Gear Closed Area 41.

Point	North lat.	West long.
A	25°08′58.007″	80°17′24.999″
B	25°08′58.007″	80°17′35.999″
C	25°09′09.007″	80°17′35.999″
D	25°09′09.007″	80°17′24.999″
A	25°08′58.007″	80°17′24.999″

(xlii) Lobster Trap Gear Closed Area 42.

Point	North lat.	West long.
A	25°09′10.999″	80°16′00.000″
B	25°09′10.999″	80°16′09.997″
C	25°09′20.996″	80°16′09.997″
D	25°09′20.996″	80°16′00.000″
A	25°09′10.999″	80°16′00.000″

(xliii) Lobster Trap Gear Closed Area 43.

Point	North lat.	West long.
A	25°09′28.316″	80°17′03.713″
B	25°09′14.006″	80°17′17.000″
C	25°09′21.697″	80°17′25.280″
D	25°09′36.006″	80°17′12.001″
A	25°09′28.316″	80°17′03.713″

(xliv) Lobster Trap Gear Closed Area 44.

Point	North lat.	West long.
A	25°10′00.011″	80°16′06.000″
B	25°10′00.011″	80°16′17.000″
C	25°10′09.995″	80°16′17.000″
D	25°10′09.995″	80°16′06.000″
A	25°10′00.011″	80°16′06.000″

(xlv) Lobster Trap Gear Closed Area 45.

Point	North lat.	West long.
A	25°10′29.002″	80°15′52.995″
B	25°10′29.002″	80°16′04.002″
C	25°10′37.997″	80°16′04.002″
D	25°10′37.997″	80°15′52.995″
A	25°10′29.002″	80°15′52.995″

(xlvi) Lobster Trap Gear Closed Area 46.

Point	North lat.	West long.
A	25°11′05.998″	80°14′25.997″
B	25°11′05.998″	80°14′38.000″
C	25°11′20.006″	80°14′38.000″
D	25°11′20.006″	80°14′25.997″

Point	North lat.	West long.
A	25°11′05.998″	80°14′25.997″

(xlvii) Lobster Trap Gear Closed Area 47.

Point	North lat.	West long.
A	25°12′00.998″	80°13′24.996″
B	25°11′43.008″	80°13′35.000″
C	25°11′48.007″	80°13′44.002″
D	25°12′06.011″	80°13′33.998″
A	25°12′00.998″	80°13′24.996″

(xlviii) Lobster Trap Gear Closed Area 48.

Point	North lat.	West long.
A	25°12′18.343″	80°14′32.768″
B	25°12′02.001″	80°14′44.001″
C	25°12′07.659″	80°14′52.234″
D	25°12′24.001″	80°14′41.001″
A	25°12′18.343″	80°14′32.768″

(xlix) Lobster Trap Gear Closed Area 49.

Point	North lat.	West long.
A	25°15′23.998″	80°12′29.000″
B	25°15′04.676″	80°12′36.120″
C	25°15′09.812″	80°12′50.066″
D	25°15′29.148″	80°12′42.946″
A	25°15′23.998″	80°12′29.000″

(l) Lobster Trap Gear Closed Area 50.

Point	North lat.	West long.
A	25°16′01.997″	80°12′32.996″
B	25°15′33.419″	80°12′52.394″
C	25°15′44.007″	80°13′08.001″
D	25°16′12.585″	80°12′48.597″
A	25°16′01.997″	80°12′32.996″

(li) Lobster Trap Gear Closed Area 51.

Point	North lat.	West long.
A	25°16′33.006″	80°13′30.001″
B	25°16′33.006″	80°13′41.001″
C	25°16′34.425″	80°13′41.026″
D	25°16′41.850″	80°13′37.475″
E	25°16′42.001″	80°13′30.001″
A	25°16′33.006″	80°13′30.001″

(lii) Lobster Trap Gear Closed Area 52.

Point	North lat.	West long.
A	25°17′04.715″	80°12′11.305″
B	25°16′17.007″	80°12′27.997″
C	25°16′23.997″	80°12′47.999″
D	25°17′11.705″	80°12′31.300″
A	25°17′04.715″	80°12′11.305″

(liii) Lobster Trap Gear Closed Area 53.

Point	North lat.	West long.
A	25°17′23.008″	80°12′40.000″
B	25°17′23.008″	80°12′49.997″
C	25°17′33.005″	80°12′49.997″
D	25°17′33.005″	80°12′40.000″
A	25°17′23.008″	80°12′40.000″

(liv) Lobster Trap Gear Closed Area 54.

Point	North lat.	West long.
A	25°20′57.996″	80°09′50.000″
B	25°20′57.996″	80°10′00.000″
C	25°21′07.005″	80°10′00.000″
D	25°21′07.005″	80°09′50.000″
A	25°20′57.996″	80°09′50.000″

(lv) Lobster Trap Gear Closed Area 55.

Point	North lat.	West long.
A	25°21′45.004″	80°09′51.998″
B	25°21′38.124″	80°09′56.722″
C	25°21′49.124″	80°10′12.728″
D	25°21′56.004″	80°10′07.997″
A	25°21′45.004″	80°09′51.998″

(lvi) Lobster Trap Gear Closed Area 56.

Point	North lat.	West long.
A	25°21′49.000″	80°09′21.999″
B	25°21′49.000″	80°09′31.996″
C	25°21′58.998″	80°09′31.996″
D	25°21′58.998″	80°09′21.999″
A	25°21′49.000″	80°09′21.999″

(lvii) Lobster Trap Gear Closed Area 57.

Point	North lat.	West long.
A	25°24′31.008″	80°07′36.997″
B	25°24′31.008″	80°07′48.999″
C	25°24′41.005″	80°07′48.999″
D	25°24′41.005″	80°07′36.997″
A	25°24′31.008″	80°07′36.997″

(lviii) Lobster Trap Gear Closed Area 58.

Point	North lat.	West long.
A	25°25′14.005″	80°07′27.995″
B	25°25′14.005″	80°07′44.001″
C	25°25′26.008″	80°07′44.001″
D	25°25′26.008″	80°07′27.995″
A	25°25′14.005″	80°07′27.995″

(lix) Lobster Trap Gear Closed Area 59.

Point	North lat.	West long.
A	25°35′13.996″	80°05′39.999″
B	25°35′13.996″	80°05′50.999″
C	25°35′24.007″	80°05′50.999″
D	25°35′24.007″	80°05′39.999″
A	25°35′13.996″	80°05′39.999″

(lx) Lobster Trap Gear Closed Area 60.

Point	North lat.	West long.
A	25°40′57.003″	80°05′43.000″
B	25°40′57.003″	80°05′54.000″
C	25°41′06.550″	80°05′53.980″
D	25°41′18.136″	80°05′49.158″
E	25°41′18.001″	80°05′43.000″
A	25°40′57.003″	80°05′43.000″

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Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0022]

Notice of Request for a New Information Collection (Food Safety Education Campaign—Post-Wave Tracking Survey)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection for a post-wave tracking survey associated with the Food Safety Education Campaign. The post-wave survey is conducted after the initial tracking survey is completed, and the media campaign has begun and has had time to reach its intended audience.

DATES: Comments on this notice must be received on or before July 16, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0022. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street, Room 8–164, Washington, DC 20250–3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Food Safety Education Campaign Post-Wave Tracking Survey.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 & 2.13) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C., *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled and packaged.

FSIS, in partnership with the Ad Council, the Food and Drug Administration, and the Centers for Disease Control and Prevention, developed a new national public service advertising campaign to educate the public about the importance of safe food handling and how to reduce the risks associated with foodborne illness. FSIS is seeking approval of a new information collection to help evaluate the impact of the Food Safety Education Campaign. The new collection will take the form of a post-survey of members of the target audience and will help gauge awareness of the advertising, attitudes regarding safe food preparation, and self-reported prevention behaviors. The post-wave survey will be fielded approximately 12 months following launch of the Food Safety Education Campaign, which occurred in July 2011, to monitor any shifts in attitudes, awareness, or behaviors in the target audience over time.

The campaign targets parents, ages 20 to 40, who are caregivers for children between the ages of 4 and 12. Parents have been identified as the target audience because they are most likely to be preparing food for themselves and others, and they have an incentive to listen to food safety messages and adopt or change their behaviors as a result.

The post-wave survey will be administered using a national random digit dial phone methodology in both English and Spanish. Each respondent will answer questions about their attitudes about food safety, their awareness of the risks of foodborne illness, their own efficacy with regard to preventing foodborne illness, and their own use of safe food-handling practices. The public service announcements (PSAs) will also be described to respondents in order to gauge recognition of the ads in market.

Once the post-wave survey is conducted, FSIS and the Ad Council will compare results to identify any shifts in attitudes, awareness, or behaviors that occurred as a result of the media campaign. The results of the post-wave survey will be used to assess the effectiveness of the campaign thus far and inform future rounds of PSAs.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 15 minutes per year, and non-respondents an average of 2 minutes per year, to respond.

Respondents: Consumers.

Estimated No. of Respondents: 7,200.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: May 8, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–11720 Filed 5–14–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA) from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[04/06/2012 through 05/08/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Hubbardton Forge, LLC	Hubbardton Forge, LLC., P.O. Box 827, 154 Route 30 S., Castleton, VT 06763.	04/06/12	The firm designs and manufactures hand-forged lighting products and accessories.
Durrset Amigos, Ltd	4669 U.S. Highway 90W, San Antonio, TX 78237.	04/23/12	The firm manufactures processed food for human consumption.
Conval, Inc	265 Field Road, P.O. Box 1049, Somers, CT 06071.	04/25/12	The firm manufactures commercial and N Stamp (Classes 1,2,&3) high pressure, high temperature, forged steel valves.
Alternative Manufacturing, Inc	30 Summer Street, Suite B, Winthrop, ME 04367.	04/25/12	The firm assembles printed circuit boards.
J&M Plating, Inc	4500 Kishwaukee Street, Rockford, IL 61109–2924.	04/25/12	The firm manufactures plated and heat treated screws.
Snow Country Hardwoods, Inc.	1300 Odanah Road Hurley, WI 54534 USA.	04/25/12	The firm manufactures custom made dimension wood products and components.
U.S. Ply, Inc	2000 E Richmond Avenue, Fort Worth, TX 76104–6333.	05/07/12	The firm manufactures full line of low-slope commercial roofing materials.
Ventamatic, Ltd	100 Washington Street, Mineral Wells, TX 76068.	05/08/12	The firm manufactures air vents for commercial, residential, and industrial applications.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: May 9, 2012.

Bryan Borlik,

Director, TAA for Firms.

[FR Doc. 2012–11704 Filed 5–14–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–52–2012]

Foreign-Trade Zone 45—Portland, OR; Application for Subzone, Shimadzu USA Manufacturing, Inc., Canby, OR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, requesting special-purpose subzone status for the facility of Shimadzu USA Manufacturing, Inc. (SUM), located in Canby, Oregon. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 8, 2012.

The proposed subzone is located at 1900 SE. 4th Avenue, Canby. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 45.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 25, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 9, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: May 8, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–11780 Filed 5–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1827]

Grant of Authority for Subzone Status; North American Stainless, (Stainless Steel), Ghent, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Louisville & Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has made application to the Board for authority to establish a special-purpose subzone at the stainless steel mill of North American Stainless (NAS), located in Ghent, Kentucky (FTZ Docket 67–2011, filed 10–21–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 66684–66685, 10–27–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of stainless steel at the facility of North American Stainless, located in Ghent, Kentucky (Subzone 29L), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following conditions:

1. Privileged foreign status (19 CFR 146.41) must be elected on all foreign status ferrosilicon, molybdenum and titanium (HTSUS 7202.21, 8102.94, 8108.20 and 8108.90) admitted to the subzone.

2. NAS shall submit supplemental reporting data, as specified by the Executive Secretary, for the purpose of monitoring by the FTZ staff.

Signed at Washington, DC, this 4th day of May 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–11772 Filed 5–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2012]

Foreign-Trade Zone 216—Olympia, WA; Notification of Proposed Production Activity; Callisons, Inc., (Mint Products), Lacey and Chehalis, WA

The Port of Olympia, grantee of FTZ 216, submitted a notification of proposed production activity on behalf of Callisons, Inc. (Callisons), located in Chehalis and Lacey, Washington. The Callisons facility is located within Site 3 and Site 15 of FTZ 216. The facility is used for the production and distribution of mint products, primarily for the food, confectionary, pharmaceutical and fragrance industries.

Production under FTZ procedures could exempt Callisons from customs duty payments on the foreign status components used in export production. On its domestic sales, Callisons would be able to choose the duty rates during customs entry procedures that apply to essential oils of peppermint (mentha piperita), other essential mint oils, odoriferous mixtures for use by the food and drink industries and non-alcohol perfume bases (duty rate ranges from duty-free to 4.2%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: menthol, cyclenic ethers and derivatives, cyclenic ketones without oxygen, essential oils of peppermint (mentha piperita), essential oils of mint and essential oils of eucalyptus (duty rate ranges from duty-free to 4.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 25, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 10, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–11752 Filed 5–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2012]

Foreign-Trade Zone 92—Gulfport, MS Notification of Proposed Production Activity; Gulf Ship, LLC, (Shipbuilding), Gulfport, MS

The Mississippi Coast Foreign-Trade Zone, Inc., grantee of FTZ 92, submitted a notification of proposed production activity on behalf of Gulf Ship, LLC (Gulf Ship), located in Gulfport, Mississippi. The Gulf Ship facility is located within Site 3 of FTZ 92. The facility is used for the construction and repair of oceangoing vessels.

Production under FTZ procedures could exempt Gulf Ship from customs duty payments on foreign status components used in export production. On its domestic sales, Gulf Ship would be able to choose the duty rates during customs entry procedures that apply to oceangoing vessels (duty rate—free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: marine engines, winches, steering gears, electric motors, generators, raceways, doors, tefrotex, floor coatings, rock wool, couplings, universal joints, bobbins, rubber seals, valves, man-holes, ladders, handrails, vibration control dampeners, oil booms, lighting equipment, controllers, electrical cabinets, bearings, heaters, transmission shafts, blades, and thruster parts (duty rate ranges from free to 7.0%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 25, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: May 10, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–11754 Filed 5–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1828]

Reorganization and Expansion of Foreign-Trade Zone 89 Under Alternative Site Framework, Las Vegas, NV

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Nevada Development Authority, grantee of Foreign-Trade Zone 89, submitted an application to the Board (FTZ Docket 77–2011, filed November 29, 2011) for authority to reorganize and expand under the ASF with a service area of Clark County, Nevada, within and adjacent to the Las Vegas U.S. Customs and Border Protection port of entry, FTZ 89's existing Sites 1, 3, 5, 6, 7 and 9 would be categorized as magnet sites, existing Site 8 would be categorized as a usage-driven site, Site 4 would be removed from the zone project, acreage would be reduced at Site 5 and the grantee proposes two new usage-driven sites (Sites 10 and 11);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 76934, 12/09/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 89 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 3, 5, 6, 7 and 9 if not activated by May 31, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 8, 10 and 11 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by May 31, 2015.

Dated: Signed at Washington, DC, this 4th day of May 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–11779 Filed 5–14–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 15, 2012.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 7850, Washington, DC 20230; telephone: (202) 482–0195, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2012, the Department published the preliminary results of administrative review for the 2009–2010 period of review (POR) of honey from Argentina. *See Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458 (January 10, 2012) (*Preliminary Results*). The administrative review covers nine producers/exporters of honey from Argentina during the POR.[1]

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days after the date on which the preliminary results are published.

The Department has determined it is not practicable to complete this review within the current time limit and requires additional time regarding the issue of which rate to assign to the non-selected companies subject to this review. Accordingly, the Department is extending the time limit for completion of the final results of this administrative review by 30 days (*i.e.,* to June 8, 2012).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 4, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11771 Filed 5–14–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Preliminary Results for a detailed history of the companies covered by this administrative review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results

SUMMARY: On April 25, 2012, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') final results of redetermination pursuant to voluntary remand of the 2006–2007 antidumping duty administrative review of pure magnesium from the People's Republic of China (''*Voluntary Remand Redetermination''*).[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken''*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010) (''*Diamond Sawblades''*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results and is amending the final results of the administrative review of pure magnesium from the People's Republic of China (''PRC'') with respect to the margin assigned to Tianjin Magnesium International Co., Ltd. (''TMI'') covering the period of review (''POR'') May 1, 2006, through April 30, 2007.[2]

DATES: *Effective Date:* May 5, 2012.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION: In the *Final Results,* the Department granted TMI's request for two by-product offsets, and calculated a dumping margin for TMI of 0.63 percent. TMI and US Magnesium LLC (''Petitioner'') initially challenged the final results with respect to several issues, and the court remanded two issues to the Department.[3] During litigation proceedings for the 2006–2007 review, verification of TMI and its suppliers took place in the PRC for the 2007–2008 review. At verification, TMI's producer revealed that there were no by-product sales prior to April 2007, i.e. during the previous POR. During the first remand proceedings, Petitioner placed the 2007–2008 review verification report on the record of this litigation. The Department initially determined not to consider the evidence because it was from a subsequent review and did not exist when the Department made its determination in the 2006–2007 final results.

Shortly thereafter, the CAFC issued its decision in *Home Prods. Int'l, Inc.* v. *United States,*[4] holding that a court abuses its discretion when it declines to remand to an agency when evidence sufficient to make a *prima facie* case that the agency proceedings under review were tainted by material fraud is presented. Based on the standard set forth in *Home Products,* the Department requested a voluntary remand to determine whether to reopen the administrative record and consider the 2007–2008 verification report. On remand, the Department determined there was clear and convincing evidence sufficient to make a prima facie case that the 2006–2007 administrative review was tainted by fraud and reopened the record. The Department also determined, based on this evidence, that application of total adverse facts available to TMI was warranted because TMI had continued to seek by-product offsets even though record evidence clearly established that no by-product sales existed during the POR. The Department assigned to TMI a rate of 111.73, the calculated rate for the other mandatory respondent in the 2006–2007 review. The Department's final results of redetermination therefore changed TMI's margin from 0.63 percent to

[1] *See* Final Results of Redetermination Pursuant to Voluntary Remand issued by the Department of Commerce, Court No. 09–00012, dated October 28, 2011, available at: *http://www.ia.ita.doc.gov/remands/index.html.*

[2] *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008) and accompanying Issues and Decision Memorandum (''*Final Results''*).

[3] In the first remand order, the Department was instructed to: (1) Further explain the valuation of TMI's by-product offsets; and (2) further explain the Department's determination to use the surrogate financial ratios for overhead, selling, general and administrative expenses (''SG&A'') and profit of Madras Aluminum Co. Ltd. in the normal value calculation. *See Tianjin Magnesium Int'l Co.* v. *United States,* 722 F. Supp. 2d 1322 (CIT 2010).

[4] *See Home Prods. Int'l, Inc.* v. *United States,* 633 F.3d 1369 (CAFC 2011) (''*Home Products''*).

111.73 percent. On April 25, 2012, the CIT sustained the Department's *Voluntary Remand Redetermination.*[5]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 25, 2012 judgment sustaining the Department's voluntary remand results with respect to TMI constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondent was reviewed.[6]

Amended Final Determination and Order

Because there is now a final court decision, we are amending the *Final Results* with respect to TMI's margin for the period May 1, 2006 through April 30, 2007. The revised weighted-average dumping margin is as follows:[7]

Exporter	Percent margin
Tianjin Magnesium International Co., Ltd	111.73

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by TMI during the POR using the revised assessment rate calculated by the Department in the *Voluntary Remand Redetermination.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 9, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–11734 Filed 5–14–12; 8:45 am]

BILLING CODE P

[5] *Tianjin Magnesium Int'l, Co.* v. *United States,* Ct. No. 09–00012, Slip Op. 12–54 (CIT April 25, 2012).

[6] *See Pure Magnesium From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 76 FR 76945 (December 9, 2011).

[7] The rate for the other mandatory respondent in the instant administrative review, Shangxi Datuhu Coke & Chemicals Co., Ltd. (''Datuhe''), remains unchanged. In its first remand order, the Court resolved a ministerial error allegation, holding that there was no ministerial error because the Department's acts were intentional. *See Tianjin Magnesium Int'l, Co.* v. *United States,* Ct. No. 09–00012, Slip Op. 10–87 (CIT August 9, 2010).

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (''Bureau''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Generic Clearance for Collection of Information on Compliance Costs and Other Effects of Regulations that has been submitted to the Office of Management and Budget for review and approval. A copy of the submission, including copies of the proposed collection and supporting documentation, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before June 19, 2012 to be assured of consideration.

ADDRESSES: You may submit comments to:

- *Agency contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552; *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_PRA_Public@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3170–XXXX.

Type of Review: Generic Clearance Request.

Title: Generic Clearance for Collection of Information on Compliance Costs and Other Effects of Regulations.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Dodd-Frank Act''), the Bureau has the responsibility for rulemaking, supervision, and enforcement with respect to various Federal consumer financial protection laws. Among other things, the Dodd-Frank Act directs the Bureau to promulgate rules regulating various aspects of the mortgage and remittance markets.[1] For many of these directives there is a corresponding statutory deadline for a proposed or final rule. In such cases, if a final rule is not issued by a certain date, the statute will take effect automatically, as outlined in more detail below.

A number of Federal laws require agencies to consider the benefits, costs, and impacts of rulemaking actions, including the Regulatory Flexibility Act and the Paperwork Reduction Act. Furthermore, Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of certain rules to consumers and ''covered persons,'' including depository and non-depository providers of consumer financial products and services (''providers.'') This consideration includes an assessment of the impacts of rules on consumers in rural areas and on depository institutions and credit unions with total assets of $10 billion or less as described in section 1026 of the Dodd-Frank Act. As part of its analysis of benefits and costs of certain rulemakings, the Bureau will consider, among other things, the potential ongoing costs for a provider as well as the implementation costs the provider may incur in order to comply with a regulation.

The Federal consumer financial laws for which the Bureau has been granted rulemaking authority that regulate aspects of the mortgage and remittance markets include: Alternative Mortgage Transaction Parity Act; the Consumer Leasing Act; the Equal Credit Opportunity Act; the Fair Credit Billing Act; the Fair Credit Reporting Act; the Fair Debt Collection Practices Act; the Federal Deposit Insurance Act; the

[1] The Bureau has other rulemaking mandates that are not discussed in this document.

Homeowners Protection Act; the Home Mortgage Disclosure Act; the Home Ownership and Equity Protection Act; the Real Estate Settlement Procedures Act; the SAFE Mortgage Licensing Act; the Truth in Lending Act; the Interstate Land Sale Full Disclosures Act; and the Electronic Fund Transfer Act. The Dodd-Frank Act also provides dates by which the Bureau is to propose or finalize rules in the mortgage and remittance markets. With respect to mortgage loans, the Dodd-Frank Act requires the Bureau to propose new rules and forms combining disclosures mandated under TILA and RESPA by July 21, 2012. Additionally, certain statutory provisions of title XIV of the Dodd-Frank Act (the Mortgage Reform and Anti-Predatory Lending Act) take effect on January 21, 2013, in the absence of regulatory action by the Bureau. The Bureau believes it is critical to have regulations clarifying these provisions by such time. Further, certain other statutory provisions of title XIV require the Bureau to issue final rules by January 21, 2013. To meet these deadlines, the Bureau is planning to issue notices of proposed rulemakings by summer 2012.

With respect to remittances, as required by the Dodd-Frank Act, the Bureau has adopted regulations implementing new statutory protections for remittance consumers which take effect in February 2013. The Bureau has also issued a proposal on several outstanding issues related to remittances, which the Bureau is seeking to finalize before the February effective date.

In order to fulfill the Bureau's rulemaking mandates, the Bureau seeks to collect qualitative information from mortgage and remittance industry participants regarding the potential compliance costs of these rules and other effects these rules may have for providers and consumers.

In proposing new rules for providers in the mortgage markets—whether as to the enumerated statutory mandates listed above or as to potential rulemakings pursuant the Bureau's general rulemaking authority under the relevant Federal consumer financial protection laws—the Bureau will consider the potential implementation and ongoing compliance activities and associated costs of the proposed rules. Accordingly, the Bureau seeks to collect qualitative information on the potential costs of complying with potential new regulations and other effects the rules may have for providers and consumers. Through the collections under this generic clearance, the Bureau aims to understand the effects of potential regulations on providers and consumers, the ways in which providers may comply with potential regulations, and the costs associated with compliance. By collecting this information in advance of and during the rulemaking process, the Bureau seeks to ensure that it has considered the compliance burdens and costs before completing a rulemaking action.

The Bureau is particularly interested in collecting information on the impact of regulatory changes on the unit costs of delivering specific consumer financial products and services (e.g., mortgage originations, mortgage servicing, and remittance transfers). This will help determine whether proposed rules may have unnecessary costs for providers or consumers.

In order to gather the information indicated above, the Bureau intends to use structured interviews, focus groups, conference calls, written questionnaires, and online surveys. The Bureau will seek different providers' estimates of compliance burdens on their respective institutions. The Bureau recognizes that burdens vary depending on the size and type of the institution, as well as on the products and services offered. Therefore, the collections of information will seek to sample providers that are representative of affected markets.

Affected Public: U.S. depository and non-depository financial institutions.

Estimated Total Annual Burden Hours:

Annual Number of Respondents: 1,200 institutions.

Average Minutes per Response: 90 minutes for questions administered via focus groups, structured interviews, and conference calls. 60 minutes for questions delivered via email or administered through online survey.

Annual Burden Hours: 1,560 hours.

Comments are invited on: (a) Whether the collections of information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information (including hours and costs); (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques on other forms of information technology. All comments will be a matter of public record.

Dated: May 8, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–11668 Filed 5–14–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Federal Student Aid; Loan Verification Certificate for Special Direct Consolidation Loans

SUMMARY: This Loan Verification Certificate (LVC) will serve as the means by which the U.S. Department of Education (the Department) collects certain information from commercial holders of Federal Family Education Loan (FFEL) Program loans that a borrower wishes to consolidate into the William D. Ford Federal Direct Loan (Direct Loan) Program under a special initiative announced by the White House in an October 25, 2011 fact sheet titled ''Help Americans Manage Student Loan Debt.'' Loans made under this initiative are known as Special Direct Consolidation Loans. The information collected on the LVC includes the amount needed to pay off the loans that the borrower wants to consolidate and other information required by the Department to make and service a Special Direct Consolidation Loan.

DATES: Interested persons are invited to submit comments on or before June 14, 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 04857. 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

Acting 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: Loan Verification Certificate for Special Direct Consolidation Loans.

OMB Control Number: 1845–0111.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 62,633.

Total Estimated Number of Annual Burden Hours: 3,131,650.

Abstract: The purpose of the special consolidation initiative is to encourage borrowers who have both commercially-held FFEL Program loans and other loans that are held by the Department (either Direct Loan Program loans or FFEL Program loans previously sold to the Department by a FFEL Program lender) to consolidate their commercially-held FFEL Program loans into the Direct Loan Program. Currently, these borrowers have at least two loan servicers and are required to make at least two separate monthly payments on their federal education loans. This makes repayment more difficult and increases the likelihood of a borrower becoming delinquent or going into default. For a borrower who has both commercially-held FFEL Program loans and Department-held loans, consolidation of the commercially-held loans into the Direct Loan Program will simplify repayment by allowing the borrower to make a single monthly loan payment to one entity (a federal loan servicer under contract to the Department), thereby reducing the likelihood of delinquency or default. As an incentive for borrowers to consolidate under the special initiative, the Department is offering reduced interest rates on Special Direct Consolidation Loans.

Dated: May 10, 2012.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–11723 Filed 5–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Impact Aid Discretionary Construction Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education

ACTION: Notice.

Overview Information

Impact Aid Discretionary Construction Grant Program

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.041C.

Dates: Applications Available: May 15, 2012.

Deadline for Transmittal of Applications: July 13, 2012.

Deadline for Intergovernmental Review: September 11, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Impact Aid Discretionary Construction Grant program provides grants for emergency repairs and modernization of school facilities to certain local educational agencies (LEAs) that receive Impact Aid formula funds.

Priority: In this notice, the Secretary is soliciting applications only for Priority 1 emergency repair grants. We will not accept applications for any other priorities for emergency repair or modernization grants at this time.

In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), this priority is from section 8007(b)(2)(A) of the Elementary and Secondary Education Act of 1965, as amended (Act) (20 U.S.C. 7707(b)), and the regulations for this program in 34 CFR 222.177.

Absolute Priority: For FY 2012, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: Priority 1 emergency repair grants. An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act (20 U.S.C. 7707(a));

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

Note: For competitions with FYs 2002, 2003, 2004, 2005, 2008, and 2009 funds under this program, the amounts requested by applicants for Priority 1 grants exceeded the funds available.

Program Authority: 20 U.S.C. 7707(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 80, 82, 84, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 222.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $17,440,974.

Estimated Range of Awards: $50,000–$5,000,000.

Estimated Average Size of Awards: $1,585,543.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will determine each project period based on the nature of the project proposed and the time needed to complete it. We will specify this period in the grant award document.

III. Eligibility Information

Eligible Applicants

Consistent with the requirements of the Absolute Priority, an LEA is eligible to receive an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act (20 U.S.C. 7707(a)) because it enrolls a high percentage (at least 50 percent) of federally connected children in average

daily attendance (ADA) who either reside on Indian lands or who have a parent on active duty in the U.S. uniformed services.

(b)(1) Has no practical capacity to issue bonds (as defined in 34 CFR 222.176);

(2) Has minimal capacity to issue bonds (as defined in 34 CFR 222.176) and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel. In making emergency grant awards, the Secretary must also consider the LEA's total assessed value of real property that may be taxed for school purposes, its use of available bonding capacity, and the nature and severity of the school facility emergency.

2. a. *Cost Sharing or Matching:* See 20 U.S.C. 7707(b)(5) and 34 CFR 222.174 and 222.191 through 222.193. In reviewing proposed awards, the Secretary considers the funds available to the grantee from other sources, including local, State, and other Federal funds.

Consistent with 34 CFR 222.192, an applicant will be required to submit financial reports for FYs 2010, 2011, and 2012, or the applicant's most recently available audited financial reports for three consecutive fiscal years, showing closing balances for all school funds. If significant balances (as detailed in 34 CFR 222.192) are available at the close of the applicant's FY 2012, or its most recently audited year, that are not obligated for other purposes, those funds will be considered available for the proposed emergency repair project, which may reduce the amount of funds that may be awarded or eliminate the applicant's eligibility for an emergency grant award under this competition.

b. *Supplement-Not-Supplant:* As outlined in 34 CFR 222.174, grants made under this program are subject to supplement, not supplant funding provisions. Grant funds under this program may not be used to supplant or replace other available non-Federal construction money.

IV. Application and Submission Information

1. *Address to Request Application Package:* An electronic application is available at: *www.G5.gov*. For assistance, please contact Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C121, Washington, DC 20202–6244. Phone: 202–260–2410, FAX: 1–866–799–1273. EMAIL: *nyonuwi.akamefula@ed.gov*.

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: We recommend that applicants limit their responses in each applicable narrative section to two pages with a one-inch margin in 12 point font, double spaced.

3. *Submission Dates and Times:*

Applications Available: May 15, 2012.

Deadline for Transmittal of Applications: July 13, 2012.

Applications for grants under this competition must be submitted electronically using G5, the Department's grant management system, accessible at *www.G5.gov*. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 11, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Except for applicants with no practical capacity to issue bonds, as defined in 34 CFR 222.176, an eligible applicant's award amount may not be more than 50 percent of the total cost of an approved project and may not exceed $4 million during any four-year period. See 34 CFR 222.193. Applicants may submit only one application for one educational facility as provided by 34 CFR 222.183. If multiple applications are submitted, the Department will consider only the first one. Grant recipients must, in accordance with Federal, State, and local laws, use emergency grants for permissible construction activities at public elementary and secondary school facilities. The scope of the project for a selected facility will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 (prohibited activities).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any

changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Impact Aid Discretionary Construction Grant Program, CFDA 84.041C, must be submitted electronically using the G5 system, accessible through the Department's G5 site (*www.G5.gov*).

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not email an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the G5 Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Discretionary Construction Program under Section 8007(b) and all necessary signature pages.
- You must upload all additional narrative documents and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, you must fax or email a signed copy of the cover page and the emergency certification form for the Application for Discretionary Construction Program under Section 8007(b) to the Impact Aid Program after following these steps:

(1) Print a copy of the application from G5 for your records.

(2) The applicant's Authorizing Representative must sign and date the cover page. The local certifying official must sign the certification for an emergency application. These forms must be submitted within three days of the application deadline in order to be considered for funding under this program.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the Application for Discretionary Construction Program under Section 8007(b).

(4) Fax or email the signed cover page and independent certification for the Discretionary Construction Program under Section 8007(b) to the Impact Aid Program at 1–866–799–1273 or by email to *Impact.Aid@ed.gov*. These forms must be submitted before midnight of the application deadline in order to be considered for funding under this program.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of G5 System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the G5 system is unavailable, we will grant you an extension until 4:30:00 p.m., Washington, DC time of the following business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of the G5 system and you have initiated an electronic application for this competition; and

(2) (a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and therefore the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the G5 system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to G5; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the

Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C121, Washington, DC 20202–6244. Phone: 202–260–2410. FAX: 1–866–799–1273. EMAIL: *nyonuwi.akamefula@ed.gov.*

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C155, 400 Maryland Avenue SW., Washington, DC 20202–6244.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C155, 400 Maryland Avenue SW., Washington, DC 20202–6244. The Impact Aid Program accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope—if not provided by the Department—the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Impact Aid Program will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Impact Aid Program at (202) 260–3858.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 20 U.S.C. 7707(b)(4) and (b)(6), and are further clarified in 34 CFR 222.183 and 222.187 and described in the following paragraphs. The Secretary gives distinct weight to the listed selection criteria. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points.

(1) Need for project/severity of the school facility problem to be addressed by the proposed project (30 points).

(a) Justification that the proposed project will address a valid emergency, and consistency of the emergency description and the proposed project with the certifying local official's statement.

(b) Impact of the emergency condition on the health and safety of the building occupants or on program delivery. Applicants should describe the systems or areas of the facility involved, e.g., HVAC, roof, floor, windows; the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas; the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program.

(2) Project urgency (28 points).

(a) Risk to occupants if the facility condition is not addressed. Applicants should describe projected increased future costs; the anticipated effect of the proposed project on the useful life of the facility or the need for major construction; and the age and condition of the facility and date of last renovation of affected areas.

(b) The justification for rebuilding, if proposed.

(3) Effects of Federal presence (30 points total).

(a) Amount of non-taxable Federal property in the applicant LEA (percentage of Federal property divided by 10) (10 points).

(b) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the LEA (percentage of identified children in LEA divided by 10) (10 points).

(c) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (10 points).

(4) Ability to respond or pay (12 points total).

(a) The percentage an LEA has used of its bonding capacity. Four points will be distributed based on this percentage so that an LEA that has used 100 percent of its bonding capacity receives all four points and an LEA that has used less than 25 percent of its bond limit receives only one point. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all four points (4 points).

(b) Assessed value of real property per student (Applicant LEA's total assessed valuation of real property per pupil as a percentile ranking of all LEAs in the State). Points will be distributed by providing all four points to LEAs in the State's poorest quartile and only one point to LEAs in the State's wealthiest quartile (4 points).

(c) Total tax rate for capital or school purposes (Applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State). If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Points will be distributed by providing all four points to LEAs in the State's highest-taxing quartile and only one point to LEAs in the State's lowest-taxing quartile (4 points).

2. *Review and Selection Process:* We remind potential applicants that in

reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Upon receipt, Impact Aid program staff will screen all applications to eliminate any applications that do not meet the eligibility standards, are incomplete, or are late. Applications that do not include a signed cover page and a signed independent certification submitted by fax or email before midnight of the application deadline are considered incomplete and will not be considered for funding. Program staff will also calculate the scores for each application under criteria (3) and (4). Panel reviewers will assess the applications under criteria (1) and (2).

(a) Applications are ranked based on the total number of points received during the review process. Those with the highest scores will be at the top of the funding slate.

(b) Applicants may submit only one application for one educational facility. If an applicant submits multiple applications, the Department will only consider the first sequentially submitted application, as provided under 34 CFR 222.183.

(c) For applicants that request funding for new construction and that are selected for funding, the Department will require a feasibility of construction study prior to making an award determination. This independent third-party study must demonstrate that the area upon which the construction will occur is suitable for construction and will be able to sustain the new facility or addition. This study should include information to show that the soil is stable, the site is suitable for construction, and the existing infrastructure can serve and sustain the new facility.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following performance measure for this program: An increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on Table 10 of the application for Impact Aid Section 8003 Basic Support Payments.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., room 3C121, Washington, DC 20202–6244. Telephone: (202) 260–2410 or by email: *Impact.Aid@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 10, 2012.

Michael Yudin,

Deputy Assistant Secretary of Policy and Strategic Initiatives. Delegated Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–11749 Filed 5–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

DATES: *Applications Available:* May 15, 2012.

Deadline for Transmittal of Applications: June 14, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays DDRA Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority and two competitive preference priorities, which are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2012, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, or Vatican City.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address one or both of the following priorities.

For FY 2012, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2) and 34 CFR 662.21(d)(2), we award an additional five points to an application for each competitive preference priority it meets (up to 10 additional points).

These priorities are:

Competitive Preference Priority 1 (5 points): A research project that focuses on any of the 78 languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs), as follows:

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2 (5 points): Research projects that are proposed by applicants using advanced language proficiency in one of the 78 LCTLs listed in *Competitive Preference Priority 1* in their research and are in the fields of economics, engineering, international development, global education, mathematics, political science, public health, science, or technology.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Note: Based on language included in the Department of Education Appropriations Act for FY 2012, the Department may use funds to support the applications of individuals who are participating in advanced language training and international studies in areas vital to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in these fields and those planning teaching careers are eligible to apply for this program.

Estimated Available Funds: $3,227,000.

Estimated Range of Fellowship Awards: $15,000 to $60,000.

Estimated Average Size of Fellowship Awards: $36,000.

Estimated Number of Fellowship Awards: 90.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months, beginning October 1, 2012. Students may request funding for a period of no less than 6 months and no more than 12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the Internet at *www.G5.gov* or from Amy Wilson, International and Foreign Language Education, U.S. Department of Education, 1990 K Street NW., room 6082, Washington, DC 20006–8521. Telephone: (202) 502–7689; or, by email: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339. Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms the applicant must submit, are in the application package for this program. Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student

applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than 2 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). Student applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424), the supplemental information form required by the Department of Education, or the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: May 15, 2012.

Deadline for Transmittal of Applications: June 14, 2012.

Applications for grants under this program must be submitted electronically using the G5 e-Application system accessible through the Department's G5 site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Fulbright-Hays DDRA Fellowship Program, CFDA number 84.022A, must be submitted electronically using the G5 e-Application system, accessible through the Department's G5 site: *www.G5.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the student applicant will be entering data online, which will be saved into a database. Neither the IHE nor the student applicant may email an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays DDRA Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major steps are:

(1) IHEs must email the following information to *ddra@ed.gov:* name of university and full name and email address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that they obtain access to the G5 e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date in order to facilitate timely submission of their applications;

(2) Students must complete their individual applications and submit them to their IHE's project director using G5 e-Application;

(3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using the G5 e-Application; and

(4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using the G5 e-Application.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The G5 e-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

• Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including all information typically provided on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Both IHEs and student applicants must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Student transcripts must be submitted electronically through the G5 e-Application system.

• Both the IHE's and the student applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by email. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from G5 e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of G5 e-Application Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the G5 e-Application is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of the G5 e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) The G5 e-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The G5 e-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgment of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see Section VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated the G5 e-Application. Extensions referred to in this section apply only to the unavailability of the G5 e-Application.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the G5 e-Application because—

• The IHE or a student applicant does not have access to the Internet; or

• The IHE or a student applicant does not have the capacity to upload large documents to the G5 e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K Street NW., Room 6082, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number84.022A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. Submission of Paper Applications by Hand Delivery

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number84.022A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive this grant notification within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2012, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 662.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priorities, is 110 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (15 points);

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality, and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (5 points); and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record (10 points);

(2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable, has a history of unsatisfactory performance, has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable, has not fulfilled the conditions of a prior grant, or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of the binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays DDRA Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following DDRA measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of Fulbright-Hays DDRA Fellowship recipients at the end of their period of research minus their average score at the beginning of the period.

Efficiency measure: Cost per grantee of increasing language competency by at least one level in at least one area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://iris.ed.gov/iris/pdfs/DDRA_director.pdf.http://iris.ed.gov/iris/pdfs/DDRA_fellows.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Amy Wilson, International and Foreign Language Education, U.S. Department of Education, 1990 K Street NW., Room 6082, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by email: *ddra@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available for free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 9, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–11681 Filed 5–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Undergraduate International Studies and Foreign Language (UISFL) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Undergraduate International Studies and Foreign Language (UISFL) Program.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.016A.

Dates:

Applications Available: May 15, 2012.

Deadline for Transmittal of Applications: June 29, 2012.

Deadline for Intergovernmental Review: August 28, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The UISFL program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Priorities: This notice contains two competitive preference priorities and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), *Competitive Preference Priority 1—Increasing Foreign Language Capacity* is from section 604(a)(5) of the Higher Education Act of 1965, as amended (HEA). In accordance with 34 CFR 75.105(b)(2)(iv), *Competitive Preference Priority 2—Expanding Opportunities for Learning Foreign Languages and Increasing In-service Professional Development Opportunities for K–12 Teachers* is from section 604(a)(2)(B)(ii) of the Higher Education Act of 1965, as amended (HEA).

Competitive Preference Priorities: For FY 2012, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets *Competitive Preference Priority 1—Increasing Foreign Language Capacity* and up to an additional five points to an application that meets *Competitive Preference Priority 2—Expanding Opportunities for Learning Foreign Languages and Increasing In-service Professional Development Opportunities for K–12 Teachers.*

These priorities are:

Competitive Preference Priority 1—Increasing Foreign Language Capacity. Applications from institutions of higher education (IHEs), consortia, or partnerships of these institutions that require entering students to have successfully completed at least two years of secondary school foreign language instruction or that require each graduating student to earn two years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a 2-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Competitive Preference Priority 2—Expanding Opportunities for Learning Foreign Languages and Increasing In-service Professional Development Opportunities for K–12 Teachers.

Applications that expand opportunities for learning foreign languages, including less commonly taught languages; or that support in-service teacher professional development. **Note:** Applicants addressing the priority on expanding opportunities for learning foreign languages might want to consider projects that would expand curriculum offerings to include courses in any of the 78 priority languages selected from the U.S. Department of Education's list of less commonly taught languages (LCTLs) that would otherwise not be offered or courses that would enable undergraduates to achieve a more advanced level of proficiency in a less commonly taught language that would otherwise not have been possible.

Invitational Priorities: For FY 2012, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets either of these priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Minority-Serving Institutions (MSIs) and Community Colleges.

Background: In the past, recipients of international education funding consisted primarily of traditional four-year institutions and few MSIs. The Secretary believes that international education opportunities should be available to all U.S. postsecondary students from all types of IHEs. Thus, the Secretary is interested in increasing the diversity of institutions funded through the UISFL program by inviting applicants representing a variety of types of institutions, including MSIs eligible for assistance under Part A or B of Title III or under Title V of the HEA and community colleges, to apply for funding under this competition.

Priority:

We encourage applications MSIs, especially those that are eligible to receive assistance under Part A or B of Title III or under Title V of the HEA, and from community colleges.

Invitational Priority 2—Less Commonly Taught Languages (LCTLs).

We encourage applications that propose programs or activities focused on language instruction or the development of area or international studies programs to include language instruction in any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs).

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Note: The Secretary developed this list of languages in accordance with section 601(c) of the HEA, 20 U.S.C. 1121(c), in consultation with the head officials of a wide range of Federal agencies. As part of this consultation, the Secretary also received recommendations regarding national need for expertise in foreign languages and world regions. The Secretary has taken these recommendations into account in developing this this list of priority languages. A list of foreign languages and world regions identified as areas of national need may be found using at the following Web sites: *http://www2.ed.gov/about/offices/list/ope/iegps/languageneeds.html* and *http://www2.ed.gov/about/offices/list/ope/iegps/consultation-2012.pdf.*

Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The regulations in 2 CFR part 3485. (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 86, 97, 98 and 99. (c) The regulations in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,794,040.

Estimated Range of Awards: For single applicant grants: $70,000–$120,000. For consortia grants: $80,000–$200,000.

Estimated Average Size of Awards: For single applicant grants: $89,000. For consortia grants: $140,000.

Maximum Award: We will reject any application that proposes a budget exceeding $120,000 from a single applicant for a 12-month budget period, or a budget exceeding $200,000 from an applicant that is a consortium of IHEs/organizations/associations for a 12-month budget period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: For single applicant grants: Up to 24 months. For consortia grants: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs; (2) Consortia of IHEs; (3) Partnerships between nonprofit educational organizations and IHEs; and (4) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. a. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL program grantees must provide matching funds in either of the following ways: (i) Cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (ii) a combination of institutional and non-institutional cash or in-kind contributions including contributions from State and private sector corporations or foundations, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of Title III or under Title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. See Part V. paragraph 5.(D) of this notice for further information regarding this requirement.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet,

use the following address: *http://grants.gov*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.016A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- The 40-page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget section, including the narrative budget justification (ED Form 524); Part IV, assurances, certifications, and the response to Section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; or the appendices. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 15, 2012.

Deadline for Transmittal of Applications: June 29, 2012.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 28, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two-to-five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the UISFL program, CFDA number 84.016A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding

calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the UISFL Program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.016, not 84.016A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document Format) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time, or if the technical problems you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Michelle Guilfoil, Undergraduate International Studies and Foreign Language Program, U.S. Department of Education, 1990 K Street NW., room 6098, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For the FY 2012 UISFL competition, applications are randomly grouped regardless of language or area studies region. International education experts are organized into panels of three and will review each application.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31, 658.32, 658.33, and 655.32 and are listed in this section.

All Applications. All applications will be evaluated based on the following criteria: (a) Plan of operation (15 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); and (e) Adequacy of resources (5 points).

Applications from IHEs, or combinations of IHEs.

All applications submitted by an IHE or a consortium/partnership of IHEs will also be evaluated based on the following criteria: (a) Commitment to international education (15 points); (b) Elements of the proposed international studies program (10 points); and (c) Need for and prospective results of the proposed program (15 points).

Applications from Educational Organizations and Associations. All applications from non-profit educational organizations and associations will also be evaluated based on the following criterion: (a) Commitment to international education (10 points); and (b) Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (30 points).

Additional information regarding these criteria is in the application package for this program. The total number of points available under these selection criteria, combined with the competitive preference priorities is as follows:

Selection criteria	UISFL institutional applications	UISFL organizations & associations
Plan of Operation	15	15
Key Personnel	10	10
Budget & Cost Effectiveness	10	10
Evaluation Plan	20	20
Adequacy of Resources	5	5
Commitment to International Education	15	10
Elements of Proposed International Studies Program	10	n/a
Need for & Prospective Results of Proposed Program	15	n/a
Need for & Potential Impact of the Proposed Project in Improving International Studies & the Study of Modern Foreign Languages at the Undergraduate Level	n/a	30
Sub-Total	100	100
Additional Competitive Preference Priorities (Optional)	10	10
Total Possible Points	110	110

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Application Requirements:* In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA requires that each application include—

(A) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(B) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(C) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL program;

(D) An assurance that each institution, combination or partnership will use the Federal assistance provided under the UISFL program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(E) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(F) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, where applicable; and

(G) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, recently updated with the GPRA Modernization Act of 2010 on January 4, 2011, the Department will use the following performance measure to evaluate the success of the UISFL program:

Percentage of critical languages addressed/covered by foreign language major, minor, or certificate programs created or enhanced; or by language courses created or enhanced; or by faculty or instructor positions created with UISFL or matching funds in the reporting period.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://iris.ed.gov/iris/pdfs/uisfl.pdf.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Michelle Guilfoil, Undergraduate International Studies and Foreign Language Program, U.S. Department of Education, 1990 K Street NW., Room 6098, Washington, DC 20006–8521. Telephone: (202) 502–7625 or by email: *michelle.guilfoil@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 9, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–11680 Filed 5–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Priorities—American Overseas Research Centers Program; CFDA Number 84.274A

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes priorities and definitions for the American Overseas Research Centers (AORC) Program. The Assistant Secretary may use one or more of these priorities and definitions for competitions in fiscal year (FY) 2012 and later years. We intend these priorities and definitions to result in a wider spectrum of institutions being represented in the AORC consortia and to provide overseas professional development opportunities to U.S. postgraduate researchers, visiting scholars, and faculty from institutions that are traditionally underrepresented in this program.

DATES: We must receive your comments on or before June 14, 2012.

ADDRESSES: Address all comments about this notice to Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street NW., Room 6083, Washington, DC 20006–8521.

If you prefer to send your comments by email, use the following address: *cheryl.gibbs@ed.gov.* You must include the term ''AORC Proposed Priorities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs. Telephone: (202) 502–7634 or by email: *cheryl.gibbs@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

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 proposed priorities. Please let us know of ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about this notice in room 6083, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 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 this notice. 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**.

Purpose of Program: The AORC Program provides grants to consortia of institutions of higher education (IHEs) to establish or operate an AORC that promotes postgraduate research, exchanges, and area studies. Funded AORCs provide programs as well as operational support to U.S. scholars conducting overseas research that is vital to understanding the history, culture, economy, languages, and other issues related to the country or region where the AORC is located. AORCs also facilitate networking and collaborations via conferences, teaching opportunities for visiting faculty, and information-sharing through publications and outreach activities.

Program Authority: 20 U.S.C. 1128a.

Proposed Priorities

This notice contains two proposed priorities.

Background

The AORC Program is authorized under title VI, part A, section 609 of the Higher Education Act of 1965, as amended (HEA), which provides that the Department may only award an AORC grant to a consortium of IHEs.

In implementing this program, we have observed that consortia members listed in AORC applications tend primarily to be four year institutions of which few are minority serving institutions (MSIs). We hope to increase the number of MSIs that participate in this program using these priorities. We would also like to encourage more community colleges to participate in the consortia because community colleges are developing international education programs and offering foreign language courses to enhance career training or preparation for transfer to four-year programs.

In 2011, the American Council of Education (ACE) released the *Report of the Blue Ribbon Panel of Global Engagement; Strength through Global Leadership and Engagement: U.S. Higher Education in the 21st Century.* The report recommended that when U.S. IHEs are assessing whether or not they are doing all they can to prepare students for life after graduation, IHEs examine their activities relative to global experiences and understandings.

We believe that these priorities and definitions support the recommendation in the ACE report because they will promote new institutional partnerships and resource leveraging that will ultimately improve the opportunities for a broader range of students to access area studies, language training, and study abroad, and will increase the number of college graduates who are prepared to work in a globally competent workforce.

For these reasons, we propose *Priority 1—Centers that Expand the Diversity of IHEs as Consortium Members.* Proposed priority 1 is designed to encourage AORC applications that include a wider spectrum of U.S. IHEs, such as community colleges and MSIs as consortium members.

While proposed priority 1 focuses on the members of the consortium that serve as the AORC, proposed priority 2 focuses on the researchers and faculty served by the AORC.

Under this program, an AORC provides opportunities for U.S. postgraduate researchers and faculty participants to (a) conduct advanced area studies research; (b) network with other U.S. and overseas scholars; (c) participate in conferences hosted by the AORC; and (d) engage in symposia, lectures, and outreach. Engaging in these activities enables participants to enhance their research and expand the international scope of their courses and teaching at their home institutions.

Proposed *Priority 2—Projects that Provide Research, Teaching, and Professional Development Opportunities at the Overseas Center to Individuals from Community Colleges and MSIs* is intended to increase the number of visiting scholars, researchers, and faculty from these IHEs who participate in the academic, networking, and outreach activities at funded AORCs. We believe that providing opportunities for faculty from these IHEs to participate

in professional development activities in overseas learning communities provides an important cultural context that bolsters teaching and research that ultimately strengthens their institutions' international education programs.

Proposed Priority 1—Centers That Expand the Diversity of IHEs as Consortium Members

To meet this priority, an applicant AORC must include community colleges or MSIs, or both as consortium members for the purpose of establishing or operating the AORC.

Proposed Priority 2—Projects That Extend Research, Teaching, and Professional Development Opportunities at the Overseas Center to Individuals From Community Colleges or MSIs, or Both

To meet this priority, the proposed AORC must extend research, teaching, or professional development opportunities to faculty from community colleges or MSIs, or both.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definitions

Background

The Assistant Secretary for Postsecondary Education seeks to achieve greater diversity in the IHEs and participants in the AORC program by including community colleges and MSIs. These two types of IHEs are not defined in the AORC program legislation. For this reason, we propose the following definitions to apply to AORC competitions:

Proposed Definitions

Community College means—

(A) A junior or community college, as that term is defined in section 312(f) of the HEA (20 U.S.C. 1058(f));

(B) Or an institution of higher education (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards a significant number of degrees and certificates, that are not—

(i) Bachelor's degrees (or an equivalent); or

(ii) Master's, professional, or other advanced degrees.

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A or under part B of title III or under title V of the HEA.

Final Priorities and Definitions

We will announce the final priorities and definitions in a notice in the **Federal Register.** We will determine the final priorities and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

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.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action 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 taking this proposed regulatory action only on a reasoned determination that its benefits justify its 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 proposed priorities and definitions 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 both 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 the Department's programs and activities.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital Systems at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 9, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–11682 Filed 5–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–199–004.
Applicants: Coram California Development, L.P.
Description: Coram California Development, L.P. Notice of Non-Material Change in Status.
Filed Date: 5/4/12.
Accession Number: 20120504–5202.
Comments Due: 5 p.m. ET 5/25/12.

Docket Numbers: ER12–1713–000.
Applicants: Southwest Power Pool, Inc.
Description: 2415 KMEA NITSA NOA and Cancellation of SAs 1863R1, 1975R1, 2014R1 & 2015R1 to be effective 4/1/2012.
Filed Date: 5/3/12.
Accession Number: 20120503–5107.
Comments Due: 5 p.m. ET 5/24/12.

Docket Numbers: ER12–1714–000.
Applicants: West Oaks Energy LP.
Description: Notice of Cancellation to be effective 5/4/2012.
Filed Date: 5/3/12.
Accession Number: 20120503–5114.
Comments Due: 5 p.m. ET 5/24/12.

Docket Numbers: ER12–1718–000.
Applicants: Sunbury Generation LP.
Description: Sunbury Generation LP Market Based Rate Change to be effective 5/5/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5153.
Comments Due: 5 p.m. ET 5/25/12.

Docket Numbers: ER12–1719–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of SA No. 2952 in Docket No. ER11–3889–000 to be effective 4/4/2011.
Filed Date: 5/4/12.
Accession Number: 20120504–5170.
Comments Due: 5 p.m. ET 5/25/12.

Docket Numbers: ER12–1720–000.
Applicants: Vlast LLC.
Description: Vlast LLC, FERC Electric Tariff to be effective 7/2/2012.
Filed Date: 5/7/12.
Accession Number: 20120507–5000.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1721–000.
Applicants: Southern Power Company.
Description: Request of Southern Power Company for Authorization to Make Affiliate Market-Based-Rate Wholesale Power Sales.
Filed Date: 5/4/12.
Accession Number: 20120504–5175.
Comments Due: 5 p.m. ET 5/25/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–31–000.
Applicants: American Transmission Company LLC, ATC Management Inc.
Description: Supplement to Section 204 Application of American Transmission Company LLC, *et al.*
Filed Date: 5/4/12.
Accession Number: 20120504–5143.
Comments Due: 5 p.m. ET 5/17/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11642 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2664–003.
Applicants: Powerex Corp.
Description: Powerex Corp. submits Notice of Non-Material Change in Status.
Filed Date: 5/7/12.
Accession Number: 20120507–5086.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1722–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Southern Illinois Power-Prairie State to be effective 5/8/2012.
Filed Date: 5/7/12.
Accession Number: 20120507–5057.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1723–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3282; Queue No. X1–116 to be effective 4/10/2012.

Filed Date: 5/7/12.

Accession Number: 20120507–5068.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1724–000.

Applicants: Alabama Power Company.

Description: SMEPA Amended and Restated NITSA Filing to be effective 7/1/2012.

Filed Date: 5/7/12.

Accession Number: 20120507–5084.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1725–000.

Applicants: ECP Energy I, LLC, AES Red Oak, L.L.C., Liberty Electric Power, LLC, Empire Generating Co, LLC, Dighton Power, LLC, EquiPower Resources Management, LLC, Lake Road Generating Company, L.P., MASSPOWER, Milford Power Company, LLC.

Description: Compliance filing to be effective 5/8/2012.

Filed Date: 5/7/12.

Accession Number: 20120507–5097.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1726–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii) Certificate of Concurrence to be effective 7/1/2012.

Filed Date: 5/7/12.

Accession Number: 20120507–5108.

Comments Due: 5 p.m. ET 5/29/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11643 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1739–000.

Applicants: Bethel Wind Energy LLC.

Description: Bethel Wind Energy LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/7/2012.

Filed Date: 05/08/2012.

Accession Number: 20120508–5077.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, May 29, 2012.

Docket Numbers: ER12–1740–000.

Applicants: Rippey Wind Energy LLC.

Description: Rippey Wind Energy LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/7/2012.

Filed Date: 05/08/2012.

Accession Number: 20120508–5083.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, May 29, 2012.

Docket Numbers: ER12–1741–000.

Applicants: Copper Mountain Solar 1, LLC.

Description: Copper Mountain Solar 1, LLC submits tariff filing per 35.13(a)(2)(iii) Copper Mountain Solar 1 LLC Joint Use Agreement to be effective 5/8/2012.

Filed Date: 05/08/2012.

Accession Number: 20120508–5087.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, May 29, 2012.

Docket Numbers: ER12–1742–000.

Applicants: International Transmission Company.

Description: International Transmission Company submits tariff filing per 35.13(a)(2)(iii) Notice of Succession to be effective 7/10/2012.

Filed Date: 05/08/2012.

Accession Number: 20120508–5093.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, May 29, 2012.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11693 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP10–837–000.

Applicants: Dominion Transmission, Inc.

Description: DTI—Operational Gas Sales Report—2012 to be effective N/A.

Filed Date: 5/4/12.

Accession Number: 20120504–5018.

Comments Due: 5 p.m. ET 5/16/12.

Docket Numbers: RP12–726–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: LSS and SS–2 Rates Tracker Filing to be effective 5/1/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5061.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: RP12–727–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: LSS and SS–2 Fuel Tracker Filing to be effective 6/1/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5066.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: RP12–728–000.

Applicants: Leaf River Energy Center LLC.

Description: Leaf River Energy Center LLC—Proposed Revisions to FERC Gas Tariff to be effective 6/7/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5070.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: RP12–729–000.

Applicants: CenterPoint Energy Gas Transmission Company, LLC.

Description: CEGT LLC—Revised Revenue Crediting—May 2012 to be effective 5/1/2012.
Filed Date: 5/8/12.
Accession Number: 20120508–5113.
Comments Due: 5 p.m. ET 5/21/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11731 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–722–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendments to Negotiated Rate Agreements—Add PXS and Bistineau Points Filing #1 to be effective 5/1/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5102.
Comments Due: 5 p.m. ET 5/16/12.

Docket Numbers: RP12–723–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: New Pools and Receipt Points to be effective 5/4/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5110.
Comments Due: 5 p.m. ET 5/16/12.

Docket Numbers: RP12–724–000.
Applicants: Columbia Gas Transmission, LLC.
Description: ISS Implementation Filing to be effective 6/4/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5138.
Comments Due: 5 p.m. ET 5/16/12.

Docket Numbers: RP12–725–000.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Negotiated Rate—2012–05–04 DCP Midstream to be effective 5/7/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5162.
Comments Due: 5 p.m. ET 5/16/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1859–001.
Applicants: Equitrans, L.P.
Description: Refund Report for Pipeline Safety Cost Tracker under Docket No. RP11–1859–001 to be effective N/A.
Filed Date: 5/7/12.
Accession Number: 20120507–5050.
Comments Due: 5 p.m. ET 5/21/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–11713 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1727–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Interconnection—Original Service Agreement No 632 to be effective 3/1/2012.
Filed Date: 5/7/12.
Accession Number: 20120507–5119.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1728–000.
Applicants: Middletown Coke Company, LLC.
Description: Middletown MBR Application to be effective 5/8/2012.
Filed Date: 5/7/12.
Accession Number: 20120507–5128.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1729–000.
Applicants: Southern Energy Solution Group, LLC.
Description: Southern Energy Initial MBR Filing to be effective 5/7/2012.
Filed Date: 5/8/12.
Accession Number: 20120508–5001.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1730–000.
Applicants: FirstEnergy Solutions Corp.
Description: Application of FirstEnergy Solutions Corp. for authorization to sell electricity at wholesale to The Potomac Edison Company, an affiliate.
Filed Date: 5/7/12.
Accession Number: 20120507–5151.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1731–000.
Applicants: FirstEnergy Solutions Corp.
Description: Application of FirstEnergy Solutions Corp. for authorization to sell electricity at wholesale to West Penn Power Company, an affiliate.
Filed Date: 5/7/12.
Accession Number: 20120507–5156.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1732–000.
Applicants: Louisville Gas and Electric Company.
Description: ER98_111ER00_1507 Amended and Restated TCA to be effective 6/1/2012.
Filed Date: 5/8/12.
Accession Number: 20120508–5039.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1733–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits tariff filing per 35.37: MBR Triennial Filing—1st Rev MBR to be effective 9/30/2010.
Filed Date: 5/8/12.
Accession Number: 20120508–5043.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1734–000.
Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits tariff filing per 35.13(a)(2)(iii) ER98_111ER00_1507 Amd and Restated TCA KU Concur to be effective 6/1/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5047.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1735–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii) GRE–City of Worthington T–T to be effective 5/9/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5049.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1736–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii) Filing of an Interconnection Agreement to be effective 7/10/2012.

Filed Date: 5/8/12.

Accession Number: 20120508–5060.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1737–000.

Applicants: Cordova Energy Company LLC.

Description: Cordova Energy Company LLC submits tariff filing per 35.37: Cordova Energy Company LLC MBR Tariff Filing to be effective 6/24/2011.

Filed Date: 5/8/12.

Accession Number: 20120508–5067.

Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: ER12–1738–000.

Applicants: Saranac Power Partners, L.P.

Description: Saranac Power Partners, L.P. submits tariff filing per 35.37: Saranac Power Partners, L.P. MBR Tariff Filing to be effective 9/14/2010.

Filed Date: 5/8/12.

Accession Number: 20120508–5069.

Comments Due: 5 p.m. ET 5/29/12.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR12–8–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Revisions to its Rules of Procedure.

Filed Date: 5/7/12.

Accession Number: 20120507–5083.

Comments Due: 5 p.m. ET 5/29/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11692 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1740–000]

Rippey Wind 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 Rippey Wind 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11641 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1716–000]

Your Energy Holding, 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 Your Energy Holding, 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11645 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1739–000]

Bethel Wind 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 Bethel Wind 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11640 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1729–000]

Southern Energy Solution Group, 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 Southern Energy Solution Group, 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11647 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1720–000]

Vlast 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 Vlast 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11646 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1711–000]

High Plains Ranch II, 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 High Plains Ranch II, 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 29, 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: May 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11644 Filed 5–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 17, 2012, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using

the eLibrary link, or may be examined in the Commission's Public Reference Room.

981ST—Meeting

Regular Meeting

May 17, 2012

10:00 a.m.

Item No.	Docket No.	Company
		Administrative
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD05–9–000	Summer Energy Market Assessment 2012.
A–4	AD12–15–000	Report on Arizona-Southern California Outages on September 8, 2011.
		Electric
E–1	RM10–23–001	Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities.
E–2	OMITTED.	
E–3	EL12–35–000	Midwest Independent Transmission System Operator, Inc.; ALLETE, Inc.; Ameren Illinois Company; Ameren Transmission Company of Illinois; American Transmission Company, LLC; Big Rivers Electric Corporation; Board of Water, Electric and Communications Trustees of the City of Muscatine, Iowa; Central Minnesota Municipal Power Agency; City of Columbia, Missouri, Water & Light Company; City Water, Light & Power (Springfield, Illinois); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest, LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; Michigan South Central Power Agency; MidAmerican Energy Company; Missouri River Energy Services; Montana-Dakota Utilities Company; Montezuma Municipal Light & Power; Municipal Electric Utility of the City of Cedar Falls, Iowa; Muscatine Power and Water; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota Corporation; Northern States Power Company, a Wisconsin Corporation; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Tipton Municipal Utilities; Union Electric Company; Wabash Valley Power Association, Inc.; Wolverine Power Supply Cooperative, Inc.
E–4	ER12–1204–000	PJM Interconnection, L.L.C.
E–5	PL12–1–000	The Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards.
E–6	OMITTED.	
E–7	QM12–2–000, QM12–2–001	Public Service Company of New Mexico.
E–8	PA10–13–000	ITC Holdings Corporation.
E–9	ER11–4336–004	ISO New England Inc.
E–10	EL11–9–001	*CAlifornians for Renewable Energy, Inc., (CARE) and Barbara Durkin* v. *National Grid, Cape Wind, and the Massachusetts Department of Public Utilities*.
E–11	OMITTED.	
E–12	EL11–49–000	National Grid Transmission Services Corporation and Bangor Hydro Electric Company.
		Hydro
H–1	P–14263–001	Wyco Power and Water, Inc.
H–2	OMITTED.	
H–3	P–14358–001	Borough of Weatherly, Pennsylvania.
H–4	OMITTED.	
H–5	P–2145–109	Public Utility District No. 1 of Chelan County, Washington.
H–6	P–2114–250	Public Utility District No. 2 of Grant County, Washington.
		Certificates
C–1	CP11–547–000	Natural Gas Pipeline Company of America LLC.
C–2	CP12–31–000	Southern LNG Company, L.L.C.

A free Web cast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will

not be telecast through the Capitol Connection service.

Dated: May 10, 1012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11790 Filed 5–11–12; 11:15 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 29, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *John W. Crites,* Marco Island, Florida, to individually retain control of voting shares of Summit Financial Group, Inc., Moorefield, West Virginia, with shares held in his individual capacity, jointly with Patricia Crites, and as trustee for the following trusts: Subtrust f/b/o Zackary Kenton Crites; Subtrust f/b/o Bailey Buena-Vista Crites; Subtrust f/b/o Kevin David Mongold; Subtrust f/b/o Jessica Ann Mongold; Subtrust f/b/o Joshua Alexander Wingard; and Subtrust f/b/o Bianca Marie Wingard; Patricia A. Crites 2010 Grantor Retained Annuity Trust; and Patricia A. Crites 2012 Grantor Retained Annuity Trust. In addition John and Patricia Crites and the following would control in additional voting shares of Summit Financial Group, Inc.: Valerie C. Mongold, Weyers Cave, Virginia,; Kelly C. Wingard, Petersburg, West Virginia, in her individual capacity and a Trustee for the following subtrusts: Subtrust f/b/o Jeremiah Thomas Wingard and Subtrust f/b/o Joseph Riley Wingard; and John W. Crites II, Petersburg, West Virginia.

Board of Governors of the Federal Reserve System, May 9, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–11666 Filed 5–14–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Marquis Bancshares, Inc.,* Manhattan, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Leonardville State Bank, Leonardville, Kansas.

2. *Prime Time Investments Group, LLC,* Wray, Colorado; to become a bank holding company by acquiring 79.2 percent of the voting shares of Investment Opts, LLC, Bethune, Colorado, and the indirect and direct acquisition of approximately 48 percent of the voting shares of FarmBank Holding, Inc., Greeley, Colorado, and thereby indirectly acquire voting shares of FirstFarm Bank, Greeley, Colorado.

Board of Governors of the Federal Reserve System, May 9, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–11665 Filed 5–14–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-12–12AL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Ambulatory Care Pretest: National Hospital Care Survey—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This one-year clearance request seeks approval to pre-test: (1) Data collection from hospital ambulatory departments including emergency departments (ED), outpatient departments (OPD), and ambulatory surgery locations (ASLs) through the National Hospital Care Survey (NHCS) (OMB No. 0920–0212, expiration date 04/30/2014); (2) new questions on drug-related ED visits; and (3) new questions on colorectal cancer screening in ambulatory surgery visits.

In 2012, a pretest of 32 hospitals and 15 freestanding ambulatory surgery centers (FSASC) will collect data using methods approved for the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–

0278, expiration date 12/31/2014) data collection. The proposed pretest will test the data collection procedures involved in integrating the NHAMCS into the NHCS. NHAMCS has provided data annually since 1992 concerning the nation's use of hospital emergency and outpatient departments, and since 2009, on hospital-based ASLs and since 2010, on FSASCs. If the pretest is successful, NHAMCS will be integrated into NHCS in order to increase the wealth of data on health care utilization in hospitals across episodes of care and to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS).

The data items to be collected from the recruited hospitals and FSASCs in the pretest will include facility level data items such as visit volume, ownership, and information on electronic health record systems. Facility- and ambulatory unit-level data will be collected through in-person interviews and recorded on computerized survey instruments. It is anticipated that each hospital will have approximately four ambulatory units and each FSASC will have one ambulatory unit.

Patient level data items will include basic demographic information, name, address, social security number (if available), and medical record number (if available), and characteristics of the patients including visit dates, reason for visit, diagnoses, diagnostic services, procedures, medications, providers seen, and disposition. Patient visit data will be abstracted by field representatives of the data collection agent. A targeted number of patient visits will be sampled from each department depending on the type of department—approximately 200 across ambulatory units in the ED, 200 across ambulatory units in the OPD, and 100 across ambulatory units in ASLs.

Secondly, the pretest will collect specific information on drug-related visits to the ED. This endeavor, funded by the Center for Behavioral Health Statistics & Quality (CBHSQ) of the Substance Abuse & Mental Health Services Administration (SAMHSA), will assess the feasibility of integrating the Drug Abuse Warning Network (DAWN) (OMB No. 0930–0078, expired 12/31/2011) into the emergency department component of the NHCS. In each of the 32 pretest hospitals with an emergency department, a sample of all patient visits will be abstracted; for each drug-related visit within this sample, additional drug-related data will be abstracted. The only burden to the respondent at the patient visit level will be due to pulling and refiling approximately 104 medical records at each ambulatory unit.

Finally, the pretest will assess the feasibility of obtaining information on colorectal cancer screening during ambulatory surgery visits where a colonoscopy is performed. This endeavor is sponsored jointly by the National Center for Chronic Disease Prevention and Promotion (NCCDPHP) and the National Cancer Institute (NCI). The questions will be added to the Ambulatory Surgery Patient Record form and will be completed for patients who have a colonoscopy performed at the sampled visit. Potential users of the NHCS ambulatory data include, but are not limited to CDC, Congressional Research Service, Office of the Assistant Secretary for Planning and Evaluation (ASPE), American Health Care Association, Centers for Medicare and Medicaid Services (CMS), Bureau of the Census, state and local governments, and nonprofit organizations. There is no cost to respondents other than their time to participate. The total burden is 381 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
Hospital Chief Executive Officer	Hospital Induction Interview	32	1	1.5
FSASC Chief Executive Officer	FSASC Induction Interview	15	1	30/60
Medical and Health Services Manager	Ambulatory Unit Induction	140	1	15/60
IT Staff	Prepare and transmit UB–04	47	1	1
Medical Record Clerk	Pulling and refiling records	140	104	1/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–11705 Filed 5–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–12–12JM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Improving the Health and Safety of the Diverse Workforce—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Stress is one of the major causes of diminished health, safety, and productivity on the job (Jordan et al,

2003; Brunner, 2000). Increasing medical care utilization costs, job dissatisfaction, poor job performance, and employee turnover are some of the documented health, economic, psychological, and behavioral consequences of stress (Levi, 1996).

Racial and ethnic minority groups often shoulder a disproportionate burden of stress-related illnesses. For example, the age-adjusted prevalence of hypertension is 40.5% among Blacks compared to 27.4% among non-Hispanic Whites. Further, some cancers are 5 times greater among Asians, Type II diabetes is 2–5 times greater among Hispanics, and depression is 4–6 times greater among Native Americans (Carter-Pokras & Woo, 2002). Few studies thus far, however, have explored factors in the workplace that may contribute to these disparities.

Because of their general concentration in high-hazard and/or lower-status occupations, some racial and ethnic minority workers may be over-exposed to workplace factors (e.g., high workload and low job control) which have traditionally linked to a variety of stress-related health and safety problems. In addition, racial and ethnic minorities appear to be significantly more likely than non-minorities to encounter discrimination and other race-related stressors in the workplace (e.g., Krieger et al, 2006; Roberts et al, 2004).

Given a potentially greater stress burden, racial and ethnic minority workers may be at heightened risk for the development of health and safety problems associated with stress. On the other hand, occupational stress research experts suggest that certain workplace and other factors (e.g., co-worker and supervisory support, anti-discrimination policies and practices, etc.) may help reduce stress among employees, including racial and ethnic minorities.

Occupational hazards have been found to be distributed differentially with workers possessing specific biologic, social, and/or economic characteristics more likely to experience increased risks of work-related diseases and injuries. Consequently, CDC/NIOSH established the Occupational Health Disparities (OHD) program. Part of the National Occupational Research Agenda (NORA), the goals of the OHD program are to conduct research ''to define the nature and magnitude of risks experienced by vulnerable populations, including racial and ethnic minorities, and to develop appropriate intervention and communication strategies to reduce these health and safety risks.''

CDC/NIOSH requests OMB approval to collect standardized information from working adults via a telephone interview. Respondents will be asked about: (1) Their exposure to workplace and job stressors, including those related to race and ethnicity (2) their health and safety status and (3) organizational (e.g., organizational characteristics, policies and practices that may or may not buffer them from the adverse effects of work-related stressors. Respondents will be a random sample of 2,300 Blacks/African Americans, White/European Americans, Hispanic/Latino Americans, American Indian/Alaska Natives, and Asian Americans. All telephone interview respondents will be between the ages of 18 and 65, English-speaking, either currently employed or unemployed for no more than 3 years, and living within the Chicago Metropolitan area. The estimated burden per response is 30 minutes.

CDC/NIOSH will use the information gather through the telephone interviews to evaluate (1) the degree of exposure of minority and non-minority workers to various workplace and job stressors (2) the impact of these stressors on health and safety outcomes and on (3) the organizational (e.g., organizational characteristics, policies and practices) and other factors that protect minority and other workers from stress and associated problems in health and safety. The data collection will ultimately help CDC/NIOSH focus intervention and prevention efforts that are designed to benefit the health and safety of the diverse American workforce. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Individual	Telephone Interviews	2,300	1	30/60	1,150
Total					1,150

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–11709 Filed 5–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–12–12JN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—NEW—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

The National Health and Nutrition Examination Survey (NHANES) has, to date, been authorized as a generic clearance under OMB Number 0920–0237. A change in accounting practice for the burden hours, however, requires a shift to a newly-assigned clearance number.

The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC.

Annually, approximately 15,411 respondents participate in some aspect of the full survey. About 10,000 complete the screener for the survey. About 142 complete the household interview only. About 5,269 complete both the household interview and the MEC examination. Up to 4,000 additional persons might participate in tests of procedures, special studies, or methodological studies. The average burden for these special study/pretest respondents is 3 hours. Participation in NHANES is completely voluntary and confidential. A three-year approval is requested.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as arthritis, asthma, osteoporosis, infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES continues to collect genetic material on a national probability sample for future genetic research aimed at understanding disease susceptibility in the U.S. population. NCHS collects personal identification information. Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS). There is no cost to respondents other than their time.

NHANES data users include the U.S. Congress; numerous Federal agencies such as other branches of the Centers for Disease Control and Prevention, the National Institutes of Health, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; and private businesses.

TABLE 1—ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
1. Individuals in households	NHANES Questionnaire	15,411	1	2.4	36,986
2. Individuals in households	Special Studies	4,000	1	3	12,000
Total					48,986

Dated: May 9, 2012.

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–11711 Filed 5–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2012–0006; NIOSH–255]

Draft publication: Coal Dust Explosibility Meter Evaluation and Recommendations for Application

Authority: 30 U.S.C. 95l.

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft publication available for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following notice of draft publication available for public comment entitled ''Coal Dust Explosibility Meter Evaluation and Recommendations for Application.'' The document and instructions for submitting comments can be found at *http://www.regulations.gov.*

Public Comment Period: Comment period ends May 29, 2012.

ADDRESSES: Written comments, identified by CDC–2012–0006 and docket number NIOSH–255, may be

submitted by any of the following methods:

- *Federal erulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *Email: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or *http://www.cdc.gov/niosh/docket/review/docket255/default.html.* NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. All material submitted to the Agency should reference docket number NIOSH–255 and must be submitted by May 29, 2012 to be considered by the Agency.

Background: This report details the results of a cooperative study between the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) investigating the ability of the Coal Dust Explosibility Meter (CDEM) to accurately predict the explosibility of samples of coal and rock dust mixtures collected from underground coal mines in the U.S. The CDEM, which gives instantaneous results in real time, represents a new way for miners and operators to assess the relative hazard of dust accumulations in their mines and the effectiveness of their rock dusting practices. The intention of the device is to assist mine operators in complying with the (MSHA) final rule 30 CFR 75.403, requiring that the incombustible content of combined coal dust, rock dust, and other dust be at least 80% in underground areas of bituminous coal mines.

This study was completed in 2010, and involved field use of the CDEM within MSHA's 10 bituminous coal districts. As part of their routine dust compliance surveys in these districts, MSHA inspectors collected sample coal and rock dust mixtures, field testing these samples for explosibility with the CDEM. Samples were then sent to the MSHA laboratory at Mt. Hope, WV, for parallel testing, first using a drying oven to determine the surface moisture followed by traditional low temperature ashing (LTA) method. The LTA method determines explosibility of a coal and rock dust sample in a laboratory by heating the mixture to burn off the combustible material. The results, when combined with the surface moisture, are reported as total incombustible content (TIC). If the TIC is ≥80%, the sample is deemed to be nonexplosible and compliant with 30 CFR 75.403.

The CDEM utilizes a different approach, using optical reflectance to determine the ratio of rock dust to coal dust in a mixture. The CDEM offers real-time measurements of the explosion propagation hazard within a coal mine entry, allowing for immediate identification and mitigation of the problem.

The conclusions of this study support the field use of the CDEM to measure the explosibility of coal and rock dust mixtures, to more effectively improve the onsite adequacy of rock dusting for explosion prevention.

FOR FURTHER INFORMATION CONTACT: Dr. Jeff Kohler, NIOSH, Associate Director for Mining, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–5301, email *jkohler@cdc.gov.*

Reference: Web address for this publication: *http://www.cdc.gov/niosh/docket/review/docket255/pdfs/CDEM_IC_Final_May01.pdf.*

Dated: May 9, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–11695 Filed 5–14–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of an Opportunity for Manufacturers and Designers of Closed Circuit Escape Respirators To Participate in Performance Testing Within a Correlation Test Program Offered by the National Institute for Occupational Safety and Health

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce a Correlation Test Program offered by NIOSH through its National Personal Protective Technology Laboratory (NPPTL) and provide information on how interested parties can obtain the Standard Test Procedures. The Correlation Test Program is the result of HHS publishing a final rule (*http://www.gpo.gov/fdsys/pkg/FR-2012-03-08/pdf/2012-4691.pdf*), *Approval Tests and Standards for Closed-Circuit Escape Respirators (CCERs)* on March 8th 2012. This final rule revised and updated the requirements for testing and certification of CCERs and introduced the use of an Automated Breathing and Metabolic Simulator to be used during testing as part of the approval process.

The Correlation Testing Program will consist of two tests:

- Performance Tests of As-Received and Environmentally Treated Closed-Circuit Respirators; and
- Capacity Tests of As-Received and Environmentally Treated Closed-Circuit Escape Respirators.

The Standard Test Procedures for the Correlation Testing Program, and for the other CCER performance requirements, are available from NIOSH for review. These procedures are subject to modification as they are incorporated into the certification program.

All correlation testing conducted in this program will be done free of charge. This program was designed to enable potential CCER applicants to correlate or calibrate their own automated breathing and metabolic simulator to the automated breathing and metabolic simulator that will be used by NPPTL as part of the CCER approval process.

NPPTL will not make any performance-related judgments as to the ability of any tested units meeting the new approval requirements. Data obtained from testing will be provided only to the applicant. Testing results may be provided to the public; however, product or applicant identity will not be disclosed. Test results from the Correlation Test Program are not applicable as pre-test data for a respirator approval application.

DATES: The CCER Correlation Test Program shall be in effect until November 15, 2012.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the application requirements and process, Jeff Peterson, telephone (412) 386–4018, email *JPeterson@cdc.gov.* For information concerning details and copies of the Standard Test Procedures, Tim Rehak, telephone (412) 386–6866, email *TRehak@cdc.gov.*

Dated: May 9, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–11694 Filed 5–14–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0438]

Agency Information Collection Activities; Proposed Collection; Comment Request; Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's procedures for early food safety evaluation of new non-pesticidal proteins produced by new plant varieties intended for food use, including bioengineered food plants; new Form FDA 3666, which may be submitted electronically via the Electronic Submission Gateway (ESG); and the guidance document entitled, ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use.''

DATES: Submit either electronic or written comments on the collection of information by July 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use (OMB Control Number 0910–0583)—Revision

I. Background

Since May 29, 1992, when FDA issued a policy statement on foods derived from new plant varieties, FDA has encouraged developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA early in the development process to discuss possible scientific and regulatory issues that might arise (57 FR 22984). The guidance entitled, ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use,'' continues to foster early communication by encouraging developers to submit to FDA their evaluation of the food safety of their new protein. Such communication helps to ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply of material from that plant variety.

FDA believes that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the procedures for early food safety evaluation of new proteins in new plant varieties, including bioengineered food plants, and the procedures for communicating with FDA about the safety evaluation.

FDA has recently developed a form that interested persons may use to transmit their submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition. New Form FDA 3666, a draft of which is available at *http://www.fda.gov/downloads/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodIngredientsandPackaging/RegulatorySubmissions/UCM199325.pdf*, is entitled, ''Early Food Safety Evaluation of a New Non-Pesticidal Protein Produced by a New Plant Variety (New Protein Consultation)'' and may be used in lieu of a cover letter for a New Protein Consultation (NPC). Form FDA 3666 prompts a submitter to include certain elements of a NPC in a standard format and helps the respondent organize their submission to focus on the information needed for FDA's safety review. The form, and elements that would be prepared as attachments to the form, may be submitted in electronic format via the Electronic Submission Gateway (ESG), or may be submitted in paper format, or as electronic files on physical media with paper signature page. The information is used by FDA to evaluate the food safety of a specific new protein produced by a new plant variety.

II. NPC Information Submitted on Form FDA 3666

The NPC submitted to FDA includes the following information on Form FDA 3666 and in attachments to the form:

A. Introductory Information About the Submission

- Whether the NPC submission is a new submission, or an amendment or supplement to a previously established NPC;
- Whether the submitter has determined that all files provided in an electronic transmission are free of computer viruses;
- The date of the submitter's most recent meeting (if any) with FDA before transmitting a new NPC submission; and
- The date of any correspondence, sent to the submitter by FDA, relevant to an amendment or supplement the submitter is transmitting.

B. Information About the Submitter

- The name of and contact information for the submitter, including the identity of the contact person and the company name (if applicable); and
- The name of and contact information for any agent or attorney who is authorized to act on behalf of the submitter.

C. General Administrative Information

- The title of the submission;
- The format of the submission (i.e., paper, electronic, or electronic with a paper signature page);
- The mode of transmission of any electronic submission (i.e., ESG or transmission on physical media such as CD–ROM or DVD);
- Whether the submitter is referring us to information already in our files;
- Whether the submitter has designated in its submission any information as trade secret or as confidential commercial or financial information; and
- Whether the submitter has attached a redacted copy of some or all of the submission.

D. Information About the New Protein

- The name of the new protein;
- Any requested registry designations for the new protein; and
- The purpose or intended technical effect of the new protein.

E. Information About Genetic Material

- Information about the introduced genetic material (including identity and source).

F. The Scientific Evaluation of the Food Safety of the New Protein

The submitter indicates:

- Whether there is a history of safe use of the new protein in food or feed;
- Whether the submitter has included an assessment of the amino acid similarity between the new protein and known allergens and toxins;
- Whether the submitter has included information about the overall stability of the protein, and the resistance of the protein to enzymatic degradation using appropriate *in vitro* assays; and
- Whether the submitter has included any other information for FDA to consider in evaluating a NPC.

Form FDA 3666 also requires the signature of a responsible official (or agent or attorney) and a list of attachments.

III. Burden Estimates

Description of Respondents: The respondents to this collection of information are developers of new plant varieties intended for food use.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Category	FDA form No.[2]	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
First four data components	Form FDA 3666	20	1	20	4	80
Two other data components	Form FDA 3666	20	1	20	16	320
Total						400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Form FDA 3666 may be submitted electronically via the ESG.

The estimated number of annual responses and average burden per response are based on FDA's experience with early food safety evaluations submitted in the past 3 years. Completing an early food safety evaluation for a new protein from a new plant variety is a one-time burden (one evaluation per new protein). Based on its experience over the past 3 years, FDA estimates that approximately 20 developers will choose to complete an early food safety evaluation for their new plant protein, for a total of 20 responses annually. Many developers of novel plants may choose not to submit an evaluation because the field testing of a plant containing a new protein is conducted in such a way (*e.g.,* on such a small scale, or in such isolated conditions, etc.) that cross-pollination with traditional crops or commingling of plant material is not likely to be an issue. Also, other developers may have previously communicated with FDA about the food safety of a new plant protein, for example, when the same protein was expressed in a different crop.

The early food safety evaluation for new proteins includes six main data components. Four of these data components are easily and quickly obtainable, having to do with the identity and source of the protein. FDA estimates that completing these data components will take about 4 hours per NPC. FDA estimates the reporting burden for the first four data components to be 80 hours (4 hours × 20 responses).

Two data components ask for original data to be generated. One data component consists of a bioinformatics analysis which can be performed using publicly available databases. The other data component involves ''wet'' lab work to assess the new protein's stability and the resistance of the protein to enzymatic degradation using appropriate in vitro assays (protein digestibility study). The paperwork burden of these two data components consists of the time it takes the company to assemble the information on these two data components and include it in a NPC. FDA estimates that completing these data components will take about 16 hours per NPC. FDA estimates the reporting burden for the two other data components to be 320 hours (16 hours × 20 responses). Thus, FDA estimates the total annual hour burden for this collection of information to be 400 hours.

FDA expects that most if not all businesses filing NPCs in the next 3 years will choose to take advantage of the option of electronic submission via the ESG. Thus, the burden estimates in Table 1 are based on the expectation of one hundred percent (100%)

participation in the electronic submission process. The opportunity to provide the information in electronic format could reduce the Agency's previous estimates for the time to prepare each submission. However, as a conservative approach for the purpose of this analysis, FDA is assuming that the availability of new Form FDA 3666 and the opportunity to submit the information in electronic format will have no effect on the average time to prepare a submission. While FDA does not charge for the use of the ESG, FDA requires respondents to obtain a public key infrastructure certificate in order to set up the account. This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 year to 3 years. The certificate typically costs from $20 to $30.

Dated: May 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11689 Filed 5–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0454]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This guidance solicits comments on ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.''

DATES: Submit either electronic or written comments on the collection of information by July 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela,Office of Information Management, Food and Drug Administration,1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act—(OMB Control Number 0910–0640)—Extension

On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Pub. L. 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application.

Section 502(x) of the FD&C Act (21 U.S.C. 352(x)), which was added by Public Law 109–462, requires the label of a nonprescription drug product marketed without an approved application in the United States to include a domestic address or domestic telephone number through which a responsible person may receive a report of a serious adverse event associated with the product. The guidance document contains questions and answers relating to this labeling requirement and provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the labeling requirements of section 502(x) of the FD&C Act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or phone number that is required to appear on the product label under section 502(x) of the FD&C Act; and (3) FDA's intent regarding enforcing the labeling requirements of section 502(x) of the FD&C Act. Separate guidance, issued by the Center for Food Safety and Applied Nutrition on reporting for dietary supplements, is announced elsewhere in the **Federal Register**.

Title: Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors whose name (pursuant to section 502(b)(1) of the FD&C Act) appears on the label of a nonprescription drug product marketed in the United States without an approved application.

Burden Estimate: FDA is requesting public comment on the estimated one-time reporting burden from these respondents, as required by 502(x) of the FD&C Act and described in the guidance ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The estimates for one-time reporting are based on FDA's knowledge of nonprescription drug product labeling in the United States, whether or not marketed under an approved application.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ONE-TIME REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total responses	Average burden per response	Total hours
Domestic address or phone number labeling requirement (21 U.S.C. 502(x)) and recommendation to clarify its purpose	200	500	100,000	4	400,000

There are no capital costs or maintenance and operating costs associated with this collection of information.

As indicated in Table 1 of this document, we estimate that approximately 200 manufacturers will revise approximately 100,000 labels to add a full domestic address and a domestic telephone number, and should they choose to adopt the draft guidance's recommendation, to add a statement identifying the purpose of the domestic address or telephone number. FDA believes that designing the label change should not take longer than 4 hours per label. Automated printing of the labels should only require a few seconds per label. This estimate accounts for the possibility that every manufacturer will make label revision, which is unlikely. Because the majority of over-the-counter drug product labels currently have a domestic telephone number that satisfies the requirement, we believe many manufacturers will opt not to adopt the guidance's recommendation to add a statement identifying the purpose of the address or telephone number, significantly reducing the number of total responses. However, assuming that all labels are revised, we estimate a one-time reporting burden for this information collection of 400,000 hours.

Dated: May 9, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11688 Filed 5–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden 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.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034)—[Revision]

The Health Education Assistance Loan (HEAL) program provided federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program the following forms are utilized: The Lenders Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrowers' eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The annual estimate of burden is as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	15	1.00	15	.13	1.95
Borrower's Deferment Request:					
Borrowers	28	1.00	28	.17	4.76
Employers	23	1.21	28	.08	2.24
Borrower Loan Status Update	5	13.00	65	.17	11.05
Loan Purchase/Consolidation	2	2.50	5	.07	.35
Total	73				20.35

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 9, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–11637 Filed 5–14–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden 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.

Proposed Project: Maternal, Infant, and Early Childhood Home Visiting Program FY 2012 Competitive Grant Non-Competing Continuation Progress Reports (OMB No. 0915–xxxx)—[New]

Activity Code: D89

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (the Act). Section 2951 of the Act amended Title V of the Social Security Act by adding a new section, 511, which authorized the creation of the Maternal, Infant, and Early Childhood Home Visiting Program, (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf,* pages 216–225). The Act responds to the diverse needs of children and families in communities at risk and provides an unprecedented opportunity for collaboration and partnership at the Federal, State, and community levels to improve health and development outcomes for at-risk children through evidence-based home visiting programs.

Under this program, $125,000,000 was awarded to States on a formula basis in 2010. An additional $125,000,000 was made available to States on a formula basis in 2011. Additionally, competitive funding was awarded in June 2011 for Development Grants and Expansion Grants. Development Grants were intended to support the efforts of States and jurisdictions with modest evidence-based home visiting programs to expand the depth and scope of these efforts, with the intent to develop the infrastructure and capacity needed to seek an Expansion Grant in the future. Expansion Grants were intended to support the efforts of States and jurisdictions that had already made significant progress towards a high-quality home visiting program or embedding their home visiting program into a comprehensive, high-quality early childhood system. Thirteen States were awarded Development Grants, and nine States were awarded Expansion Grants. These competitive grants are for 2 years (Development Grants) and 4 years (Expansion Grants), respectively. State grantees of both competitive programs will need to complete non-competing continuation (NCC) progress reports in order to secure the release of FY 2012 and out-year grant funds.

Additional funds are being made available for Development and Expansion Grants in FY 2012. Ten Expansion Grants, totaling $71.9 million, have been awarded. An additional four to eight Development Grants are anticipated to be awarded, with 2-year project periods. Development Grant recipients will be required to complete one NCC to secure the release of second-year funds. The project period is 4 years for the FY 2011 Expansion grants, and 3 years for the FY 2012 Expansion Grants. Fiscal year 2012 Expansion grant recipients will be required to complete three annual NCCs, and FY 2013 recipients will be required to complete two annual NCCs to secure the release of their out-year funds.

The annual estimate of burden is as follows:

Instrument: A summary of the progress on the following activities	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Implementing home visiting programs	25	1	8	200
Fostering the integration of home visiting programs into early childhood systems	25	1	8	200
Promoting effective policy to support and strengthen home visiting programs	25	1	24	600
Evaluating programs and using the information received to improve the quality of home visiting programs and early childhood systems	25	1	8	200
Improving outcomes for families served by the home visiting program	25	1	8	200
Providing services to vulnerable or high risk populations	25	1	2	50
Total	25			1,450

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 9, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–11636 Filed 5–14–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden 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.

Proposed Project: Faculty Loan Repayment Program (OMB No. 0915–0150)—[Revision]

Under the Health Resources and Services Administration (HRSA) Faculty Loan Repayment Program, degree-trained health professionals from disadvantaged backgrounds may enter into a contract under which the Department of Health and Human Services will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions college or university. Applicants must complete an application and provide all other required documentation, including information on all eligible educational loans.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Online Application	304	1	304	1.00	304
Institution/Loan Repayment Employment Form	*304	*1	304	1.00	304
Authorization to Release Information Form	304	1	304	0.25	76
Total	912				684

*Respondent for this form is the institution for the applicant.

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 9, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–11627 Filed 5–14–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Organ Transplantation (ACOT). The ACOT was established by the Amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR part 121) and, in accordance with Public Law 92–463, was chartered on September 1, 2000.

DATES: The agency must receive nominations on or before June 11, 2012.

ADDRESSES: All nominations should be submitted to the Executive Secretary, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, UPS, etc., should be addressed to the Executive Secretary, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia A. Stroup, M.B.A., M.P.A., Executive Secretary, Advisory Committee on Organ Transplantation, at (301) 443–1127 or email *pstroup@hrsa.gov*.

SUPPLEMENTARY INFORMATION: As provided by 42 CFR 121.12, the Secretary established the Advisory Committee on Organ Transplantation. The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The ACOT advises the Secretary on all aspects of organ procurement, allocation, and transplantation, and on other such matters that the Secretary determines. One of its principal functions is to advise the Secretary on Federal efforts to maximize the number of deceased donor organs made available for transplantation and to support the safety of living organ donation.

The ACOT consists of up to 25 members, who are Special Government Employees, and 5 ex-officio, non-voting members. Members and the Chair shall be appointed by the Secretary from individuals knowledgeable in such fields as deceased and living organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical

specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, living organ donors, and family members of deceased and living organ donors. Members shall not serve while they are also serving on the OPTN Board of Directors. To the extent practicable, Committee members should represent the minority, gender and geographic diversity of transplant candidates, transplant recipients, organ donors and family members served by the OPTN. The ex-officio, non-voting members shall include the Directors of the National Institutes of Health, the Centers for Disease Control and Prevention; and the Agency for Healthcare Research and Quality; the Administrator of the Centers for Medicare and Medicaid Services; and the Commissioner of the Food and Drug Administration—or their designees.

Specifically, HRSA is requesting nominations for voting members of the ACOT representing: Health care public policy; transplantation medicine and surgery, including pediatric and heart/lung transplantation; critical care medicine; nursing; epidemiology and applied statistics; immunology; law and bioethics; behavioral sciences; economics and econometrics; organ procurement organizations; transplant candidates/recipients; transplant/donor family members; and living donors. Nominees will be invited to serve a 4-year term beginning after January 2013.

HHS will consider nominations of all qualified individuals with a view to ensuring that the Advisory Committee includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the ACOT. Nominations shall state that the nominee is willing to serve as a member of the ACOT and appears to have no conflict of interest that would preclude the ACOT membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Committee to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (i.e., what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACOT), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

The Department of Health and Human Services has special interest in assuring that advisory committees benefit from a broad and diverse range of perspectives. In support of that interest, we encourage nominations of all qualified candidates, and extend particular encouragement to nominations of women, racial and ethnic minorities, and those with disabilities.

Dated: May 9, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–11634 Filed 5–14–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Therapeutic RNA Switches and Auto-Recognizing Therapeutic R/DNA Chimeric Nanoparticles (NP) for HIV Treatment

Description of Technology: RNA interference (RNAi) as a therapeutic agent is routinely used to knock down the expression of target genes in diseased cells. Using siRNAs it is possible to knock down target mRNA expression. It is possible, for example, to induce cell death through co-RNAi by simultaneously targeting several human anti-apoptotic genes with different siRNAs. NIH inventors computationally and experimentally developed a new technology that utilizes two (or more) cognate RNA/DNA NPs that, when recombined within the cell, trigger the RNAi pathway as well as other functionalities that exist inside diseased cells. This new methodology therefore opens a new route in the development of auto-recognizing ''smart'' nucleic acids based nanoparticles for a wide range of applications in biomedical RNA nanotechnology. This new approach may overcome several issues commonly associated with the clinical delivery of siRNA, such as intravascular degradation, the potential for immune-mediated toxicities, tissue specificity and pharmacodynamics.

Potential Commercial Applications:

- Therapeutics that control gene expression (e.g., anti-apoptotic genes).
- Combinations with other therapeutics to treat cancer, RNA viruses (e.g., HIV) and other RNA related diseases.
- Triggered release of siRNAs within cells.
- Research on targeting cells.
- Labeling of targeted cells.
- Research on cancer cells harboring cancer and other RNA related diseases in patients.
- Research on treatment of RNA related viruses.

Competitive Advantages:

- Size overcomes problems with traditional siRNA pharmacokinetics.
- Chemical stability improves half-life.
- Incorporation of multiple functionalities split and otherwise.
- Multi-stage delivery controls activation.

Development Stage:

- Prototype.
- In vitro data available.

Inventors: Bruce A. Shapiro (NCI), Eckart HU Bindewald (NCI), Kirill A. Afonin (NCI), Arti Santhanam (NCI), Mathias Viard (SAIC), Luc Jaeger (UCSB).

Intellectual Property: HHS Reference No. E–038–2012/0—Research Material.

Patent protection is not being pursued for this technology.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Center for Cancer Research Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology to advance antiviral therapy concepts. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Multilayer X-Ray Transmission Grating Array for Phase-Contrast Imaging and Tomography

Description of Technology: Classical X-ray Computed Tomography (CT) and radiography are based on X-ray absorption and cannot show soft tissue structures as well as Magnetic Resonance Imaging (MRI). Detecting the phase delay/advance of X-rays that travel through the body could enhance soft tissue contrast 10–100 times. Submicron-period X-ray transmission gratings for medical x-ray energies can substantially enhance the phase detection sensitivity, but fabrication is a great challenge. This invention includes a method to fabricate multilayer transmission gratings of large areas. The design uses multilayer deposition of alternating materials on a staircase substrate to form micro grating arrays of extremely small periods and high aspect ratio in large areas. This invention should substantially improve the visibility of soft tissue structures and reduce radiation dose to patients.

Potential Commercial Applications:

- X-ray diagnostic imaging.
- X-ray non-destructive materials testing.
- X-ray security screening.
- X-ray lithography of nanostructures.
- Also applies to neutron beam or proton beam imaging.

Competitive Advantages:

- Gratings of ultra-high aspect ratio and small period allow phase-contrast imaging at high x-ray energies which are suitable for human body CT, and provide better soft tissue contrast in radiography and CT.
- Reduces radiation exposure to patient.
- Large area gratings enable full field imaging without raster or line scanning.

Development Stage:

- Pre-clinical.
- Early-stage.

Inventor: Han Wen (NHLBI).

Publication: Lynch SK, *et al.* Multilayer-coated micro-grating array for x-ray phase-contrast imaging. Proc. SPIE 8076, 80760F (2011); *http://dx.doi.org/10.1117/12.888939.*

Intellectual Property: HHS Reference No. E–207–2011/0—U.S. Provisional Application No. 61/578,719 filed 21 Dec 2011.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The Imaging Physics Lab, Biophysics and Biochemistry Center, NHLBI/NIH, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize multilayer-coated gratings for phase-contrast CT. For collaboration opportunities, please contact Dr. Han Wen at *wenh@nhlbi.nih.gov*.

Human DNA Polymerase Gamma for Testing the Effect of Drugs on Mitochondrial Function

Description of Technology: One of the primary means for treating HIV infection is the use of antiviral nucleotide or nucleoside analogs. These analogs work by inhibiting the activity of reverse transcriptase, the enzyme responsible for preparing the HIV genome for integration into the DNA of the host cell. Although these analogs do not have an effect on the polymerases responsible for replicating the human genome, the polymerase responsible for replicating the mitochondrial genome is sensitive to these analogs. When patients are exposed to nucleotide or nucleoside analogs through long-term treatment regimens, the replication of the mitochondrial genome can be adversely affected. Since mitochondrial functionality is necessary for cell activity, the nucleotide and nucleoside analogs can cause serious and unwanted side-effects.

This invention concerns the cloning and purification of human DNA polymerase gamma, the polymerase responsible for replicating the mitochondrial genome. The enzymes that have been purified include the wild-type version, a version which lacks exonuclease (proofreading) activity, and several versions with modified activity due to the mutation of the enzyme. These purified enzymes can be used to directly test the effects of new drugs that affect the activity of polymerases, such as nucleotide and nucleoside analogs.

Potential Commercial Applications:

- Research reagent to screen the effects of antiviral drugs (nucleotide and nucleoside analogs) on mitochondrial function.
- Research reagent to test the mitochondrial toxicity of other drugs that can affect polymerase activity.

Competitive Advantages:

- Purified polymerase allows for direct analysis of the effect of nucleotide analogs on DNA polymerase gamma.
- Different formats of the enzyme such as the exonuclease-deficient version, allows comprehensive testing of drug candidates.

Development Stage: In vitro data available.

Inventors: William Copeland *et al.* (NIEHS).

Publication: Longley MJ, *et al.* Characterization of the native and recombinant catalytic subunit of human DNA polymerase gamma: identification of residues critical for exonuclease activity and dideoxynucleotide sensitivity. Biochemistry. 1998 Jul 21;37(29):10529–39. [PMID 9671525]

Intellectual Property: HHS Reference Nos. E–191–2011/0, B–035–1998/0, and B–035–1998/1—Research Materials. Patent protection is not being pursued for these technologies.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the antibodies. For collaboration opportunities, please contact Elizabeth Denholm at *denholme@niehs.nih.gov*.

Biomarker To Predict High-Risk Clinical Outcomes for Colon, Lung, and Ovarian Cancers

Description of Technology: It has long been known that general genomic instability is associated with cancer. NIH scientists Drs. Habermann and Reid at the National Cancer Institute, along with West Virginia University scientists Drs. Mettu and Guo, have recently identified specific genes whose instability is strongly associated with poor outcomes for colon, small-cell lung, and ovarian cancers. Using this 12-gene genomic instability signature as a biomarker could be a diagnostic tool for identifying high-risk patients that would benefit from more aggressive forms of treatment.

Potential Commercial Applications: Diagnostic tool for identifying patients at high-risk for developing colon, small-cell lung, and ovarian cancers that are recurring and/or aggressive.

Competitive Advantages:

- Allows more accurate prognoses by separating high-risk from low-risk cancer patient populations.

• Allows doctors to choose more individualized therapies for patients based on whether the cancer is at high or low risk for aggressiveness or recurrence.

Development Stage: Clinical.

Inventors: Thomas K. Ried (NCI) *et al.*

Intellectual Property: HHS Reference No. E–119–2011/0—PCT Application No. PCT/US2011/061871 filed 22 Nov 2011.

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; *vathyams@mail.nih.gov.*

Isolation of Hybridomas Producing Monoclonal Antibodies (MAbs) Inhibitory to Human CYP2J2

Description of Technology: The National Institutes of Health announces three specific monoclonal antibodies that strongly inhibit and/or immunoblot the human cytochrome P450 2J2 (CYP2J2).

Cytochrome P450s catalyze the NADPH-dependent oxidation of arachidonic acid to various eicosanoids found in several species. The eicosanoids are biosynthesized in numerous tissues including pancreas, intestine, kidney, heart and lung where they are involved in many different biological activities.

MAb 6–5–20–8 selectively inhibits CYP2J2-mediated arachidonic acid metabolism by more than 80% and also immunoblots the enzyme. MAb 6–2–16–1 also selectively inhibits arachidonic acid metabolism by more than 80% but does not immunoblot the enzyme. MAb 5–3–2–2 is not inhibitory but selectively immunoblots the enzyme. These antibodies can be used to identify and quantify inter-individual variation in physiological functions and to study pharmacological drug metabolism in various tissues.

Potential Commercial Applications:

• These antibodies can be used to identify and quantify inter-individual variation in physiological functions.

• These antibodies can be used to study pharmacological drug metabolism in various tissues.

Competitive Advantages: These antibodies strongly inhibit and/or immunoblot the human cytochrome P450 2J2 (CYP2J2).

Development Stage: In vitro data available.

Inventors: Darryl C. Zeldin (NIEHS) *et al.*

Publications:

1. Wu S, *et al.* Molecular cloning and expression of CYP2J2, a human cytochrome P450 arachidonic acid epoxygenase highly expressed in heart. J Biol Chem. 1996 Feb 16;271(7):3460–8. [PMID 8631948]

2. Node K, *et al.* Anti-inflammatory properties of cytochrome P450 epoxygenase-derived eicosanoids. Science 1999 Aug 20;285(5431):1276–9. [PMID 10455056]

3. Node K, *et al.* Activation of Galpha s mediates induction of tissue-type plasminogen activator gene transcription by epoxyeicosatrienoic acids. J Biol Chem. 2001 May 11;276(19):15983–9. [PMID 11279071]

4. Zeldin DC. Epoxygenase pathways of arachidonic acid metabolism. J Biol Chem. 2001 Sep 28;276(39):36059–62. [PMID 11451964]

5. Yang B, *et al.* Overexpression of cytochrome P450 CYP2J2 protects against hypoxia-reoxygenation injury in cultured bovine aortic endothelial cells. Mol Pharmacol. 2001 Aug;60(2):310–20. [PMID 11455018]

6. King LM, *et al.* Cloning of CYP2J2 gene and identification of functional polymorphisms. Mol Pharmacol. 2002 Apr;61(4):840–52. [PMID 11901223]

7. Sun J, *et al.* Inhibition of vascular smooth muscle cell migration by cytochrome p450 epoxygenase-derived eicosanoids. Circ Res. 2002 May 17;90(9):1020–7. [PMID 12016269]

Intellectual Property: HHS Reference No. E–337–2003/0—Research Material. Patent protection has not been pursued for this technology.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this antibody. For collaboration opportunities, please contact Elizabeth Denholm at *denholme@niehs.nih.gov*.

Dated: May 9, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–11691 Filed 5–14–12; 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: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: May 30–31, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Spatio-Temporal Cell Signaling Networks.

Date: June 4–5, 2012.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Developments & Therapeutics.

Date: June 5–6, 2012.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Sally A Mulhern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 408–9724, *mulherns@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 7, 2012.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)-435–1722, *jollieda@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: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11764 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; P50 Review.

Date: June 1, 2012.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@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. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11762 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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: Communication Disorders Review Committee.

Date: June 13–14, 2012.

Time: June 13, 2012, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: June 14, 2012, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Susan Sullivan, Ph.D., Scientific Review Branch Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–496–8683, *sullivas@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Clinical Trial Review.

Date: June 15, 2012.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Hearing and Balance Fellowship Meeting.

Date: June 19, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Chemo Sensory Fellowship Review.

Date: June 20, 2012.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; VSL Fellowships.

Date: June 20, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review, Branch Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Communication Disorder Core Center.

Date: June 21, 2012.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Clinical Trial Review.

Date: June 26, 2012.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Clinical Trial Review.

Date: June 28, 2012.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11758 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 14, 2012, 8:00 a.m. to June 14, 2012, 6:00 p.m., Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314 which was published in the **Federal Register** on March 29, 2012, 77 FR 19024.

This notice is being amended to change the location to ''The Residence Inn Old Town Alexandria, 1456 Duke Street, Alexandria, VA 22314.'' The meeting is closed to the public.

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11750 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Cancer Institute Special Emphasis Panel; Limited Competition: Comprehensive Partnerships to Advance Cancer Health Equity (CPACHE) (U54).

Date: June 28, 2012.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institute, 6116 Executive Blvd. Room 406, Bethesda, MD 20852, (Telephone Conference Call).

Contact Person: Jeannette F Korczak, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11748 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Cystic Fibrosis in Humans.

Date: June 5, 2012.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R24 Lung Resource.

Date: June 6, 2012.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 9, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11747 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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/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 grant applications/contract proposals the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; In Vitro and In Vivo Agent Development Assays.

Date: June 12, 2012.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Room 4075, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Diagnostic & Therapeutic Agents Enabled by Nanotechnology.

Date: July 11–12, 2012.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Savvas C. Makrides, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11746 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the National Cancer Advisory Board 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 Cancer Advisory Board; *Ad hoc* Subcommittee on Global Cancer Research.

Open: June 24, 2012, 5:00 p.m. to 6:30 p.m.

Agenda: Discussion on Global Cancer Research.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Edward Trimble, Executive Secretary, NCAB Ad hoc Subcommittee on Global Cancer Research, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN/7025, Rockville, MD 20892–8345, (301) 496–2522, *trimblet@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board; Subcommittee on Cancer Centers.

Open: June 24, 2012, 6:40 p.m. to 8:10 p.m.

Agenda: Discussion on Cancer Centers.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Linda K. Weiss, Executive Secretary, NCAB Subcommittee on Cancer Centers, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 700, Bethesda, MD 20892–8345, (301) 496–8531, *weissl@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board and NCI Board of Scientific Advisors.

Open: June 25, 2012, 9:00 a.m. to 3:30 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors; NCI Board of Scientific Advisors Concepts Review and NCI Director's reports and NCAB presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: June 25, 2012, 3:30 p.m. to 5:00 p.m.

Agenda: Review of NCAB Grant Applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page:

NCAB: *deainfo.nci.nih.gov/advisory/ncab.htm,* BSA: *deainfo.nci.nih.gov/advisory/bsa/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11745 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Chemopreventive Treatments for Head and Neck Squamous Cell Carcinoma

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in PCT Patent Application No. PCT/US2009/054478, U.S. Patent Application No. 13/059,335 and foreign equivalents thereof entitled ''Chemopreventive of Head and Neck Squamous Cell Carcinoma'' (HHS Ref. No. E–302–2008/0) to Yissum Research Development Company of the Hebrew University of Jerusalem, Ltd., which is located in Jerusalem, Israel. The patent rights in these inventions have been assigned to the United States of America.

Other than license applications submitted as objections to this Notice of Intent to Grant an Exclusive License, no further license applications will be considered for the exclusive field of use set forth below if the Yissum Research Development Company of the Hebrew University of Jerusalem, Ltd. is granted an exclusive license pursuant to this Notice of Intent to Grant an Exclusive License. The prospective exclusive license territory may be worldwide and the field of use may be limited to use of the Licensed Patent Rights for the prevention and treatment of head and neck cancers.

DATE: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 14, 2012 will be considered, in addition to the current non-exclusive applications under consideration, for the prospective license territory and field of use to be granted under the contemplated exclusive patent license.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Whitney A. Hastings, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; Email: *hastingw@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In head and neck squamous cell carcinoma (HNSCC), a cancer occurring mostly in the mouth, it is frequently observed that the Akt/mTOR pathway is abnormally activated. Therefore, inhibiting this signaling pathway may help in treating this disease. Rapamycin and its analogs are known to inhibit the activity of mTOR so in principle they could serve as therapeutics for treating HNSCC.

This technology describes a method of potentially preventing or treating HNSCC through the inhibition of mTOR activity. The proof of this principle was demonstrated by rapid regression of mouth tumors in mice afflicted with Cowden syndrome with the administration of rapamycin. Like HNSCC, development of this disease is linked to over activation of the Akt/mTOR pathway. Furthermore, the therapeutic potential of rapamycin was demonstrated using mice in experiments that model chronic exposure to tobacco, which promotes the development of HNSCC. Therefore, inhibitors of mTOR have considerable potential in the prevention and treatment of HNSCC.

The prospective exclusive license and any further license applications received as objections to this Notice of Intent to Grant an 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. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Any additional applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted 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: May 9, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–11690 Filed 5–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2012 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to the University of California Los Angeles (UCLA).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $130,000 (total costs) for up to one year to the University of California Los Angeles (UCLA). This is not a formal request for applications. Assistance will be provided only to the University of California Los Angeles (UCLA) based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: TI–12–001.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Foreign Operations and Related Programs Appropriations Act, 2010 (Division F, Pub. L. III–J 17). Funding for this program is made available through the State Department.

Justification: Only the University of California Los Angeles (UCLA) is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to award a supplemental grant to the University of California Los Angeles (UCLA) to expand/enhance grant activities funded under the FY 2011 Cooperative Agreement for the Drug Demand Reduction Initiative for Iraq. This initiative builds on work begun as part of the 2010 Iraq-SAMHSA Initiative, which supported a team of

behavioral health professionals from the Government of Iraq (GOI Team) who visited substance abuse sites in the U.S. to learn about establishing substance abuse services and training.

The purpose of the supplemental funding is to provide logistical and fiscal management support, and training for project-related activities in Iraq, including SBIRT and other trainings planned to take place in Iraq.

At a minimum the funds awarded will be used to conduct the following activities:

- Develop a plan to provide logistical and fiscal management support for project-related activities in Iraq, including SBIRT and other trainings planned to take place in Iraq.
- Develop a plan for the United Nations Office on Drugs and Crime rapid assessment of the current substance use trends in Iraq and assist in the establishment of the Community Epidemiology Workgroup.
- Provide an implementation plan in the context of the overall project and an updated timeline, which shows how funds will be used to enhance logistics and financial management of the project.
- Provide a plan on how individuals served as a result of the supplemental activities will be incorporated into the ongoing Government Performance and Results Modernization Act of 2010 (GPRA) activities.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; telephone: (240) 276–2321; Email: *shelly.hara@samhsa.hhs.gov*.

Cathy Friedman,

SAMHSA Public Health Analyst.

[FR Doc. 2012–11702 Filed 5–14–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2012 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to the Natividad Medical Center in Salinas, CA.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $375,000 (total costs) for up to one year to the Natividad Medical Center in Salinas, CA. This is not a formal request for applications. Assistance will be provided only to the Natividad Medical Center based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: TI–12–009.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 509 of the Public Health Service Act, as amended.

Justification: Only the Natividad Medical Center in Salinas, CA is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to award a supplemental grant to the Natividad Medical Center in Salinas, CA, to enable Natividad to continue to develop and implement a training program to teach medical residents skills to provide evidence-based screening, brief intervention, brief treatment and referral to specialty treatment for patients who have, or are at risk for, a substance use disorder as required under the FY 2008 Request for Applications (RFA). This organization was funded under the SBIRT Medical Residency grant program (TI–08–003) in FY 2008. Under the leadership at that time, the Natividad Medical Center received a 4-year grant, although the SBIRT Medical Residency Program is a 5-year program. Subsequent to the original award, new leadership for the grant program has been put in place. As a result, the new leadership has determined that in order to execute the full requirements of the program and to meet the necessary client targets, the final year of funding is required. The purpose of this sole source award is to fund the last year of the 5-year cooperative agreement awarded under the initial announcement. SAMHSA will not accept an application from any other entity. Natividad Medical Center is in the unique position to be awarded one year funding because:

- Natividad Medical Center to date has successfully implemented the SBIRT Medical Residency Program since 2008, and a fifth year of funding would give the program an additional year to train more residents in SBIRT as well as allow the program to solidify sustaining its training program after the end of SAMHSA funding.
- Natividad Medical Center is the only SBIRT Medical Residency Program grantee in Central California, and serves minority, high-risk and vulnerable populations, including farm workers, low-income individuals, adolescents, elderly, homeless, veterans, and individuals with substance abuse and co-occurring disorders.

Contact: Cathy Friedman, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1097, Rockville, MD 20857; telephone: (240) 276–2316; Email: *cathy.friedman@samhsa.hhs.gov*.

Cathy Friedman,

SAMHSA Public Health Analyst.

[FR Doc. 2012–11725 Filed 5–14–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0020; OMB No. 1660–0009]

Agency Information Collection Activities: Submission for OMB review; Comment Request; The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, Appeals, Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is submitting a request for review and approval of a collection of information under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by June 1, 2012. The approval will authorize FEMA to use the collection through December 1, 2012. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

DATES: Comments must be submitted to OMB on or before June 14, 2012. You may submit comments to FEMA on or before July 16, 2012.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland

Security, Federal Emergency Management Agency, (Proposed New Information Collection—The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, Appeals, Cost Share Adjustment) and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806. Comments may also be submitted to the following:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2012–0020. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2012–0020 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, Office of the Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, 1800 South Bell Street Arlington, VA 20598–3005, facsimile number (202) 646–3347, or at email address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Act), requires that all requests for a declaration by the President that a major disaster or emergency exists shall be made by the Governor of the affected State. Section 401 of the Act stipulates that such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local government, and that Federal assistance is necessary. Section 401 of the Act further stipulates that as a part of such request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate response action under State law and direct the execution of the State's emergency plan and shall furnish specific information that must be included in a request for a major disaster declaration. Section 401 of the Act stipulates that the request must include specific information on the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster. In the event that a Governor's request for supplemental Federal assistance is denied, the Governor may appeal this denial under the provisions set forth in 44 CFR 206.46.

Collection of Information:

Title: The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, Appeals, Cost Share Adjustment.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0009.

Abstract: This collection includes a new FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency which asks for the same data that were stated and required in the previous narrative Governor's requests to the President requesting for supplemental Federal assistance. When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, State, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation shall include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation to the President and also provides a copy of the Governor's request. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House. In the event the Governor's request for a major disaster declaration or an emergency declaration is not granted, the Governor may appeal the decision.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 16.5 hours.

Estimated Total Annual Burden Hours: 11,088.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Frequency of Response: Annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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 technology, e.g., permitting electronic submission of responses. Submit comments to OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide FEMA with a copy of your comments. FEMA will continue to accept comments from interested persons through July 16, 2012. Submit comments to the FEMA address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

John G. Jenkins, Jr.,

Acting Director, Records Management Division, Office of the Chief Administrative Office, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–11677 Filed 5–14–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Consultation Sessions—Department of the Interior Information Technology Infrastructure Consolidation and Reorganization

AGENCY: Office of the Assistant Secretary for Policy, Management and Budget, Interior.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Policy, Management and Budget is hosting upcoming tribal consultation sessions. The purpose of the sessions is to obtain tribal input on the 2012 Information Technology

transformation realignment proposal as well as on how Information Technology transformation should be implemented in the coming years.

DATES: See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the tribal consultation sessions. We will consider all comments received by close of business on June 22, 2012.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for locations of the tribal consultation sessions. Submit comments by email to: ITT_consultation@ios.doi.gov or by U.S. mail to: IT Transformation Comments, Office of the Chief Information Officer, U.S. Department of the Interior, Mail Stop 7454, MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Andrew Jackson, Deputy Assistant Secretary for Technology, Information and Business Services, (202) 208–7966.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Policy, Management and Budget will be hosting the following tribal consultation sessions and invites tribal leaders to participate:

CONSULTATION SCHEDULE

Date	Location and time
June 13, 2012	8:00 am–noon, Office of the Special Trustee, 4400 Masthead St. NE., Room 145, Albuquerque, NM 87109.
Additional sessions to be announced.	

The agenda topics for each session will be:

Overview of IT Transformation Reorganization and Consolidation Proposal

IT Transformation and Indian Preference Positions

IT Transformation and Native-owned business contracting strategy

IT Transformation Customer Council and Ensuring Service Delivery

A brief description of each of the topics is provided below. Additional information is posted at: *http://www.doi.gov/ocio/it-transformation.cfm.*

Overview of IT Transformation Reorganization and Consolidation Proposal: The Assistant Secretary for Policy, Management and Budget is seeking tribal input on the current proposal to transfer IT infrastructure personnel, assets, and contracts from bureaus and offices to a newly established IT Shared Service Center in the Office of the Chief Information Officer (OCIO).

IT Transformation and Indian Preference Positions: Although analysis is still underway to determine the final number of impacted positions, approximately 125 Indian Preference positions would be transferred from the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, Bureau of Indian Education, and Office of Special Trustee to the OCIO. It is DOI's intention to maintain all of these positions as Indian Preference in the IT Shared Service Center. The Assistant Secretary for Policy, Management and Budget is seeking tribal input on the proposed approach to transfer Indian Preference positions into the IT Shared Service Center.

IT Transformation and Native-owned business contracting strategy: The Department of the Interior is committed to ensuring that Native-owned businesses will be engaged in the implementation of IT transformation. The Assistant Secretary for Policy, Management and Budget seeks tribal input on the IT transformation contracting strategy as it relates to Native-owned businesses.

IT Transformation Customer Council and Ensuring Service Delivery: To ensure that bureau and office IT infrastructure needs are met to ensure mission continuity, a Customer Council will be established. The Assistant Secretary for Policy, Management and Budget seeks tribal input on how the Customer Council is established and operated to ensure responsiveness to tribes' needs.

Dated: May 11, 2012.

Rhea Suh,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 2012–11863 Filed 5–14–12; 8:45 am]

BILLING CODE 4310–RH–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.EI0000.241A]

Call for Nominations and Comments for the 2012 National Petroleum Reserve-Alaska Oil and Gas Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office, under the authority of 43 CFR 3131.2, is issuing a call for nominations and comments on tracts for oil and gas leasing for the 2012 National Petroleum Reserve in Alaska (NPR–A) oil and gas lease sale. Available tracts are within the Northeast and Northwest Planning Areas of the NPR–A. A map of the NPR–A showing available areas is online at *http://www.blm.gov/ak.*

DATES: BLM–Alaska must receive all nominations and comments on these tracts for consideration on or before June 29, 2012.

ADDRESSES: Mail nominations and/or comments to: State Director, Bureau of Land Management; Alaska State Office; 222 West 7th Ave. Mailstop 13; Anchorage, AK 99513–7504. 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.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Deputy State Director, BLM-Alaska Division of Resources, 907–271–4413. 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: Describe and depict all tract nominations on the NPR–A map by outlining your area(s) of interest. NPR–A maps, legal descriptions of the tracts, and additional

information are available through the BLM-Alaska Web site at *http://www.blm.gov/ak.*

Ron Dunton,

Acting State Director.

[FR Doc. 2012–11757 Filed 5–14–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD07000, L51010000.FX0000.LVRWB10B4050]

Notice of Availability of the San Diego Gas & Electric Ocotillo Sol Solar Project Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act 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 Draft Environmental Impact Statement (EIS) and Draft California Desert Conservation Area (CDCA) Plan Amendment for the San Diego Gas & Electric (SDG&E) Ocotillo Sol Solar Project in Imperial County, California, and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS and Draft CDCA Plan Amendment within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, news media releases, and/or mailings.

ADDRESSES: You may submit comments related to the SDG&E Ocotillo Sol Solar Project by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *Email: BLM_CA_Ocotillo_Sol_Comments@blm.gov.*
- *Fax:* 951–697–5299, Attn: Noel Ludwig.
- *Mail:* California Desert District Office, Attn: Noel Ludwig, 22835 Calle San Juan de los Lagos, Moreno Valley, California 92553.

Copies of the SDG&E Ocotillo Sol Solar Project Draft EIS and Draft CDCA Plan Amendment are available in the California Desert District Office at the above address and at the El Centro Field Office, 1661 S. 4th Street, El Centro, California 92243.

FOR FURTHER INFORMATION CONTACT: Noel Ludwig, Project Manager, telephone 951–697–5368; address 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553; or email *CA_BLM_Ocotillo_Sol_Comments@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has received a right-of-way (ROW) application from SDG&E to construct, operate, maintain, and decommission the Ocotillo Sol project, a solar photovoltaic (PV) power plant facility, on approximately 115 acres of BLM-administered public lands in Imperial County, California. The site for the solar facility would be adjacent to the existing Imperial Valley Substation (IVS), 4 miles south of Interstate 8, approximately 5 miles north of the United States-Mexico border, 5 miles south of Seeley, 9 miles southwest of El Centro, and 82 miles east of San Diego. The proposed project site is located within the BLM's CDCA, the BLM's Yuha Basin Area of Critical Environmental Concern, and the Yuha Desert Management Area for flat-tailed horned lizard. A portion of the Juan Bautista de Anza National Historic Trail lies approximately 5 miles southwest of the project site at its closest point, and runs approximately north-south. The Jacumba Mountains Wilderness lies 11.7 miles to the west of the project site.

All proposed project components, including a temporary 15-acre construction lay-down area, would be located on BLM-administered lands subject to a ROW grant. The proposed Ocotillo Sol project components would include the PV modules and mounting structures, a maintenance building with an associated parking area, internal roads, inverters, transformers, and the combining switchgear. An existing road to the IVS would provide access to the proposed project site. New minor internal roads would be constructed between the module rows. The interconnection to the IVS would be via underground trench. Once approved and operational, the proposed Ocotillo Sol project is expected to have a 15 to 20 megawatt generating capacity, depending on the specific technology chosen.

In connection with its decision on the proposed Ocotillo Sol project, the BLM will also include consideration of potential amendments to the CDCA land use plan, as analyzed in the Draft EIS alternatives. The CDCA plan, while recognizing the potential compatibility of solar energy facilities on public lands, requires that all sites associated with power generation or transmission not identified in the Plan be considered through the land use plan amendment process. The BLM is deciding whether to amend the CDCA Plan to identify the Ocotillo Sol project site as available or unavailable for solar development. The Draft EIS describes the following five alternatives: (1) No Action/No CDCA Plan Amendment; (2) the Applicant's Proposed Project to construct, operate, maintain, and decommission a 100-acre solar PV facility on BLM-managed lands under an authorized ROW, plus use of a 15-acre temporary ROW for construction laydown; (3) a Reduced Footprint Alternative which would retain the 100-acre facility but reduce the laydown area from 15 acres to 2 acres; (4) No Action/Amend the CDCA Plan to identify the area as suitable for solar development; and (5) No Action/Amend the CDCA Plan to identify the area as unsuitable for solar development. All of the alternatives except the No Action/No CDCA Plan Amendment would include an amendment to the CDCA Plan. The BLM has identified the Reduced Footprint Alternative as the Preferred Alternative. The issues evaluated in the Draft EIS include the physical, biological, cultural, socioeconomic, and other resources that have the potential to be affected by the proposed project and alternatives. The issues are air quality, greenhouse gases and climate change, geology and soil resources, water resources, biological resources, cultural resources, paleontological resources, fire and fuels, lands and realty, special designations, recreation, visual resources, transportation and public access, noise and vibration, public health and safety, hazardous materials, socioeconomics, and environmental justice.

The BLM hosted two public scoping meetings in El Centro, California, on August 10, 2011. Both the afternoon and evening meetings were held at the Imperial County Executive Office. A news media release to introduce the project to the public and provide information about scoping meetings was issued on July 15, 2011 to local and regional newspapers, television and

radio stations, and via the BLM Web site. During the public scoping period, two Federal agencies, eight special interest groups, and three individuals provided comments.

Please note that public comments and information submitted—including names, street addresses, and email addresses of persons who submit comments—will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2

Cynthia Staszak,

Acting Deputy State Director, California.

[FR Doc. 2012–11667 Filed 5–9–12; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittee for the proposed Monument and Cassia Land Use Plan amendments will meet as indicated below.

DATES: On June 5, 2012, the Twin Falls District RAC subcommittee members for the proposed Monument and Cassia Land Use Plan amendments will meet at the Twin Falls District BLM office, 2536 Kimberly Road, Twin Falls, Idaho. The meeting will begin at 6:00 p.m. and end no later than 9:00 p.m. The public comment period for the RAC subcommittee meeting will take place 6:10 p.m. to 6:40 p.m. On June 26, the Twin Falls District Resource Advisory Council will tour Craters of the Moon National Monument area, following a public comment period to take place at the BLM Shoshone Field Office, Fire Ready Room, 400 West F Street, Shoshone, Idaho, 83352. The public comment for the RAC meeting on June 26 will take place 9:00 a.m. to 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the June 5th meeting, RAC subcommittee members will discuss rock climbing, camping, staging, trail-building and other recreational issues at Cedar Fields and Castle Rocks. The June 26th meeting will focus on sage-grouse issues and RAC members will tour the Craters of the Moon National Monument area to view the process being used by staff to inventory sage-grouse habitat throughout the Monument.

Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html* RAC meetings are open to the public.

Dated: May 3, 2012.

Jenifer Arnold,

District Manager (Acting).

[FR Doc. 2012–11716 Filed 5–14–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L12200000.PM0000 LXSS006F0000 261A; 12–08807; MO# 4500034358; TAS: 14X1109]

Notice of Public Meetings: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will hold two meetings in Nevada in fiscal year 2012. The meetings are open to the public.

Dates and Times: June 14–15 at the BLM Carson City District Office, 5665 Morgan Mill Road in Carson City, Nevada and a field trip on June 15; September 27–28 at the BLM Winnemucca District Office, 5100 East Winnemucca Blvd. and a field trip on September 28. Approximate meeting times are 8 a.m. to 4 p.m. However, meetings could end earlier if discussions and presentations conclude before 4 p.m. All meetings will include a public comment period at approximately 2 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone: (775) 885–6107, email: *lross@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at each meeting will include, but are not limited to:

- June 14–15 (Carson City)—rangeland health assessments, Carson City Resource Management Plan, greater sage-grouse conservation, recreation, and fire prevention (field trip on June 15).
- September 27–28 (Winnemucca)—landscape vegetative management and ongoing monitoring, Ruby Pipeline (field trip on September 28).

Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at the meetings.

Final agendas will be posted on-line at the BLM Sierra Front-Northwestern Great Basin Resource Advisory Council Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources at least 14 days before each meeting.

Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lisa Ross no later than 10 days prior to each meeting.

Dated: May 9, 2012.

Erica Haspiel-Szlosek,

Chief, Office of Communications.

[FR Doc. 2012–11717 Filed 5–14–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0043]

Notice of Determination of No Competitive Interest

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of Determination of No Competitive Interest for Proposed Right-of-Way Grant Area

SUMMARY: This notice provides the Bureau of Ocean Energy Management (BOEM) determination of no competitive interest (DNCI) for the area requested by Atlantic Grid Holdings LLC's (AGH) application for a right-of-way (ROW) grant to build an offshore electrical transmission system on the Outer Continental Shelf off the coasts of New York, New Jersey, Delaware, Maryland, and Virginia as described in the December 21, 2011, Notice of Proposed Grant Area and Request for Competitive Interest (RFCI) in the Area of the Atlantic Wind Connection Proposal (76 FR 79206).

DATES: Effective May 15, 2012.

FOR FURTHER INFORMATION CONTACT: For information on the DNCI, contact Mr. Casey Reeves, BOEM, Office of Renewable Energy Programs, 381 Elden Street HM 1328, Herndon, Virginia 20170–4817; phone (703) 787–1320.

SUPPLEMENTARY INFORMATION:

1. Authority

This DNCI is published pursuant to subsection 8(p)(3) of the Outer Continental Shelf (OCS) Lands Act, which was added by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR part 585. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and rights-of-way be issued ''on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.'' The authority to make such determinations has been delegated to BOEM.

2. Determination and Next Steps

This DNCI provides notice to the public that BOEM has determined there is no competitive interest in the proposed ROW grant area, as no indications of competitive interest were submitted in response to the RFCI.

In the RFCI, BOEM also solicited public comment on site conditions and multiple uses within the ROW grant area that would be relevant to the proposed project or its impacts. BOEM received public comment submissions from 56 parties in response. The comments received in response to the RFCI will be used to inform BOEM in subsequent agency decisions. After the publication of this DNCI, BOEM will proceed with the noncompetitive ROW grant process outlined at 30 CFR 585.306(b).

3. Map of the Area

A map of the area proposed for a ROW grant area can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.*

Dated: April 27, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–11823 Filed 5–14–12; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Impact on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the 15th report on the Andean Trade Preference Act (ATPA).

SUMMARY: Section 206 of the ATPA (19 U.S.C. 3204) requires the Commission to report biennially to the Congress by September 30 of each reporting year on the economic impact of the Act on U.S. industries and U.S. consumers, as well as on the effectiveness of the Act in promoting drug related crop eradication and crop substitution efforts by beneficiary countries. The Commission prepares these reports under investigation No. 332–352, *Andean Trade Preference Act: Impact on the U.S. Economy and on Andean Drug Crop Eradication.*

DATES:

July 3, 2012: Deadline for filing written submissions.

September 30, 2010: Transmittal of Commission report to Congress.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202–205–3228, or *walker.pollard@usitc.gov*), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819 or *margaret.olaughlin@usitc.gov*). General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background: Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit biennial reports to the Congress regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act from beneficiary countries;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on such domestic industries; and

(3) The estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

Notice of institution of this investigation for preparing these reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). This 15th report, covering 2010–2011, the period since the previous report, is to be submitted by September 30, 2012.

Written Submissions: Interested parties are invited to submit written

statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., July 3, 2012. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 C.P.R. 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 noon eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Congressional committee staff has indicated that the receiving committees intend to make the Commission's report available to the public in its entirety, and has asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the Congress. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: May 9, 2012.

James R. Holbein,

Secretary of the Commission.

[FR Doc. 2012–11685 Filed 5–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–745]

Certain Wireless Communication Devices, Portable Music and Data Processing Devices, Computers and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order with respect to respondent Apple, Inc.'s (''Apple'') accused products and a cease and desist order directed toward Apple.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on May 9, 2012. Comments should address whether issuance of a limited exclusion order and a cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the limited exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 6, 2012.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–745'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/*

handbook_on_electronic_ filing.pdf). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Dated: Issued: May 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11729 Filed 5–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–752]

Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order directed to the products of Microsoft Corporation of Redmond, Washington (''Microsoft'') that have been found to infringe the asserted patents and a cease and desist order directed to Microsoft.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on May 7, 2012. Comments should address whether issuance of a limited exclusion order and a cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the limited exclusion order and a cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on Friday, June 8, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–752'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: May 9, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11683 Filed 5–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–477 and 731–TA–1180–1181 (Final)]

Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of bottom mount combination refrigerator-freezers from Korea, provided for in subheadings 8418.10.00, 8418.21.00, 8418.99.40, and 8418.99.80 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce (Commerce) has determined are subsidized by the Government of Korea and sold in the United States at less than fair value (LTFV). The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Mexico of bottom mount combination refrigerator-freezers, provided for in subheadings 8418.10.00, 8418.21.00, 8418.99.40, and 8418.99.80 of the Harmonized Tariff Schedule of the United States, that Commerce has determined are sold in the United States at LTFV.

Background

The Commission instituted these investigations effective March 30, 2011, following receipt of a petition filed with the Commission and Commerce by Whirlpool Corp., Benton Harbor, MI. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of bottom mount combination refrigerator-freezers from Korea were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of bottom mount combination refrigerator-freezers from Korea and Mexico were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 23, 2011 (76 FR 72440). The hearing was held in Washington, DC, on March 13, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 9, 2012. The views of the Commission are contained in USITC Publication 4318 (May 2012), entitled *Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico: Investigation Nos. 701–TA–477 and 731–TA–1180–1181 (Final).*

Issued: May 9, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11684 Filed 5–14–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun not participating.

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Impact Evaluation of the YouthBuild Program; New Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and other Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (see 5 CFR 1320.5(a) and 1320.6). This information collection request (ICR) consists of three follow-up surveys for youth who were randomly assigned to either a treatment group or control group. The surveys will be fielded 12-, 30- and 48-months after random assignment into the study groups. This package requests clearance for these follow-up surveys and related respondent materials.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 16, 2012.

ADDRESSES: Send comments to Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue NW., Frances Perkins Bldg., Room N–5641, Washington, DC 20210. Telephone number: (202) 693–3647 (this is not a toll-free number). Email address: *pederson.eileen@dol.gov.* Fax number: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Impact Evaluation of the YouthBuild program is a 7-year experimental design impact evaluation funded by the ETA. This information collection covers the follow-up surveys administered to study participants at 12-, 30- and 48-months after random assignment. YouthBuild is a youth and community development program that addresses several core issues facing low-income communities: Available housing, youth education, employment and criminal behavior. The program primarily serves high school dropouts and focuses on helping them attain a high school diploma or general

educational development, or GED, and teaching them construction skills geared toward career placement. The evaluation will measure core program outcomes including educational attainment, postsecondary planning, employment, earnings, delinquency and involvement with the criminal justice system and social and emotional development. The evaluation represents an important opportunity for the Department to add to the growing body of knowledge about the impacts of ''second chance'' programs for youth who have dropped out of high school. Compared to peers who remain in school, high school dropouts are more likely to be disconnected from school and work, incarcerated, unmarried, and have children outside of marriage.

The evaluation of the YouthBuild program will address the following research questions:

- *Operation:* How is YouthBuild designed in each participating site? What are the key implementation practices that affect how the program operates? How does the local context affect program implementation and the services available to members of the control group?
- *Participation:* What are the characteristics of youth who enroll in the study? How are these characteristics shaped by YouthBuild recruitment and screening practices?
- *Impacts:* What are YouthBuild's impacts on educational attainment, planning, and aspirations? What are YouthBuild's impacts on employment, earnings, and job characteristics? What are YouthBuild's impacts on crime and delinquency? What are the program's impacts on social-emotional development, identity development, and self-regulation?
- *Costs:* How does the net cost per participant compare with the impacts the program generates?

The evaluation study started in June 2010 and is scheduled to continue until July 2017. MDRC, the prime contractor, is working with Mathematica Policy Research and Social Policy Research Associates to design and implement the evaluation. The study includes a baseline information collection, a Web-based questionnaire and a Web-based survey of YouthBuild grantees, site-specific qualitative and cost data, and three mixed-mode (Web and computer-assisted telephone interviewing) surveys of youth that will take place 12-, 30- and 48 months after random assignment.

The target population for the study is out-of-school youth aged 16–24, who are from low-income families, in foster care, offenders, migrants, disabled, or are children of incarcerated parents. Of the universe of YouthBuild programs, the study team will recruit 83 sites (60 Department-funded sites and 23 sites that did not receive Fiscal Year 2011 funding from the Department but did receive funding from the Corporation for National and Community Service [CNCS], referred to hereafter as CNCS-funded programs) and will seek to enroll 3,465 eligible participants into the study. Study participants will be randomly assigned to either the treatment group, which will be eligible for YouthBuild services, or to the control group which will not be eligible. Study participants will be followed for 4 years after random assignment.

Data for the study will be collected from YouthBuild grantees and from study participants through the following methods:

(1) *Grantee Questionnaire and Site Visits.* A grantee survey will provide information about the grantee sites that run individual YouthBuild programs. The grantee survey is mandatory and will be administered after programs are fully operational. It will request detailed information about the services each program offers, including the frequency and location of particular services, as well as more in-depth information about the staff and participants. The information from the grantee survey will be used to support the implementation analysis and will assess how outcomes may vary across YouthBuild program models. As part of the implementation analysis, the evaluation team will conduct site visits to all 83 sites. These visits will include classroom observations to assess the quality of instruction, youth focus groups, and semi-structured in-depth interviews with program staff and collect cost data to ascertain the cost of the program.

(2) *Baseline Data Forms Completed by Sample Group Members.* Prior to random assignment in the sites selected for this component of the study, all eligible youth participants will complete baseline data forms, which will include an Informed Consent Form, a Baseline Information Form, and a Contact Information Form. Taken together, these will provide participants with information about the study while collecting information for both future subgroup analysis and locating study participants during future study follow-ups.

(3) *Three Follow-up Surveys of Sample Group Members.* Members of both the treatment and control groups will complete follow-up surveys at 12-, 30-, and 48-months following random assignment. These surveys will request information about the services that participants have received through YouthBuild and other community service providers, as well as information about their educational attainment, postsecondary planning and engagement, employment, earnings, delinquency and involvement with the criminal justice system, and social and emotional development.

At this time, clearance is requested for the youth follow-up surveys.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the youth follow-up survey data collection for the Impact Evaluation of the YouthBuild Program. Comments are requested to:

- 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 information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

At this time, the Department is requesting clearance for the youth follow-up surveys.

Type of review: New information collection request.

Title: Impact Evaluation of the YouthBuild Program.

OMB Number: 1205—0NEW.

Affected Public: Low-income, disadvantaged youth and Department- and CNCS-funded YouthBuild Programs.

Cite/Reference/Form/etc: Workforce Investment Act of 1998 Section 172.

a. Youth Follow-up Surveys:

Frequency: Three times.

Total Responses: 8,316 (= 2,772 youth × three surveys).

Average Time per Response: 40 minutes per respondent for each response.

Estimated Total Burden Hours: 5,544 hours (= 2,772 responses × 40 minutes × three rounds).

Note that, due to rounding, the total amounts may differ from the sum of the components.

Comments submitted in response to this request will be summarized and/or

included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed at Washington, DC, this 8th day of May 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–11719 Filed 5–14–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Agricultural and Food Processing Clearance Order, ETA Form 790, Extension With Revisions, and the Agricultural and Food Processing Clearance Memorandum, ETA Form 795, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the extension of the expiration date (November 30, 2012) for ETA Forms 790 and 795 to November 30, 2015, and revisions made to ETA Form 790, with respect to the collection of information on the recruitment of agricultural workers. In situations where an adequate supply of workers does not exist locally, agricultural employers must use the Agricultural and Food Processing Clearance Order, ETA Form 790, to list the job opening with the State Workforce Agency (SWA) for recruiting temporary agricultural workers. The Agricultural and Food Processing Clearance Memorandum, ETA Form 795, is used by SWAs to extend job orders beyond their jurisdictions, give notice of action on a clearance order, request additional information, amend the order, report results, and accept or reject the extended job order. No changes were made to the ETA Form 795.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 16, 2012.

ADDRESSES: Submit written comments to: Amy Young, Office of Workforce Investment, Room C–4510, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW., Room C–4510, Washington, DC 20210. Telephone number: 202–693–2758 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015. Email: *nma@dol.gov*. A copy of the proposed information collection request (ICR) can be obtained by sending an email to *nma@dol.gov*, subject line: ETA Form 790/795 ICR copy.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, ETA is soliciting comments regarding the extension of the expiration date for the Agricultural and Food Processing Clearance Order Form (ETA Form 790) with changes and for the Agricultural and Food Processing Clearance Memorandum (ETA Form 795) without changes.

The Agricultural and Food Processing Clearance Order, ETA Form 790, is used by agricultural employers to list the job opening with the State Workforce Agencies (SWAs) for recruiting temporary agricultural workers in situations where an adequate supply of workers does not exist locally. The Agricultural and Food Processing Clearance Memorandum, ETA Form 795, is used by SWAs to extend job orders beyond their jurisdictions, give notice of action on a clearance order, request additional information, amend the order, report results, and accept or reject the extended job order.

Agricultural and Food Processing Clearance Order—ETA Form 790, With Changes. The changes made to ETA Form 790 are intended to streamline the information in the Form for specificity and clarification relating to the type of job offer information that is required from agricultural employers. These changes include adjustments to the box sizes, Spanish translations of information contained in the Form, rearranging and rewording information requested for specificity, and adding an Intrastate and Interstate Clearance Order Assurance statement for employers' signature.

II. Review Focus

The Department is particularly interested in comments which:

- 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 submissions of responses.

III. Current Actions

Type of Review: Extension with revisions for ETA Form 790 and extension without revisions for ETA Form 795.

Title: Agricultural and Food Processing Clearance Order, ETA Form 790, and Agricultural and Food Processing Clearance Memorandum, ETA Form 795.

OMB Number: 1205–0134.

Affected Public: Agricultural employers, SWAs, agricultural workers.

Form(s): ETA 790 and ETA 795.

Total Annual Respondents: 9,356.

Annual Frequency: Occasional.

Total Annual Responses: 9,356 (8,356 responses for ETA 790 and 1,000 responses for ETA 795).

Average Time per Response: 60 minutes for ETA 790 and 15 minutes for ETA 795.

Estimated Total Annual Burden Hours: 8,606 hours.

Total Estimated Annual Burden Cost for Respondents: $289,592.

Data collection activity	Number of respondents	Frequency	Total responses	Average time per response (minutes)	Burden hours
ETA Form 790	8,356	Occasionally	8,356	60	8,356
ETA Form 795	1,000	Occasionally	1,000	15	250
Total	9,356	Occasionally	9,356	75	8,606

The calculations are based on a normal biweekly work week, as most jobs are 8 hours a day for 10 days bi-weekly. There are 26 bi-weeks in a year. Therefore, 8 hours × 10 days × 26 bi-weeks = 2,080 hours worked in a year. Also the calculations are based on the average median salary of a state worker of $69,992 per year, and the estimated hours expended in completing and processing ETA Form 790 and ETA Form 795 respectively, providing the grand total of burden cost reflected above.

The burden is estimated to be 60 minutes for Form 790 and 15 minutes for Form 795:

- ETA 790—8,356 multiplied by 60 minutes = 501,360 divided by 60 = 8,356;
- ETA 795—1,000 multiplied by 15 minutes = 15,000 divided by 60 = 250;
- The average median salary of a state works is $69,992 divided by 2,080 hours = $33.65 P/Hr.;
- The annual hours of 8,606 multiplied by the hourly rate of $33.65 = $289,592 total annual burden cost.

The estimate above is based on the Bureau of Labor Statistics data provided in the Occupational Employment Statistics (OES) at *www.bls.gov.* In calculating the cost of completing and processing of the forms, the hourly rate of $33.65 per hour was used.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 8th day of May 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–11628 Filed 5–14–12; 8:45 am]

BILLING CODE 4510–FN–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 8:30 a.m. to 12:30 p.m., Tuesday, May 22, 2012.

PLACE: JW Marriott Starr Pass, 3800 W. Starr Pass Boulevard, Tucson, Arizona 85745.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Program reports; (2) management committee report; (3) Parks in Focus Program report; (4) financial scenarios report; (5) Board governance and (6) personnel matters.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTIONS CLOSED TO THE PUBLIC: Executive session to review personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Ellen K. Wheeler, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: May 7, 2012.

Ellen K. Wheeler,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2012–11455 Filed 5–14–12; 8:45 am]

BILLING CODE 6820–FN–M

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0107]

Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 19, 2012 to May 2, 2012. The last biweekly notice was published on May 1, 2012 (77 FR 25753).

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–2012–0107. You may submit comments by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0107. 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.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0107 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0107.
- *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.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.

- *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–2012–0107 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.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination; any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E–Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-

timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: November 17, 2011.

Description of amendment request: The proposed amendment would add Optimized ZIRLO™ as an allowable fuel rod cladding material and add the Westinghouse topical report on Optimized ZIRLO™ to the Millstone Power Station, Unit 3 (MPS3) Technical Specifications. In addition, a typographical error would be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specifications changes are: (1) Adding Optimized ZIRLO™ to the allowable or approved cladding materials to be used at MPS3, and (2) correcting a typographical error in the title of Reference 8 in Technical Specification (TS) 6.9.1.6.b. The proposed change of adding a cladding material does not result in an increase to the probability or consequences of an accident previously evaluated. Technical Specification 5.3.1 addresses the fuel assembly design, and currently specifies that ''Each assembly shall consist of a matrix of Zircaloy or ZIRLO® fuel rods * * *''. The proposed change will add Optimized ZIRLO™ to the approved fuel rod cladding materials listed in this technical specification. In addition, a reference to the topical report for Optimized ZIRLO™, WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, will be added to the listing of approved methods used to determine the core operating limits for MPS3 provided in Technical Specification 6.9.1.6.b.

Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLOTM,'' provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO®, as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. As the nuclear industry pursues longer operating cycles with increased fuel discharge burnup and fuel duty, the corrosion performance requirements for the nuclear fuel cladding become more demanding. Optimized ZIRLO™ was developed to meet these industry needs by providing a reduced corrosion rate while maintaining the composition and physical properties, such as mechanical strength, similar to standard ZIRLO®. In addition, margin to the fuel rod design criterion on fuel rod internal pressure has been impacted by increased fuel duty, use of integral fuel burnable absorbers, and corrosion/temperature feedback effects. Reducing the associated corrosion buildup reduces temperature feedback effects, providing additional margin to the fuel rod internal pressure design criterion. The fuel will continue to satisfy the pertinent design basis operating limits, so cladding integrity is maintained. There are no changes that will adversely affect the ability of existing components and systems to mitigate the consequences of any accident. Addition of Optimized ZIRLO™ to the allowable cladding materials for MPS3 therefore does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The NRC has previously approved use of Optimized ZIRLO™ fuel cladding material in Westinghouse fueled reactors provided that licensees ensure compliance with the Conditions and Limitations set forth in the NRC Safety Evaluation for the topical report. Confirmation that these Conditions are satisfied is performed under 10 CFR 50.59 as part of the normal core reload process.

The change to the title of Reference 8 in Technical Specification 6.9.1.6.b is administrative in nature and does not alter any of the requirements of the affected TS. The proposed change does not modify any plant equipment and does not impact any failure modes that could lead to an accident. Additionally, the proposed change has no effect on the consequence of any analyzed accident since the change does not affect any equipment related to accident mitigation.

Based on this discussion, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specifications change adds Optimized ZIRLO™ to the approved fuel rod cladding materials that may be used at MPS3. Optimized ZIRLO™ was developed to provide a reduced cladding corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from potential abnormal chemistry conditions. The fuel rod design bases are established to satisfy the general and specific safety criteria addressed in the MPS3 Final Safety Analysis Report (FSAR), Chapter 15 (Accident Analyses). The fuel rods are designed to prevent excessive fuel temperatures, excessive fuel rod internal gas pressures due to fission gas releases, and excessive cladding stresses and strains. Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO®, as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The original fuel design basis requirements have been maintained. No new single failure mechanisms will be created, and there are no alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors.

Therefore, the proposed changes to the MPS3 TSs related to the use of Optimized ZIRLO™ do not create the possibility of a new or different kind of accident or malfunction from those previously evaluated within the FSAR.

The change to the title of Reference 8 in Technical Specification 6.9.1.6.b is administrative in nature. It does not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system setpoints are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed changes. The proposed change does not introduce accident initiators or malfunctions that would cause a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The cladding materials used for fuel rods are designed and tested to prevent excessive fuel temperatures, excessive fuel rod internal gas pressures due to fission .as releases, and excessive cladding stresses and strains. Optimized ZIRLO™ was developed to meet these needs while providing a reduced cladding corrosion rate and maintaining the benefits of mechanical strength and resistance to accelerated corrosion from potential abnormal chemistry conditions. Reducing the associated corrosion buildup reduces temperature feedback effects, providing additional margin to the fuel rod internal pressure design criterion. Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™'' provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO®, as

well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The NRC has previously approved use of the Optimized ZIRLO™ fuel cladding material as detailed in their Safety Evaluation for this topical report. The original fuel design basis requirements have been maintained, and evaluations will be performed under 10 CFR 50.59 for each reload cycle that incorporates Optimized ZIRLO™ cladding to confirm that design and safety limits are satisfied. Therefore, inclusion of Optimized ZIRLO™ as an additional fuel rod cladding material for MPS3 does not result in a significant reduction in margin required to preclude or reduce the effects of an accident or malfunction previously evaluated in the FSAR.

The change to the title of Reference 8 in Technical Specification 6.9.1.6.b is administrative in nature. This change does not alter any of the requirements of the affected TS. The proposed change does not affect any of the assumptions used in the accident analysis, nor does it affect any operability requirements for equipment important to plant safety.

Therefore, the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: George A. Wilson.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 5, 2012.

Description of amendment request: The proposed amendments would implement a measurement uncertainty recapture power uprate at the McGuire Nuclear Station, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment changes the rated thermal power from 3411 megawatts thermal (MWt) to 3469 MWt; an increase of approximately 1.7% Rated Thermal Power. Duke Energy's evaluations have shown that all structures, systems and components (SSCs) are capable of performing their design function at the uprated power of 3469 MWt. A review of station accident analyses found that all acceptance criteria are still met at the uprated power of 3469 MWt.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed power uprate does not affect release paths, frequency of release, or the analyzed reactor core fission product inventory for any accidents previously evaluated in the Final Safety Analysis Report. Analyses performed to assess the effects of mass and energy releases remain valid. All acceptance criteria for radiological consequences continue to be met at the uprated power level.

As summarized in Sections IV, V, and VI of Enclosure 2, the proposed change does not involve any change to the design or functional requirements of the safety and support systems. That is, the increased power level neither degrades the performance of, nor increases the challenges to any safety systems assumed to function in the plant safety analysis.

While power level is an input to accident analyses, it is not an initiator of accidents. The proposed change does not affect any accident precursors and does not introduce any accident initiators. The proposed change does not impact the usefulness of the Surveillance Requirements (SRs) in evaluating the operability of required systems and components.

In addition, evaluation of the proposed TS change demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected. Since the impact on the systems is minimal, it is concluded that the overall impact on the plant safety analysis is negligible.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A Failure Modes and Effects Analysis of the new system was performed and the possible effects of failures of the new equipment and the increased power level on the overall plant systems were reviewed. This review found that no new or different accidents were created by the new equipment or the uprated power levels.

No installed equipment is being operated in a different manner. The proposed changes have no significant adverse affect on any safety-related structures, systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. The uprated power does not create any new accident initiators. Credible malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Although the proposed amendment increases the operating power level of the plants, it retains the margin of safety because it is only increasing power by the amount equal to the reduction in uncertainty in the heat balance calculation. The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Analyses demonstrate that the design basis continues to be met after the measurement uncertainty recapture (MUR) power uprate. Components associated with the reactor coolant system pressure boundary structural integrity, including pressure-temperature limits, vessel fluence, and pressurized thermal shock are bounded by the current analyses. Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions.

The current McGuire safety analyses including the revised design basis radiological accident dose calculations, bound the power uprate.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salgado.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 22, 2011.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to allow single discharge header operation of the nuclear service water system (NSWS) for a time period of 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed single discharge header operation configuration for NSWS operation and the associated proposed TS and Bases changes have been evaluated to assess their impact on plant operation and to ensure that the design basis safety functions of safety related systems are not adversely impacted. During single discharge header operation, the operating NSWS header will be able to discharge all required NSWS flow from safety related components. [Probabilistic risk assessment] PRA has demonstrated that due to the limited proposed time in the single discharge header configuration, the resultant plant risk remains acceptable.

The purpose of this amendment request is to ultimately facilitate inspection and maintenance of the Unit 2 NSWS discharge headers within the Auxiliary Building. Therefore, NRC approval of this request will ultimately help to enhance the long-term structural integrity of the NSWS and will help to ensure the system's reliability for many years.

In general, the NSWS serves as an accident mitigation system and cannot by itself initiate an accident or transient situation. The only exception is that the NSWS piping can serve as a source of floodwater to safety related equipment in the Auxiliary Building or in the diesel generator buildings in the event of a leak or a break in the system piping. The probability of such an event is not significantly increased as a result of this proposed request. Safety related NSWS piping is tested and inspected in accordance with all applicable inservice testing and inservice inspection requirements. Given the negligible influence of flooding events on the NSWS for the submittal configuration (i.e., no dominant contribution from floods), it is judged that the analyses assessing the influence of these events provide an acceptable evaluation of the contribution of the flood risk for the requested Completion Time of 14 days.

The proposed 14 day TS Required Action Completion Time has been evaluated for risk significance and the results of this evaluation have been found acceptable. The probabilities of occurrence of accidents presented in the [updated final safety analysis report] UFSAR will not increase as a result of implementation of this change. Because the PRA analysis supporting the proposed change yielded acceptable results, the NSWS will maintain its required availability in response to accident situations. Since NSWS availability is maintained, the response of the plant to accident situations will remain acceptable and the consequences of accidents presented in the UFSAR will not increase.

Second Standard

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Implementation of this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed request does not affect the basic operation of the NSWS or any of the systems that it supports. These include the Emergency Core Cooling System, the Containment Spray System, the Containment Valve Injection Water System, the Auxiliary Feedwater System, the Component Cooling Water System, the Control Room Area Ventilation System, the Control Room Area Chilled Water System, the Auxiliary Building Filtered Ventilation Exhaust System, or the Diesel Generators. During proposed single discharge header operation, the NSWS will remain capable of fulfilling all of its design basis requirements. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new type of accident outside those assumed in the UFSAR.

Third Standard

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Implementation of this amendment will not involve a significant reduction in any margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed TS amendment. During single discharge header operation, the NSWS and its supported systems will remain capable of performing their required functions. No safety margins will be impacted.

The PRA conducted for this proposed amendment demonstrated that the impact on overall plant risk remains acceptable during single discharge header operation. Therefore, there is not a significant reduction in the margin of safety.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salgado.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: March 26, 2012, as supplemented by letter dated April 2, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Limiting Condition for Operation 3.1.1.2, TS Surveillance Requirement 4.19.2, TS 6.9.6 ''Steam Generator Tube Inspection Report,'' and TS 6.19 ''Steam Generator (SG) Program,'' changing certain inspection periods and making other administrative changes and clarifications. These proposed changes are consistent with Technical Specification Task Force (TSTF) Traveler, TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of a SGTR is not increased. The consequences of a SGTR are bounded by the conservative assumptions in the design basis accident analysis. The proposed change will not cause the consequences of a SGTR to exceed those assumptions. The proposed change to reporting requirements and clarifications of the existing requirements have no affect on the probability or consequences of SGTR.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their

method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes. Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena Khanna.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of amendment request: October 24, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.5, ''Loss of Power (LOP) Diesel Generator (DG) Start Instrumentation,'' to correct the nonconservative first level undervoltage relays (FLUR) limits contained in Surveillance Requirement (SR) 3.3.5.3; revise the Final Safety Analysis Report Update (FSARU) Appendix 6.2D and Sections 6.3, 15.3, and 15.4; revise the loss-of-coolant accident (LOCA) control room operator and offsite dose analysis of record described in the FSARU; and provide a new process for revising input values to this analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The diesel generators (DGs) provide a source of emergency power when offsite power is either unavailable, or is degraded below a point that would allow safe unit operation. Undervoltage protection will generate a loss of power (LOP) DG start if a loss of voltage or degraded voltage condition occurs on the 4.16 kV [kilovolt] vital bus. The proposed technical specification (TS) change affects the voltage at which an emergency bus that is experiencing sustained degraded voltage will disconnect from offsite power and transfer to the DGs. While the TS limits are revised, the function remains the same and will continue to be performed. The first level undervoltage relays (FLUR) and second level undervoltage relays (SLUR) will continue to meet their required function to transfer 4.16 kV buses to the DGs in the event of insufficient offsite power voltage. This transfer will ensure that the class 1E equipment is capable of performing its function to meet the requirements of the accident analysis. The revised TS surveillance requirement (SR) 3.3.5.3 setpoints will not cause unnecessary separation of engineered safety [feature] (ESF) loads from the 230 kV System. The proposed change does not affect any accident initiators or precursors.

The ESF function delay times are bounding input parameters that represent actual plant performance for when these ESF functions can be credited to begin operating after an accident has already occurred. The increased ESF delay times are not physically related to the cause of any accident. Therefore, the increase in ESF delay times do not introduce the possibility of a change in the frequency of an accident previously evaluated. The revised LOCA control room operator and offsite dose analysis results remain within the applicable [General Design Criterion (GDC)] 19–1971 and 10 CFR 100 limits. Therefore, the proposed activity does not result in an increase in the consequence of an accident previously evaluated in the FSARU.

Therefore, the probability or consequences of any accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The revised surveillance requirements will continue to assure equipment reliability such that plant safety is maintained or will be enhanced. An increased ESF delay time is not an initiator of any accident and does not create any new system interactions or failure modes of any structures, systems or components (SSC).

Equipment important to safety will continue to operate as designed. The changes do not result in adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Diablo Canyon Power Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The DGs provide emergency electrical power to the safeguard buses in support of equipment required to mitigate the consequences of design basis accidents and anticipated operational occurrences, including an assumed loss of all offsite power. SR 3.3.5.3 verifies that the LOP DG start instrumentation channels respond to measured parameters within the necessary range and accuracy. The proposed amendment corrects nonconservative values in the TS limits for the degraded voltage protection function. The proposed change to this SR assures that design requirements of the emergency electrical power system continue to be met.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed increase in ESF delay times is considered an analysis input change. However, the safety analyses continue to meet all applicable acceptance criteria. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs important to safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, 77 Beale Street, Room 2496, Mail Code B30A, San Francisco, CA 94105.

NRC Branch Chief: Michael T. Markley.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of amendment request: January 25, 2012.

Description of amendment request: The proposed amendment would revise the Diablo Canyon Power Plant, Units 1 and 2, Updated Final Safety Analysis Report Update (UFSAR) Section 4.3.2.2, ''Power Distribution,'' to allow use of the BEACON Power Distribution Monitoring System methodology described in Westinghouse Electric Company LLC (Westinghouse) WCAP–12472–P–A, Addendum 1–A, ''BEACON Core Monitoring and Operations Support System,'' dated January 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is to revise the Updated Final Safety Analysis Report to allow the use of the BEACON code methodology contained in WCAP–12472–P–A, Addendum 1–A. The BEACON code will be used to perform core flux mapping to support the performance of Technical Specification surveillances for power distribution limits and the use of the BEACON code will not cause an accident.

No physical changes are being made to the plant. With the change, Diablo Canyon Power Plant will continue to operate within the power distribution limits contained in the plant Technical Specifications.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical changes to the plant. The BEACON code performs flux mapping of the core and is not used to control the performance of any plant equipment. Therefore, use of the BEACON code cannot cause an accident. If it is determined that the plant is not operating within the power distribution limits during the performance of a Technical Specification Surveillance using BEACON, then the applicable Technical Specification Condition and Required Action(s) will be entered.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

With the use of the BEACON code methodology contained in WCAP–12472–P–A, Addendum 1–A, the plant will continue to operate within the power distribution limits contained in the plant Technical Specifications. The use of the BEACON code does not involve any changes to the fuel, reactor vessel, or containment fission product barriers. The use of the BEACON code methodology includes requirements for control of uncertainties associated with use of the methodology and therefore there will be no impact on the accident analyses that are contained in the Updated Final Safety Analysis Report.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, 77 Beale Street, Room 2496, Mail Code B30A, San Francisco, CA 94105.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: March 8, 2012.

Description of amendment request: The proposed amendment would revise (1) Technical Specification (TS) 3.3.7, ''Control Room Emergency Ventilation System (CREVS) Actuation Instrumentation,'' by changing the Allowable Value for the main control room air intake radiation monitoring instrumentation in Table 3.3.7–1 from ≤ 9.45E–05 micro-Curie/cubic centimeter (μCi/cc) (3,308 counts per minute (cpm)) to ≤ 1.647E–04 μCi/cc (3,308 cpm); and (2) TS 3.4.16, ''RCS [reactor coolant system] Specific Activity,'' by lowering the DOSE EQUIVALENT 1–131 spike limit from 21 micro-Curie/gram (μCi/gm) to 14 μCi/gm in Required Action A.1 and Condition C.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed TS changes do not adversely affect any fission product barrier nor do they alter the safety function of safety systems, structures, or components, or their roles in accident prevention or mitigation. They do not change any credited operator actions nor do they physically change any plant system, structure, or component. The amount of iodine in the primary coolant and the Allowable Value for the main control room radiation monitors do not affect the initiation of any accident or transient. Therefore, the proposed amendment does not result in a significant increase in the probability of an accident previously evaluated. The changes do not adversely affect the protective and mitigative capabilities of the plant. The SSCs [structures, systems, and components] will continue to perform their intended safety functions. The proposed reduction in the amount of DOSE EQUIVALENT 1–131 (DEI–131) in the reactor coolant following a load transient has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident.

The calculated radiological doses remain within the limits prescribed in 10 CFR Part 100 and GDC–19 [General Design Criterion 19 of Appendix A to 10 CFR Part 50] and are consistent with the methodology and acceptance criteria of Section 15.6.3 of NUREG–0800 and Appendix A of Section 15.1.5 of NUREG–0800.

The change to the Allowable Value for the main control room radiation monitors continues to ensure that the monitors are capable of performing their intended design function of isolating the main control room subsequent to an accident.

Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes do not alter the configuration of the plant nor do they directly affect plant operation. The proposed TS changes do not result in the installation of any new equipment or system or the modification of any existing equipment or systems. No new operation procedures, conditions, or modes are created. As a result, the proposed TS changes do not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing basis. There will be no adverse effects or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The calculated radiological doses remain within the limits prescribed in 10 CFR Part 100 and GDC–19, and are consistent with the methodology and acceptance criteria of

Section 15.6.3 of NUREG–0800 and Appendix A of Section 15.1.5 of NUREG–0800. The Allowable Value for the main control room radiation monitor continues to ensure that the monitors are capable of performing their intended design function of isolating the main control room subsequent to an accident.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Stephen J. Campbell.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: May 6, 2010, as supplemented by letters dated February 11, 2011, April 28, 2011, July 19, 2011, and September 16, 2011.

Brief description of amendments: The amendments revised the Technical Specifications related to supporting operation with 24-month fuel cycles. Specifically, the change would revise the frequency of certain TS Surveillance Requirements (SRs) from ''18 months'' to ''24 months,'' in accordance with the guidance of Generic Letter (GL) 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle.''

Date of Issuance: April 20, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—379, Unit 2—381, and Unit 3—380.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register**:* September 7, 2010 (75 FR 54394). The supplements dated February 11, 2011, April 28, 2011, July 19, 2011, and September 16, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 2012.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 11, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.4, ''RCS Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; to establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and to make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with the guidance contained in NRC-approved Technical Specifications Task Force (TSTF) change traveler TSTF–514, Revision 3, ''Revise BWR [Boiling-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The NRC announced the availability of this TS improvement in the **Federal Register** on December 17, 2010 (75 FR 79048), as part of the consolidated line item improvement process.

Date of issuance: April 23, 2012.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 224.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register**:* May 31, 2011 (76 FR 31373).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 2012.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3), Westchester County, New York

Date of application for amendment: September 16, 2011.

Brief description of amendment: The amendment revises the Inservice Testing Program, Technical Specification (TS) 5.5.6 for IP2 and TS 5.5.7 for IP3.

Date of issuance: May 2, 2012.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 267 and 245.

Facility Operating License Nos. DPR–26 and DPR–64: The amendment revised the License and the TSs.

*Date of initial notice in **Federal Register**:* December 27, 2011 (76 FR 80976).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2012.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: April 6, 2011, supplemented by letter dated October 28, 2011.

Brief description of amendment: The amendment revised Technical Specification 5.5.14, ''Containment Leak Rate Testing Program,'' by replacing the reference to RG 1.163, ''Performance-Based Containment Leak-Test Program,'' with a reference to Topical Report NEI 94–01, Revision 2–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J,'' as the implementation document for the 10 CFR Part 50, Appendix J, Option B, performance-based containment leak rate testing program at the Palisades Nuclear Plant (PNP). This amendment allows PNP to extend its performance-based containment integrated leakage rate test (ILRT, or Type A test) interval up to 15 years. Accordingly, the licensee has also requested to extend its current Type A test interval from the current one-time approved 11.25 years to 15 years so that the next Type A test can be conducted by May 3, 2016, instead of the current due date of August 3, 2012.

Date of issuance: April 23, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 247.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 14, 2011, (76 FR 34766).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 2012.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 28, 2011, as supplemented by letter dated January 26, 2012.

Brief description of amendment: The amendment increased the numeric values of the Safety Limit Minimum Critical Power Ratio in Technical Specification Section 2.1.1.2 from 1.09 to 1.11 for two recirculation loop operation (TLO) and from 1.12 to 1.14 for single recirculation loop operation (SLO). The Minimum Critical Power Ratio Safety Limit values for both TLO and SLO are determined in accordance with the requirements set forth in NRC-approved General Electric Company (GE) licensing topical report NEDC–33173P, ''Applicability of GE Methods to Expanded Operating Domains,'' Revision 0, February 2006.

Date of issuance: April 20, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 189.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* February 14, 2012 (77 FR 8291).

The supplemental letter dated January 26, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 2012.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2011.

Brief description of amendment: The amendment modified the Technical Specifications (TSs) as a result of a revised Fuel Handling Accident analysis. The new analysis determined that the current TSs may not be conservative for all scenarios. The amendment provides new applicability and/or action language in the TSs that includes load movements over irradiated fuel assemblies. Specifically, the amendment modified the following TSs: TS 3.3.3.1 (Radiation Monitoring Instrumentation); TS 3.7.6.1 (Control Room Emergency Air Filtration System); TS 3.7.6.3 (Control Room Air Temperature—Operating); TS 3.7.6.4 (Control Room Air Temperature—Shutdown); TS 3.8.1.2 (A.C. [Alternating Current] Sources—Shutdown); TS 3.8.2.2 (D.C. [Direct Current] Sources—Shutdown); TS 3.8.3.2 (Onsite Power Distribution—Shutdown); TS 3.9.3 (Decay Time); TS 3.9.4 (Containment Building Penetrations); and TS 3.9.7 (Crane Travel—Fuel Handling Building).

Date of issuance: April 25, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 235.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 23, 2011 (76 FR 52701).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendment: March 14, 2011, as supplemented by letters dated September 2, 2011, and November 18, 2011.

Brief description of amendment: The license amendment request changes the facility operating licenses and the Technical Specifications (TSs) 3.4.12–1, for the Braidwood Station, Units 1 and 2 and Byron Station, Units 1 and 2. The proposed change will reflect standard wording incorporated in NUREG–1431, Revision 3, ''Standard Technical Specifications—Westinghouse Plants,'' for plants with installed bypass test capability. The proposed change is needed to support utilization of bypass test capability that is planned to be installed, which will reduce the potential for unnecessary reactor trips or safeguards actuation due to a failure or transient in a redundant channel.

Date of issuance: March 30, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Braidwood Unit 1—169; Braidwood Unit 2—169; Byron Unit 1—176 and Byron Unit 2—176.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register****:* August 16, 2011 (76 FR 50759).

The September 2, 2011, and November 18, 2011, supplements contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: April 6, 2011.

Brief description of amendments: The amendment modifies the actions to be taken when the atmospheric gaseous radioactivity monitor is the only operable reactor coolant leakage detection instrument. The modified actions require additional, more frequent monitoring of other indications of Reactor Coolant System (RCS) leakage and provide appropriate time to restore another leakage detection instrument to operable status. This change is consistent with the U.S. Nuclear Regulatory Commission (NRC) approved safety evaluation on Technical Specification Task Force (TSTF) Traveler, TSTF–514–A, Revision 3, ''Revised BWR [boiling-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation'' dated November 24, 2010.

Date of issuance: April 23, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 283 and 286.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** September 6, 2011, (76 FR 55128).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2012.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: March 8, 2012, as supplemented by letters dated March 23, March 29, and April 2, 2012.

Brief description of amendment: The amendment allows an extension of 24 hours to the Completion Time for Condition C in the Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specification (TS) 3.8.7, ''Distribution Systems—Operating,'' to allow a Unit 1 4160 V subsystem to be de-energized and removed from service for 96 hours to perform modifications on the bus. It also allows an extension of 24 hours to the Completion Time for Condition A in SSES Unit 2 TS 3.7.1, ''Plant Systems—RHRSW [residual heat removal service water system] and UHS [ultimate heat sink],'' to allow the UHS spray array and spray array bypass valves associated with applicable division RHRSW, and in Condition B, the applicable division Unit 2 RHRSW subsystem, to be inoperable for 96 hours during the Unit 1 4160 V bus breaker control logic modifications.

Date of issuance: April 19, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 258.

Facility Operating License No. NPF–22: This amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 16, 2012 (77 FR 15814).

The supplements dated March 23, March 29, and April 2, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2012, which also contains its final no significant hazards consideration determination.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas Company, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Jenkinsville, South Carolina

Date of application for amendment: October 12, 2011, as supplemented by letter dated April 5, 2012.

Brief description of amendment: This amendment revised the Virgil C. Summer Nuclear Station (VCSNS) Technical Specification to allow a one-time extension of the 10-year interval for the containment integrated leakage rate test such that the existing test interval would be extended from 120 months to 130 months.

Date of Issuance: May 1, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 189.

Renewed Facility Operating License No. NPF–12: Amendment revises the License and Technical Specifications.

Date of initial notice in ***Federal Register***: December 13, 2011 (76 FR 77571).

The licensee's supplemental letter contained clarifying information, did not change the scope of the original license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2012.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: April 16, 2010, as supplemented by letters dated February 23, May 12, October 7, 2011, and April 18, 2012 (TS–473).

Brief description of amendment: The licensee proposes to transition Unit 1 to AREVA fuel. To support the transition to AREVA fuel, the proposed amendment adds the AREVA NP analysis methodologies to the list of approved methods to be used in determining the core operating limits in the core operating limits report. Additional technical specification changes are requested to reflect the AREVA NP specific methods for monitoring and enforcing of the thermal limits. The licensee's request is for non-extended power uprate conditions (i.e., 105 percent of Original Licensed Thermal Power level) only.

Date of issuance: April 27, 2012.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 281.

Renewed Facility Operating License No. DPR–33: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 10, 2011 (76 FR 1467). The supplemental letters provided clarifying information that did not expand the scope of the original application or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 3rd day of May 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–11599 Filed 5–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on May 22–23, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 22, 2012—1:00 p.m. Until 5:00 p.m.; Wednesday, May 23, 2012—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review and discuss the staff's plans for implementation of the Near-Term Task Force Tier 3 Recommendations. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 8, 2012.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–11714 Filed 5–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on May 24, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, May 24, 2012—8:30 a.m. Until 5 p.m.

The Subcommittee will review the Safety Evaluation Report (SER) associated with the Grand Gulf Nuclear Station Unit 1 extended power uprate application. The Subcommittee will hear presentations by and hold discussions with the NRC staff, the licensee (Entergy Operations, Inc.), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with

security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 8, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–11761 Filed 5–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of May 14, 21, 28, June 4, 11, 18, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike Rockville, Maryland.

STATUS: Public and Closed.

Week of May 14, 2012

There are no meetings scheduled for the week of May 14, 2012.

Week of May 21, 2012—Tentative

There are no meetings scheduled for the week of May 21, 2012.

Week of May 28, 2012—Tentative

Friday, June 1, 2012

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM), (Public Meeting), (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 4, 2012—Tentative

Thursday, June 7, 2012

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS), (Public Meeting), (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 11, 2012—Tentative

Friday, June 15, 2012

9:30 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Public Meeting) To be held at FERC Headquarters, 888 First Street NE., Washington, DC., (Contact: Jim Andersen, 301–415–3565).

This meeting will be webcast live at the Web address—*www.ferc.gov*.

Week of June 18, 2012—Tentative

There are no meetings scheduled for the week of June 18, 2012.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: May 10, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–11849 Filed 5–11–12; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

OSC Forms And Survey Renewal for FY 2012—Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice For public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of four previously approved information collections consisting of three complaint forms and an electronic survey form. These collections are listed below. The current OMB approval for Forms OSC–11, OSC–12, OSC–13, and the OSC Survey expire 9/30/12. We are submitting all three forms and the electronic survey for renewal, based on the upcoming date of expiration. There are no changes being submitted with this request for renewal of the use of these forms. Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection for the second time. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections 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.

DATES: Comments should be received by June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Karl Kammann, Director of Finance, at the address shown above; by facsimile at (202) 254–3711.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code. *Title of Collections:* (1) Form OSC–11, (Complaint of Possible Prohibited Personnel Practice of Other Prohibited Activity; (2) Form OSC–12 (Information about filing a Whistleblower Disclosure with the Office of Special Counsel); (3) Form OSC–13 (Complaint of Possible Prohibited Political Activity (Violation of the Hatch Act)); (4) Office of Special Counsel (OSC) Annual Survey; OMB Control Number 3255–0003, Expiration 09/30/12.

Copies of the OSC Forms 11, 12, and 13 can be found at: *http://www.osc.gov/RR_OSCFORMS.htm.* OSC is also required to conduct an annual survey of

individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall—(1) Determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at *http://www.osc.gov/RR_AnnualReportsToCongress.htm* or by calling OSC at (202) 254–3600.

The survey form for the collection of information is available for review by calling OSC at (202) 254–3600.

Type of Information Collection Request: Approval of previously approved collection of information that expires on September 30, 2012, with no revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of OSC Form Respondents: 3,950

Estimated Annual Number of Survey Form Respondents: 320.

Frequency of use of OSC forms: daily.

Frequency of Survey form use: Annual.

Estimated Average Amount of Time for a Person to Respond using OSC forms: 64 minutes.

Estimated Average Amount of Time for a Person to Respond to survey: 12 minutes.

Estimated Annual Burden for the OSC forms: 2,899 hours.

Estimated Annual Survey Burden: 109 hours.

These forms are used by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC. This survey form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) Apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: May 9, 2012.

Mark Cohen,

Special Counsel.

[FR Doc. 2012–11760 Filed 5–14–12; 8:45 am]

BILLING CODE 7405–01–P

OFFICE OF PERSONNEL MANAGEMENT

Revision of Information Collection: Combined Federal Campaign Applications

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Combined Federal Campaign, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revision to an existing information collection request, Combined Federal Campaign Applications OMB Control No. 3206–0131, which include OPM Forms 1647 A–E. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Personnel Management is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until July 16, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Combined Federal Campaign, 1900 E. Street NW., Washington, DC 20415, Attention: Curtis Rumbaugh or sent via electronic mail to *curtis.rumbaugh@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Combined Federal Campaign, 1900 E. Street NW., Washington, DC 20415, Attention: Curtis Rumbaugh or sent via electronic mail to *curtis.rumbaugh@opm.gov.*

SUPPLEMENTARY INFORMATION: The Combined Federal Campaign Eligibility Applications are used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign. The proposed revisions reflect changes in eligibility guidance from the Office of Personnel Management.

Analysis

Agency: Combined Federal Campaign, Office of Personnel Management.

Title: OPM Forms 1647 A–E, OMB Control No. 3206–0131.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 25,000.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 75,000 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–11726 Filed 5–14–12; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Meeting of the CFC–50 Commission

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The CFC–50 Advisory Commission will hold its fourth and final meeting on May 29, 2012, at the time and location shown below. The Commission shall advise the Director of the U.S. Office of Personnel Management (OPM) on strengthening the integrity, the operation and effectiveness of the Combined Federal

Campaign (CFC) to ensure its continued growth and success. The Commission is an advisory committee composed of Federal employees, private campaign administrators, charitable organizations and ''watchdog'' groups. The Commission is co-chaired by Thomas Davis and Beverly Byron.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Commission at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: May 29, 2012 at 2 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Executive Conference, 5th Floor, Theodore Roosevelt Building, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Keith Willingham, Director, Combined Federal Campaign, U.S. Office of Personnel Management, 1900 E St. NW., Suite 6484, Washington, DC 20415. Phone (202) 606–2564, FAX (202) 606–5056 or email at *cfc@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–11724 Filed 5–14–12; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the May 24, 2012, public meeting scheduled to be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street NW., Washington, DC. The original **Federal Register** notice announcing this meeting was published Friday, December 2, 2011, at 76 FR 75567.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2838; email *pay-leave-policy@opm.gov;* or FAX: (202) 606–4264.

U.S. Office of Personnel Management.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2012–11728 Filed 5–14–12; 8:45 am]

BILLING CODE 6325–49–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–15 and CP2012–22; Order No. 1334]

Product List Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select and Parcel Return Service Contract 3 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: May 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Parcel Select and Parcel Return Service Contract 3 to the competitive product list.[1] The Postal Service asserts that Parcel Select and Parcel Return Service Contract 3 is a ''competitive product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3).'' *Id.* at 1. The Request has been assigned Docket No. MC2012–15.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.,* Attachment B. The instant contract has been assigned Docket No. CP2012–22.

Request. To support its Request, the Postal Service filed the following six attachments:

- Attachment A—a redacted version of Governors' Decision No. 11–6 and accompanying analysis. An explanation and justification is provided in the Governors' Decision and analysis filed in the unredacted version under seal;
- Attachment B—a redacted version of the instant contract;
- Attachment C—the proposed change in the Mail Classification Schedule;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a)(1), through (a)(3); and
- Attachment F—an Application for Non-public Treatment of the material filed under seal. The materials filed under seal are the unredacted version of the instant contract and the required cost and revenue data.

In the Statement of Supporting Justification, Karen F. Key, Manager, Shipping Products, asserts that the instant contract will cover its attributable costs, make a positive contribution to cover institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's institutional costs. *Id.,* Attachment D at 1. Ms. Key contends that there will be no issue of subsidization of market dominant products by competitive products as a result of the instant contract. *Id.*

Instant contract. The Postal Service filed a revised version of the instant contract on May 7, 2012. *Id.,* Attachment B. It is scheduled to become effective on the day the Commission issues all necessary regulatory approvals or June 1, 2012, whichever date is later. *Id.* at 8. It will expire on May 31, 2019 unless, among other things, either party terminates the agreement with 12 months' written notice to the other party. *Id.* The Postal Service represents that the instant contract is consistent with 39 U.S.C. 3633. *Id.,* Attachment e.

The Postal Service filed much of its supporting materials, including the unredacted version of the instant contract, under seal. *Id.,* Attachment F. It maintains that the unredacted Governors' decision, the unredacted version of the instant contract, and supporting documents establishing compliance with 39 U.S.C. 3633 and 39CFR 3015.5 should remain

[1] Request of the United States Postal Service to Add Parcel Select and Parcel Return Service Contract 3 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 4, 2012. On May 7, 2012, the Postal Service filed a Notice of the United States Postal Service of Filing Errata to the Request and Notice, May 7, 2012 (Request). The Request supersedes the filing of May 4, 2012.

confidential. *Id.* at 1. The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.*

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–15 and CP2012–22 to consider the Request and the instant contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in these dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 17, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–15 and CP2012–22 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due not later than May 17, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–11675 Filed 5–14–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66952; File No. 4–443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures To Facilitate the Listing and Trading of Standardized Options To Add BOX Options Exchange LLC as a Sponsor

May 9, 2012.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on May 2, 2012, BOX Options Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standardized Options (''OLPP'').[3] The amendment proposes to add BOX as a Sponsor of the OLPP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The current Sponsors of the OLPP are BATS, BSE., CBOE, C2, ISE., NYSE Amex, NYSE Arca, OCC, Phlx and Nasdaq. The proposed amendment to the OLPP would add BOX as a Sponsor of the OLPP. A national securities exchange may become a Sponsor if it satisfies the requirement of Section 7 of the OLPP. Specifically an Eligible Exchange [4] may become a Sponsor of the OLPP by: (i) Executing a copy of the OLPP, as then in effect; (ii) providing each current Plan Sponsor with a copy of such executed Plan; and (iii) effecting an amendment to the OLPP, as specified in Section 7(ii) of the OLPP.

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP. Specifically, an Eligible Exchange must: (a) execute a copy of the OLPP with the only change being the addition of the new sponsor's name in Section 8 of the OLPP; [5] and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission or otherwise becoming effective pursuant to Section 11A of the Act. BOX has submitted a signed copy of the OLPP to the Commission and to each Plan Sponsor in accordance with the procedures set forth in the OLPP regarding new Plan Sponsors.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii) [6] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (a)(1) of Rule 608,[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–443 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 4–443. This file number should be included on the subject line if email is used. To help the Commission process and review your comments

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange LLC (''ISE''), Options Clearing Corporation (''OCC''), Philadelphia Stock Exchange, Inc. (''Phlx''), and Pacific Exchange, Inc. (''PCX'') (n/k/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, Boston Stock Exchange, Inc. (''BSE'') was added as a Sponsor to OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, the Nasdaq Stock Market, LLC (''Nasdaq'') was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 57546, 73 FR 16393 (March 27, 2008). On February 17, 2010, BATS Exchange, Inc. (''BATS'') was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 61528, 75 FR 8415 (February 24, 2010). On October 22, 2010, C2 Options Exchange Incorporated (''C2'') was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 63162, 75 FR 66401 (October 28, 2010).

[4] The OLPP defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act, 15 U.S.C. 78f(a), that (1) has effective rules for the trading of options contracts issued and cleared by the OCC approved in accordance with the provisions of the Exchange Act and the rules and regulations thereunder and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan''). C2 has represented that it has met both the requirements for being considered an Eligible Exchange.

[5] The Commission notes that the list of plan sponsors is set forth in Section 9 of the OLPP.

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(a)(1).

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 BOX's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–443 and should be submitted on or before June 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11700 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 17, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 17, 2012 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: May 10, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11768 Filed 5–11–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Federal Register Citation of Previous Announcement: [77 FR 27103, May 8, 2012]

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: May 10, 2012 at 2 p.m.

CHANGE IN THE MEETING: Time Change and Additional Item.

The Closed Meeting scheduled for Thursday, May 10, 2012 at 2 p.m. has been changed to start at 3:30 p.m. on May 10, 2012.

The following matter will also be considered during the 3:30 p.m. Closed Meeting scheduled for Thursday, May 10, 2012:

An examination of a financial institution.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(4) and (8) and 17 CFR 200.402(a)(4) and (8), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 10, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11769 Filed 5–11–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Friday, May 11, 2012 at 4 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(4) and (8) and 17 CFR 200.402(a)(4) and (8), permit consideration of the scheduled matters at the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the May 11, 2012 Closed Meeting will be:

An examination of a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

May 10, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11767 Filed 5–11–12; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66949; File No. SR–EDGX–2012–16]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending Certain Sections of Its Current Bylaws

May 9, 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 25, 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 and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the Amended and Restated Bylaws of EDGX Exchange, Inc. (the ''Current Bylaws'') to conform with the Exchange's current corporate governance practices. The text of the proposed rule change is attached as Exhibit 5 and 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

The Exchange proposes to amend certain sections of the Current Bylaws to conform with the Exchange's current corporate governance practices. In addition, the Exchange proposes to address other non-substantive revisions to reflect changes since the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') granted the Exchange's registration as a national securities exchange in March 2010.[3]

Board of Directors

Article III, Section 5 of the Current Bylaws state that the Chief Executive Officer shall also be the Chairman of the Board of Directors (the ''Board''). The Exchange proposes to revise this provision in the New Bylaws to state, ''[t]he Directors shall choose among themselves who will be the Chairman of the Board (the ''Chairman''), who may also be the Chief Executive Officer,'' because the Exchange believes separating the two roles is a good corporate governance practice and provides the Board additional flexibility when determining the Chairman. In addition, the Exchange proposes to add clarifying language that states that if the Chief Executive Officer or other member of management of the Exchange is the Chairman, then he or she shall not participate in executive sessions of the Board. The Exchange believes this amendment helps to preserve the purpose of the executive session, which is for the Board to meet without the Exchange's management present. Similarly, the Exchange proposes to make a conforming amendment to Article VII, Section 6, to provide that the Chief Executive Officer may be the Chairman of the Board.

Committees of the Board

The Exchange's Board consists of an Appeals Committee, an Audit Committee, a Compensation Committee, an Executive Committee and a Regulatory Oversight Committee (collectively, the ''Board Committees''). In Article V, the Exchange proposes to amend the Current Bylaws to more fully describe the responsibilities of the Board Committees and to be consistent with the provisions of the Board Committees' charters.

In Article V, Section 5(a), the Exchange proposes to amend the Current Bylaws to state that the Compensation Committee is also responsible for assisting the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as a Self Regulatory Organization (''SRO'').

In Article V, Section 5(b) (proposed to be re-numbered as Section 5(b)(i)–(vii)), the Exchange proposes to amend the Current Bylaws to state that the Audit Committee is also responsible for assisting the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; taking appropriate actions to oversee overall corporate policy for quality activities and reporting of an SRO, sound business risk management practices and ethical behavior; overseeing all activities of the Exchange's internal audit function, including management's responsiveness to internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to amend the language in Article V, Section 5(b)(iv) and (v), respectively, to elaborate on the Audit Committee's responsibility to provide oversight over the systems of internal controls, technology and information integrity established by management and the Board and the Exchange's legal and compliance process as well as to further clarify the Audit Committee's responsibilities around independent auditors.

In Article V, Section 5(c), the Exchange proposes to amend the Current Bylaws to elaborate on the Regulatory Oversight Committee's duties to assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Securities and Exchange Act of 1934 (the ''Act''). The Exchange also proposes to amend the language in Article V, Section 5(c) to clarify that the Regulatory Oversight Committee's responsibility to oversee the overall effectiveness of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

Exchange's performance of its regulatory functions.

In Article V, Section 5(e), the Exchange proposes to amend the Current Bylaws to clarify that the Executive Committee is also responsible for facilitating coordination of the Board processes among other things.

Committees of the Exchange

The Exchange proposes to amend the title of Article VI from ''Nominating and Governance Committees'' to ''Committees of the Exchange'' in the New Bylaws because this section includes the Nominating and Governance Committees and the Exchange Member Nominating Committee.

In Article VI, Section 2, the Exchange proposes to amend the Current Bylaws to elaborate on the Nominating and Governance Committee's responsibilities to-develop and recommend governance policies to the Board and to oversee an orientation for new Directors. The Exchange also proposes to amend the language in Article VI, Section 2 to clarify that the Nominating and Governance Committee nominates Director candidates and chairpersons to serve on the Board's Committee. Other non-substantive grammatical and stylistic changes are also proposed.

In Article VI, Section 3, the Exchange proposes to amend the Current Bylaws to state that the Exchange Member Nominating Committee is also responsible for nominating candidates for all other vacant or new Exchange Member Director positions on the Board.

Officers, Agents and Employees

Article VII of the Current Bylaws state that the officers of the Exchange include a President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, among others. However, the Exchange has not now or ever designated a person to be a President, Vice President, Assistant Secretary, Treasurer or Assistant Treasurer. In addition, the duties enumerated in the Current Bylaws are currently performed by other employees at the Exchange. Specifically, the Chief Executive Officer has general supervision over the operations of the Exchange. In addition, the Chief Executive Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of President and Vice President in the event of the Chief Executive Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 7 and 8 that refer to the responsibilities of the President and the Vice President since these responsibilities are included within the role of the Chief Executive Officer, which is generally described in Article VII, Section 6.

In addition, the Secretary will delegate to certain Exchange employees the powers and duties usually incident to the office of Secretary in the event of the Secretary's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Section 11 that refers to the responsibilities of the Assistant Secretary. Similarly, the Exchange proposes making a non-substantive stylistic change to move the placement of the reference to the ''Secretary'' in Article VII, Section 1.

Lastly, the Chief Financial Officer has general supervision over the powers and duties usually incident to the office of the Treasurer. The Board approves the appointment of a Chief Financial Officer in the form of a Board resolution annually. In addition, the Chief Financial Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of Treasurer and Assistant Treasurer in the event of the Chief Financial Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 12 and 13 that refer to the responsibilities of the Treasurer and Assistant Treasurer. Similarly, the Exchange proposes making a conforming amendment to delete the reference to the Treasurer in Article VII, Section 1.

In addition, the Exchange proposes to replace references to the President with the Chief Executive Officer, where applicable, given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. The Exchange's proposed revisions include the following specific amendments:

Article III, Section 7(b) of the Current Bylaws states, ''Any Director may resign at any time either upon notice of resignation to the Chairman, the President or the Secretary.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article III, Section 10(a) of the Current Bylaws states, ''Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article IV, Section 2 of the Current Bylaws states, ''Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote.'' The Exchange proposes to replace the reference to ''the President'' with the ''Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 1 of the Current Bylaws states, ''The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as in the Board's opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.'' The Exchange proposes to delete the references to the Treasurer and to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 3 of the Current Bylaws states, ''Any officer may resign at any time upon notice of resignation to the Chairman, the President or the Secretary.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. In addition, the Exchange proposes to add language stating that an officer may also resign to a designee of the Board, if none such officers are then-appointed, in order to improve the Exchange's governance framework by providing for an additional option should the Chief Executive Officer or Secretary not be appointed at the time of the officer's resignation.

In addition, in Article VII, Section 9 (proposed to be re-numbered as Section 7), the Exchange proposes to make conforming amendments to delete the

references to ''Executive Vice President'' or ''Senior Vice President'' to describe the type of officer that may be designated as the Chief Regulatory Officer.

Article XI: Miscellaneous Provisions

In Article XI, Section 7(a) (proposed to be re-numbered as Section 6(a)), the Exchange proposes to specifically identify the persons authorized as signatories of all checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money that are signed in the name of the Exchange. The New Bylaws will state, ''All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the ''Authorized Officers'').'' The Exchange proposes to make conforming amendments to the provisions in Article XI, Section 7(b) (proposed to be re-numbered as Section 6(b)) in order to permit any Authorized Officer of the Exchange to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Company.

The Current Bylaws do not address stock certificates and uncertificated shares. Therefore, the Exchange proposes to add Article XI, Section 10 in the New Bylaws to state, ''[t]he shares of the Exchange may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Exchange's stock shall be uncertificated shares. Every holder of stock of the Exchange represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.''[4]

Miscellaneous Non-Substantive Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Current Bylaws.

The Exchange proposes to include the date that the Current Bylaws were amended on the title page to notify Members of the effective date of the New Bylaws.

The Exchange proposes to re-number various sections of the Current Bylaws in order to eliminate gaps in the numbering and/or lettering of the sections resulting from the proposed revisions as described in Exchange's rule filing.

The Exchange proposes to delete the defined terms ''broker'' in Article I, paragraph (d), and ''dealer'' in Article I, paragraph (j) since neither term is referenced again in the Current Bylaws.

The Exchange proposes to amend the reference to the ''Holdings Operating Agreement'' in Article I, paragraph (u) (proposed to be re-numbered as paragraph (s)), to notify Members that the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, that was revised on June 12, 2010, is currently in effect.

In Article I, paragraph (v) (proposed to be re-numbered as paragraph (t)), the Exchange proposes to replace the reference to the ''EDGX Exchange, Inc.'' with ''EDGA Exchange, Inc.'' to correct a typographical error.

The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New Bylaws. Specifically, the Exchange proposes to delete references to the Operational Date in Article I, paragraph (y) and Article XI, Section 1 because the Commission granted the Exchange's registration as a national stock exchange on March 12, 2010.[5] Therefore, these references to the Operational Date are obsolete.

Similarly, the Exchange proposes to delete provisions regarding the initial Board in Article III, Section 2(a), and the initial Nominating and Governance Committee and the initial Exchange Member Nominating Committee in Article VI, Section 1, since these appointments have already occurred. Similarly, the Exchange proposes deleting Exhibits A and B in the Current Bylaws as this information is obsolete. The Exchange proposes to omit Exhibits A and B in the New Bylaws because the Exchange updates this information through the Commission's Form 1 amendment (Exhibits C and J),[6] which is submitted to the Commission within 10 days of a change to the Board of Directors or Committee members.

The Exchange proposes to correct a typographical error in Article I, paragraph (cc) (proposed to be re-numbered as paragraph (z)), by referencing ''an'' Exchange in the New Bylaws.

The Exchange proposes to correct a typographical error by deleting ''and Governance'' in Article III, Section 6(b) when identifying the Exchange Member Nominating Committee.

The Exchange proposes to insert ''of'' and delete ''or'' in Article IX, Section 3(a) to correct a typographical error. Therefore, the New Bylaws will state, ''* * * the trading in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system *of* any or all Persons or the trading therein of any or all securities * * *'' (*emphasis added*).

In Article XI, Section 9 (proposed to be re-numbered as Section 8), the Exchange proposes to clarify that ''PDF or similar transmission,'' where the receipt can be confirmed, will satisfy the notice requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b)(1) of the Act,[7] in general, and furthers the objectives of Section 6(b)(1) of the Act and Section 6(b)(5)[8] of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

Specifically, the proposed amendments to certain provisions will conform the Current Bylaws with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission

[4] The DGCL refers to Delaware General Corporation Law.

[5] *See also, supra* note 3.

[6] The Exchange regularly updates its Form 1 application pursuant to Rule 6a–2 of the Act.

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

granted the Exchange's registration as a national securities exchange in March 2010.[9]

In addition, these proposed amendments will improve efficiency and coordination among the Board and its Committee's by revising the Current Bylaws to clearly delineate each Committee's responsibilities. The proposed amendments will also benefit the Exchange and its Members because the New Bylaws will reflect the current governance structure, including the responsibilities of its officers thereby increasing the transparency of this process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and Rule 19b–4(f)(6) [11] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[12]

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

The proposed amendments to certain provisions of the Current Bylaws are designed to conform with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.[13] For the foregoing reasons, this rule qualifies as a ''non-controversial'' rule change under Rule 19b–4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

EDGX further requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b–4(f)(6) becomes operative. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. It will enable the Exchange to immediately adopt the New Bylaws which should provide an enhanced, more transparent governance structure for the Exchange and its Members. The Commission designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2012–16 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–2012–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–16 and should be submitted on or before June 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11686 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

[9] *See also, supra* note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See also, supra* note 3.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66951; File No. SR–NASDAQ–2012–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute an Excess Order Fee

May 9, 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 30, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

NASDAQ proposes to institute an excess order fee. NASDAQ will implement the proposed change on June 1, 2012. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is concerned that the inefficient order entry practices of certain market participants may be placing excessive burdens on the systems of NASDAQ and its members and may negatively impact the usefulness and life cycle cost of market data.[3] Market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery, and in fact may create investor confusion about the extent of trading interest in a stock. In extreme instances, inefficient order entry may constitute ''layering,'' the manipulative practice of using multiple orders at different price levels to move the price of a stock. While NASDAQ has an active program to detect and prosecute manipulative schemes, including layering,[4] it also believes that market quality can be improved through the imposition of a fee on market participants that engage in extremely inefficient order entry practices. Because NASDAQ believes that inefficient order entry is a problem associated with a relatively small number of market participants, and is therefore not a pervasive characteristic of today's markets, the impact of the fee will be narrow. In fact, it is NASDAQ's expectation that the fee will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, NASDAQ does not expect to earn significant revenues from the fee.

The fee will be imposed on market participant identifiers (''MPID'') that have characteristics indicative of inefficient order entry practices. In general, the determination of whether to impose the fee on a particular MPID will be made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer (''NBBO''), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs with an ''Order Entry Ratio'' of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis.

For each MPID, the Order Entry Ratio is the ratio of (i) the MPID's ''Weighted Order Total'' to (ii) the greater of one (1) or the number of displayed, non-marketable orders[5] sent to NASDAQ through the MPID that execute in full or in part.[6] The Weighted Order Total is the number of displayed, non-marketable orders sent to NASDAQ through the MPID, as adjusted by a ''Weighting Factor.'' The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

Order's price versus NBBO at entry	Weighting factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the ''executed'' orders component of the Order Entry Ratio if they execute in full or part. Orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration, are excluded from both components of the ratio.[7] In addition, MPIDs with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See generally* Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (''The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs * * *. The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.'').

[4] *See, e.g.,* FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy (September 13, 2010) (available at *http://www.finra.org/Newsroom/NewsReleases/2010/P121951*). The fee proposed in this filing will not in any way substitute for, or result in a diminution of, NASDAQ's surveillance program for market manipulation.

[5] The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

[6] Thus, in an extreme case where no orders entered through the MPID executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

[7] This is the case because market makers are already subject to rule-based standards designed to promote the efficiency and quality of their order entry practices. *See* Rule 4613. Although Rule 4613 allows market makers to quote at spreads much wider than 2%, NASDAQ's assessment of market maker performance has led it to conclude that market makers do not generally engage in the inefficient practices at which the new fee is aimed. NASDAQ will continually assess this data and revisit the applicability of the fee to market makers and/or the requirements of Rule 4613 as needed to promote efficient quotation practices by market makers.

[8] NASDAQ believes that this exclusion is reasonable because an MPID with an extremely low volume of entered orders has only a *de minimis* impact on the market.

The following example illustrates the calculation of the Order Entry Ratio:

• A member enters 35,000,000 displayed, liquidity-providing orders:

o The member is registered as a market maker with respect to 20,000,000 of the orders. These orders are excluded from the calculation.

o 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.

○ 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.

• Of the 15,000,000 orders included in the calculation, 90,000 are executed.

• The Weighted Order Total is $(10{,}000{,}000 \times 0) + (5{,}000{,}000 \times 2) = 10{,}000{,}000$. The Order Entry Ratio is $10{,}000{,}000/90{,}000 = 111$

If an MPID has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the MPID's ''Excess Weighted Orders.'' Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9{,}000{,}000/90{,}000 = 100$. Accordingly, the Excess Weighted Orders would be $10{,}000{,}000 - 9{,}000{,}000 = 1{,}000{,}000$.

The Excess Order Fee charged to the member will then be determined by multiplying the ''Applicable Rate'' by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio:

Order entry ratio	Applicable rate
101–1,000	$0.005
More than 1,000	0.01

In the example above, the Applicable Rate would be $0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1{,}000{,}000 \times \$0.005 = \$5{,}000$.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. Finally, NASDAQ believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, NASDAQ believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market.

Finally, NASDAQ believes that the fee will help 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, because the fee is designed to reduce the extent of non-actionable orders in the market, thereby promoting greater order interaction, increasing the quality of market data, and inhibiting potentially abusive trading practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. Specifically, NASDAQ believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, NASDAQ believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–055 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–055. This file number should be included on the subject line if email is used.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–055, and should be submitted on or before June 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11699 Filed 5–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66950; File No. SR–EDGA–2012–17]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending Certain Sections of Its Current Bylaws

May 9, 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 25, 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 and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the Amended and Restated Bylaws of EDGA Exchange, Inc. (the ''Current Bylaws'') to conform with the Exchange's current corporate governance practices. The text of the proposed rule change is attached as Exhibit 5 and 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

The Exchange proposes to amend certain sections of the Current Bylaws to conform with the Exchange's current corporate governance practices. In addition, the Exchange proposes to address other non-substantive revisions to reflect changes since the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') granted the Exchange's registration as a national securities exchange in March 2010.[3]

Board of Directors

Article III, Section 5 of the Current Bylaws state that the Chief Executive Officer shall also be the Chairman of the Board of Directors (the ''Board''). The Exchange proposes to revise this provision in the New Bylaws to state, ''[t]he Directors shall choose among themselves who will be the Chairman of the Board (the ''Chairman''), who may also be the Chief Executive Officer,'' because the Exchange believes separating the two roles is a good corporate governance practice and provides the Board additional flexibility when determining the Chairman. In addition, the Exchange proposes to add clarifying language that states that if the Chief Executive Officer or other member of management of the Exchange is the Chairman, then he or she shall not participate in executive sessions of the Board. The Exchange believes this amendment helps to preserve the purpose of the executive session, which is for the Board to meet without the Exchange's management present. Similarly, the Exchange proposes to make a conforming amendment to Article VII, Section 6, to provide that the Chief Executive Officer may be the Chairman of the Board.

Committees of the Board

The Exchange's Board consists of an Appeals Committee, an Audit Committee, a Compensation Committee, an Executive Committee and a Regulatory Oversight Committee (collectively, the ''Board Committees''). In Article V, the Exchange proposes to amend the Current Bylaws to more fully describe the responsibilities of the Board Committees and to be consistent with the provisions of the Board Committees' charters.

In Article V, Section 5(a), the Exchange proposes to amend the Current Bylaws to state that the Compensation Committee is also responsible for assisting the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as a Self Regulatory Organization (''SRO'').

In Article V, Section 5(b) (proposed to be re-numbered as Section 5(b)(i)–(vii)), the Exchange proposes to amend the Current Bylaws to state that the Audit Committee is also responsible for assisting the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; taking appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; overseeing all activities of the Exchange's internal audit function, including management's responsiveness to internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to amend the language in Article V, Section 5(b)(iv) and (v), respectively, to elaborate on the Audit Committee's responsibility to provide oversight over the systems of internal controls, technology and information integrity established by management and the Board and the Exchange's legal and compliance process as well as to further clarify the Audit Committee's responsibilities around independent auditors.

In Article V, Section 5(c), the Exchange proposes to amend the Current Bylaws to elaborate on the Regulatory Oversight Committee's duties to assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Securities and Exchange Act of 1934 (the ''Act''). The Exchange also proposes to amend the language in Article V, Section 5(c) to clarify that the Regulatory Oversight Committee's responsibility to oversee the overall effectiveness of the Exchange's performance of its regulatory functions.

In Article V, Section 5(e), the Exchange proposes to amend the Current Bylaws to clarify that the Executive Committee is also responsible for facilitating coordination of the Board processes among other things.

Committees of the Exchange

The Exchange proposes to amend the title of Article VI from ''Nominating and Governance Committees'' to ''Committees of the Exchange'' in the New Bylaws because this section includes the Nominating and Governance Committees and the Exchange Member Nominating Committee.

In Article VI, Section 2, the Exchange proposes to amend the Current Bylaws to elaborate on the Nominating and Governance Committee's responsibilities to develop and recommend governance policies to the Board and to oversee an orientation for new Directors. The Exchange also proposes to amend the language in Article VI, Section 2 to clarify that the Nominating and Governance Committee nominates Director candidates and chairpersons to serve on the Board's Committee. Other non-substantive grammatical and stylistic changes are also proposed.

In Article VI, Section 3, the Exchange proposes to amend the Current Bylaws to state that the Exchange Member Nominating Committee is also responsible for nominating candidates for all other vacant or new Exchange Member Director positions on the Board.

Officers, Agents and Employees

Article VII of the Current Bylaws state that the officers of the Exchange include a President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, among others. However, the Exchange has not now or ever designated a person to be a President, Vice President, Assistant Secretary, Treasurer or Assistant Treasurer. In addition, the duties enumerated in the Current Bylaws are currently performed by other employees at the Exchange. Specifically, the Chief Executive Officer has general supervision over the operations of the Exchange. In addition, the Chief Executive Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of President and Vice President in the event of the Chief Executive Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 7 and 8 that refer to the responsibilities of the President and the Vice President since these responsibilities are included within the role of the Chief Executive Officer, which is generally described in Article VII, Section 6.

In addition, the Secretary will delegate to certain Exchange employees the powers and duties usually incident to the office of Secretary in the event of the Secretary's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Section 11 that refers to the responsibilities of the Assistant Secretary. Similarly, the Exchange proposes making a non-substantive stylistic change to move the placement of the reference to the ''Secretary'' in Article VII, Section 1.

Lastly, the Chief Financial Officer has general supervision over the powers and duties usually incident to the office of the Treasurer. The Board approves the appointment of a Chief Financial Officer in the form of a Board resolution annually. In addition, the Chief Financial Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of Treasurer and Assistant Treasurer in the event of the Chief Financial Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 12 and 13 that refer to the responsibilities of the Treasurer and Assistant Treasurer. Similarly, the Exchange proposes making a conforming amendment to delete the reference to the Treasurer in Article VII, Section 1.

In addition, the Exchange proposes to replace references to the President with the Chief Executive Officer, where applicable, given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. The Exchange's proposed revisions include the following specific amendments:

Article III, Section 7(b) of the Current Bylaws states, ''Any Director may resign at any time either upon notice of resignation to the Chairman, the President or the Secretary.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article III, Section 10(a) of the Current Bylaws states, ''Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article IV, Section 2 of the Current Bylaws states, ''Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote.'' The Exchange proposes to replace the reference to ''the President'' with the ''Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 1 of the Current Bylaws states, ''The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as in the Board's opinion are desirable for the conduct of the business of the Company.

Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.'' The Exchange proposes to delete the references to the Treasurer and to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 3 of the Current Bylaws states, ''Any officer may resign at any time upon notice of resignation to the Chairman, the President or the Secretary.'' The Exchange proposes to replace the reference to ''the President'' with ''the Chief Executive Officer,'' given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. In addition, the Exchange proposes to add language stating that an officer may also resign to a designee of the Board, if none such officers are then-appointed, in order to improve the Exchange's governance framework by providing for an additional option should the Chief Executive Officer or Secretary not be appointed at the time of the officer's resignation.

In addition, in Article VII, Section 9 (proposed to be re-numbered as Section 7), the Exchange proposes to make conforming amendments to delete the references to ''Executive Vice President'' or ''Senior Vice President'' to describe the type of officer that may be designated as the Chief Regulatory Officer.

Article XI: Miscellaneous Provisions

In Article XI, Section 7(a) (proposed to be re-numbered as Section 6(a)), the Exchange proposes to specifically identify the persons authorized as signatories of all checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money that are signed in the name of the Exchange. The New Bylaws will state, ''All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the ''Authorized Officers'').'' The Exchange proposes to make conforming amendments to the provisions in Article XI, Section 7(b) (proposed to be re-numbered as Section 6(b)) in order to permit any Authorized Officer of the Exchange to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Company.

The Current Bylaws do not address stock certificates and uncertificated shares. Therefore, the Exchange proposes to add Article XI, Section 10 in the New Bylaws to state, ''[t]he shares of the Exchange may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Exchange's stock shall be uncertificated shares. Every holder of stock of the Exchange represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.''[4]

Miscellaneous Non-Substantive Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Current Bylaws.

The Exchange proposes to include the date that the Current Bylaws were amended on the title page to notify Members of the effective date of the New Bylaws.

The Exchange proposes to re-number various sections of the Current Bylaws in order to eliminate gaps in the numbering and/or lettering of the sections resulting from the proposed revisions as described in Exchange's rule filing.

The Exchange proposes to delete the defined terms ''broker'' in Article I, paragraph (d), and ''dealer'' in Article I, paragraph (j) since neither term is referenced again in the Current Bylaws.

The Exchange proposes to amend the reference to the ''Holdings Operating Agreement'' in Article I, paragraph (u) (proposed to be re-numbered as paragraph (s)), to notify Members that the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, that was revised on June 12, 2010, is currently in effect.

In Article I, paragraph (v) (proposed to be re-numbered as paragraph (t)), the Exchange proposes to replace the reference to the ''EDGA Exchange, Inc.'' with ''EDGX Exchange, Inc.'' to correct a typographical error.

The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New Bylaws. Specifically, the Exchange proposes to delete references to the Operational Date in Article I, paragraph (y) and Article XI, Section 1 because the Commission granted the Exchange's registration as a national stock exchange on March 12, 2010.[5] Therefore, these references to the Operational Date are obsolete.

Similarly, the Exchange proposes to delete provisions regarding the initial Board in Article III, Section 2(a), and the initial Nominating and Governance Committee and the initial Exchange Member Nominating Committee in Article VI, Section 1, since these appointments have already occurred. Similarly, the Exchange proposes deleting Exhibits A and B in the Current Bylaws as this information is obsolete. The Exchange proposes to omit Exhibits A and B in the New Bylaws because the Exchange updates this information through the Commission's Form 1 amendment (Exhibits C and J),[6] which is submitted to the Commission within 10 days of a change to the Board of Directors or Committee members.

The Exchange proposes to correct a typographical error in Article I, paragraph (cc) (proposed to be re-numbered as paragraph (z)), by referencing ''an'' Exchange in the New Bylaws.

The Exchange proposes to correct a typographical error by deleting ''and Governance'' in Article III, Section 6(b) when identifying the Exchange Member Nominating Committee.

The Exchange proposes to insert ''of'' and delete ''or'' in Article IX, Section 3(a) to correct a typographical error. Therefore, the New Bylaws will state, ''* * * the trading in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all Persons or the trading therein of any or all securities * * *'' (*emphasis added*).

In Article XI, Section 9 (proposed to be re-numbered as Section 8), the Exchange proposes to clarify that ''PDF or similar transmission,'' where the

[4] The DGCL refers to Delaware General Corporation Law.

[5] *See also, supra* note 3.

[6] The Exchange regularly updates its Form 1 application pursuant to Rule 6a–2 of the Act.

receipt can be confirmed, will satisfy the notice requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b)(1) of the Act,[7] in general, and furthers the objectives of Section 6(b)(1) of the Act and Section 6(b)(5)[8] of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

Specifically, the proposed amendments to certain provisions will conform the Current Bylaws with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.[9]

In addition, these proposed amendments will improve efficiency and coordination among the Board and its Committee's by revising the Current Bylaws to clearly delineate each Committee's responsibilities. The proposed amendments will also benefit the Exchange and its Members because the New Bylaws will reflect the current governance structure, including the responsibilities of its officers thereby increasing the transparency of this process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)[11] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[12]

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

The proposed amendments to certain provisions of the Current Bylaws are designed to conform with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.[13] For the foregoing reasons, this rule qualifies as a ''non-controversial'' rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

EDGA further requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b–4(f)(6) becomes operative. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. It will enable the Exchange to immediately adopt the New Bylaws which should provide an enhanced, more transparent governance structure for the Exchange and its Members. The Commission designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] *See also, supra* note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See also, supra* note 3.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–17 and should be submitted on or before June 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11687 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66954; File No. SR–MSRB–2012–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of a Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to Proposed Rule G–43, on Broker's Brokers; Proposed Amendments to Rule G–8, on Books and Records, Rule G–9, on Record Retention, and Rule G–18, on Execution of Transactions; and a Proposed Interpretive Notice on the Duties of Dealers That Use the Services of Broker's Brokers

May 9, 2012

On March 5, 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 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of proposed MSRB Rule G–43, on broker's brokers; amendments to MSRB Rule G–8, on books and records; amendments to MSRB Rule G–9, on record retention; amendments to MSRB Rule G–18, on execution of transactions; and a proposed interpretive notice on duties of dealers that use the services of broker's brokers. The proposed rule change was published for comment in the **Federal Register** on March 26, 2012.[3] The Commission received five comment letters regarding the proposal.[4] On May 3, 2012, the MSRB submitted a response to the comment letters [5] and filed Amendment No. 1 to the proposed rule change.

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is May 10, 2012. The Commission is extending the 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on this proposed rule change. In particular, an extension of time will ensure the Commission has sufficient time to consider and take action on the MSRB's proposal in light of, among other things, the comment letters received on the proposal, and the MSRB's response to those comment letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates June 22, 2012 as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove this proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66625 (March 20, 2012), 77 FR 17548.

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from John Webber, Chief Compliance Officer, Advisors Asset Management, Inc., dated April 16, 2012; Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated April 16, 2012; Thomas S. Vales, Chief Executive Officer, TMC Bonds, LLC, received April 16, 2012; Mark J. Epstein, President & Chief Executive Officer, Hartfield, Titus & Donnelly, dated April 18, 2012; and Paige W. Pierce, President & Chief Executive Officer, RW Smith & Associates, Inc., received April 19, 2012. The comment letters received by the Commission are available at *http://www.sec.gov/comments/sr-msrb-2012-04/msrb201204.shtml.*

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Margaret C. Henry, General Counsel, Market Regulation, MSRB, dated May 3, 2012.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11733 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66953; File No. SR–CBOE–2012–041]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

May 9, 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 30, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule's Volume Incentive Program (the ''Program''), which was implemented on January 1, 2012.[3] The Program credits Trading Permit Holders (''TPHs'') certain per contract amounts resulting from each public customer order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the TPH meets certain volume thresholds in a month. The volume thresholds are calculated based on the customer contracts per day (''CPD'') entered and executed over the course of the month.[4]

Under the current top tier of the Program, a TPH trading more than 375,000 CPD gets a $0.20 per contract rebate for all CPD traded above 375,000. While the Program is intended to attract greater customer volume, which benefits all market participants, the potential for an industry-wide volume surge could mean CBOE's average daily volume (ADV) also increases, commensurate with the industry, to a level unexpected during the design of the Program. As such, the Program's ADV thresholds would no longer reflect actual conditions. The lack of a CPD ceiling means that the Exchange could potentially be giving back a $0.20 per contract rebate on an extremely high, unlimited amount of contracts. The Program is intended to attract greater customer volume, which benefits all market participants, but it is not economically feasible to be providing an unlimited number of $0.20 rebates (the Exchange needs to retain much of the fees collected to maintain its administrative and regulatory operations). As such, the Exchange proposes to cap the $0.20 per contract rebate tier at 650,000 CPD. For all CPD traded above 650,000, the Exchange will continue offering a rebate, but that rebate will be reduced to $0.05 per contract. The addition of this new tier would ensure that the economic balances in the program would remain in place in the event of an unexpected volume surge.

This change is to take effect May 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Capping the Program's $0.20 per contract rebate at 650,000 CPD and providing a $0.05 per contract rebate for all CPD traded above 650,000 CPD is reasonable because those [sic] any TPH trading above 650,000 CPD will still be receiving a rebate for such trading activity (a rebate that they did not receive prior to the adoption of the Program). This change is equitable and not unfairly discriminatory because it only affects the contracts above 650,001 CPD; any TPH trading above 650,000 CPD will still receive the $0.20 per contract rebate for contracts 375,001–650,000 CPD. Further, this change is equitable and not unfairly discriminatory because it is necessary to ensure the economic viability of the Program. Without the change, in the event of an unexpected volume surge, the Program itself may cease to be economically rational for the Exchange, and might have to be eliminated. Such elimination would prevent any TPH trading above 650,000 CPD from receiving any rebates, as well as all other TPHs benefiting from the Program (and eliminate the spillover benefits of increased liquidity and tighter spreads that are experienced by all other market participants).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CBOE–2012–041 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–CBOE–2012–041. 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

[3] *See* Securities Exchange Act Release No. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120).

[4] *See* Exchange Fees Schedule, Section 21.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–041, and should be submitted on or before June 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11721 Filed 5–14–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7882]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on June 14, 2012 from 1:30 p.m. to 4:30 p.m. in Room 647 of Annex Building 44 of the U.S. Department of State. The State Annex 44 Building is located at 301 Fourth Street SW., Washington, DC 20547.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences, as well as bilateral and multilateral meetings that have taken place recently. In addition, the Committee will discuss key issues of importance to U.S. communications policy interests, including: recent private sector advisory efforts focused on the information and communications technology (ICT) aspects of international disaster response; recent public-private efforts to provide training to international communications professionals and regulators from the developing world; and human rights and economic issues related to the Internet.

Members of the public may submit suggestions and comments to the ACICIP. Comments concerning topics to be addressed in the agenda should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of the meeting. All comments must be submitted in written form and should not exceed one page. Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Wednesday, June 6, 2012. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time
2. Visitor's full name
3. Visitor's organization/company affiliation
4. Acceptable forms of identification for entry into the building include:
   - U.S. driver's license with photo
   - Passport
   - U.S. government agency ID
5. Whether the visitor has a need for reasonable accommodation. Such requests received after June 4, 2012, might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or email *BurtonKJ@state.gov.*

Please note that registrations will be accepted to the capacity of the meeting room.

All visitors for this meeting must use the main entrance and show a valid ID to gain admittance. Non-U.S. Government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.*

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eb/adcom/acicip/index.htm.*

Dated: May 7, 2012.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. 2012–11756 Filed 5–14–12; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2012–5–8; Docket DOT–OST–2012–0069]

Notice of Order Soliciting Community Proposals

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: The Department of Transportation is soliciting proposals from communities or consortia of communities interested in receiving a grant under the Small Community Air Service Development Program. The full text of the Department's order is attached to this document. There are two mandatory requirements for filing of applications, both of which must be completed for a community's application to be deemed timely and considered by the Department. The first requirement is the submission of the community's proposal, as described below; the second requirement is the filing of SF424 through *http://www.grants.gov.*

DATES: Grant Proposals as well as the SF424 should be submitted no later than June 11, 2012.

ADDRESSES: Interested parties can submit applications and the SF424 electronically through *http://www.grants.gov.* An electronic version of this document is available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Aloha Ley, Office of Aviation Analysis, 1200 New Jersey Ave. SE., W86–310, Washington, DC 20590, (202) 366–2347.

SUPPLEMENTARY INFORMATION:

Overview

By this order, the Department invites proposals from communities and/or consortia of communities interested in obtaining a federal grant under the Small Community Air Service Development Program (Small Community Program or SCASDP) to address air service and airfare issues in their communities. Applications of no more than 25 pages each (one-sided only, excluding the completed SF424, cover sheet, Summary Information schedule, and any letters from the community showing support for the application), including all required information, must be submitted to *www.grants.gov* no later than 5 p.m. EDT on Monday, June 11, 2012.

This order is organized into the following sections:

I. Background
II. Selection Criteria and Guidance on Application of Selection Criteria
III. Evaluation and Selection Process
IV. How to Apply
V. Air Service Development Zone
VI. Grant Administration
VII. Questions and Clarifications
Appendix A—Additional Information on Applying Through *www.grants.gov*
Appendix B—Cover Sheet Contents
Appendix C—Summary Information
Appendix D—Application Checklist
Appendix E—Confidential Commercial Information

I. Background

The Small Community Program was established by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Pub. L. 106–181) and reauthorized by the Vision 100–Century of Aviation Reauthorization Act (Pub. L. 108–176). The program is designed to provide financial assistance to small communities to help them enhance their air service. The Department provides this assistance in the form of monetary grants that are disbursed on a reimbursable basis. Authorization for this program is codified at 49 U.S.C. 41743.

The Small Community Program is authorized to receive appropriations under 49 U.S.C. 41743(e)(2), as amended. Appropriations are provided for this program for award in FY 2012 pursuant to the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). The Department has up to $14 million available for FY 2012 grant awards to carry out this program. There is no limit on the amount of individual awards, and the amounts awarded will vary depending upon the features and merits of the proposals selected. In past years, the Department's individual grant sizes have ranged from $20,000 to nearly $1.6 million.

A. Eligible Applicants

Eligible applicants are small communities that meet the following statutory criteria (49 U.S.C. 41743):

1. As of calendar year 1997, the airport serving the community was not larger than a small hub airport, and it has insufficient air carrier service or unreasonably high air fares; and

2. The airport serving the community presents characteristics, such as geographic diversity or unique circumstances, that demonstrate the need for, and feasibility of, grant assistance from the Small Community Program.

No more than 4 communities or consortia of communities, or a combination thereof, from the same state may be selected to participate in the program in any fiscal year. No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program in each year for which the funds are appropriated.

Communities without existing air service: Communities that do not currently have commercial air service are eligible for SCASDP funds, but air service providers must have met or be able to meet in a reasonable period all Departmental requirements for air service certification, including safety and economic authorities.

Essential Air Service communities: Small communities that meet the basic SCASDP criteria and currently receive subsidized air service under the Essential Air Service (EAS) program are eligible to apply for SCASDP funds. However, *grant awards to EAS-subsidized communities are limited to marketing or promotion projects that support existing or newly subsidized EAS.* Grant funds will *not* be authorized for EAS-subsidized communities to support any *new* competing air service. Furthermore, no funds will be authorized to support additional flights by EAS carriers or changes to those carriers' existing schedules. These restrictions are necessary to avoid conflicts with the EAS program.

Consortium applications: Both individual communities and consortia of communities are eligible for SCASDP funds. An application from a consortium of communities must be one that seeks to facilitate the efforts of the communities working together toward one joint grant project, with one joint objective, including the establishment of one entity to ensure that the joint objective is accomplished.

Multiple Applications: Communities may file only one application for a grant, either individually or as part of a consortium.

B. Eligible Projects

The Department is authorized to award grants under 49 U.S.C. 41743 to communities that seek to provide assistance to:

- An air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;
- An underserved airport to obtain service to and from the underserved airport; and/or
- An underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

Applicants also should keep in mind the following statutory restrictions on eligible projects:

- An applicant may not receive an additional grant to support the same project from a previous grant (*see* Same Project Limitation, below); and
- An applicant may not receive an additional grant, prior to the completion of its previous grant (*see* Concurrent Grant Limitation, below).

Same Project Limitation: A community may not receive an additional grant to support the same project for which it received a previous grant. In assessing whether a previous grantee's current application represents a new project, the Department will compare the goals and objectives of the previous grant, including the key components of the means by which those goals and objectives were to be achieved, to the current application. For example, if a community received an earlier grant to support a revenue guarantee for service to a particular destination or direction, a new application by that community for another revenue guarantee for service to the same destination or in the same direction is ineligible, even if the revenue guarantee were structured differently or the type of carrier were different. However, a new application by such a previous grantee for service to a new destination or direction using a revenue guarantee, or for general marketing of the airport and the various services it offers, is eligible. We recognize that not all revenue guarantees, marketing agreements, equipment purchases, etc. are of the same nature, and that if a subsequent application incorporates different goals or significantly different components, it may be sufficiently different to

constitute a new project under 49 U.S.C. 41743(c).

Concurrent Grant Limitation: A community may have only one SCASDP grant at any time. If a community applies for a subsequent SCASDP grant when its current grant has not yet expired, that community must notify the Department of its intent to terminate the current SCASDP grant prior to entering into the new grant. In addition, for consortium member applicants, permission must be granted from both the grant sponsor and the Department to withdraw from the current SCASDP grant before the consortium will be deemed eligible to receive a subsequent SCASDP grant.

II. Selection Criteria and Guidance on Application of Selection Criteria

SCASDP grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria: Priority Selection Criteria and Secondary Selection Criteria. Applications that meet one or more of the priority selection criteria will be viewed more favorably than those that do not meet any priority selection criteria.

A. Priority Selection Criteria

The law directs the Department to give priority consideration to those communities or consortia where the following criteria are met:

• *Air fares are higher than the national average air fares for all communities*—DOT will compare the local community's air fares to the national average air fares for all communities. Communities with air fares significantly higher than the national average air fares for all communities will be given priority. DOT calculates these fares using the Bureau of Transportation Statistics (BTS) database. BTS Origin Destination Survey data is used to gather fare data for all markets that serve airports represented in SCASDP applications. The SCASDP air fare comparison report represents a community's (each individual applicant's) air fares as a percentage of National Averages (Fare Premium). The report compares a community's air fares to the average for all other markets in the Country that have similar density (passenger volume) and distance characteristics (market groupings). The Fare Premium calculation includes all markets that averaged more than 1 passenger a day.

• *The community or consortium will provide a portion of the cost of the activity from local sources other than airport revenue sources*—DOT will consider whether a community or consortium proposes local funding for the proposed project. Applications providing proportionately higher levels of cash contributions from other than airport revenues will be viewed more favorably. Applications that provide multiple levels of contributions (state, local, airport, cash and in-kind contributions) also will be viewed more favorably. *See* Additional Guidance—Cost Sharing and Local Contributions, in Subsection C below, for more information on the application of this selection criterion.

• *The community or consortium has established or will establish a public-private partnership to facilitate air carrier service to the public*—DOT will consider a community or consortium's commitment to facilitate air carrier service in the form of a public-private partnership. Applications that describe in detail how the partnership will *actively* participate in the implementation of the proposed project will be viewed more favorably.

• *The assistance will provide material benefits to a broad segment of the traveling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited*—DOT will consider whether the proposed project would provide, to a broad segment of the community's traveling public, important benefits relevant to the community, for example: Service that would offer new or additional access to a connecting hub airport, service that would provide convenient travel times for both business and leisure travelers that would help obviate the need to drive long distances, or service that would offer lower fares.

• *The assistance will be used in a timely manner*—DOT will consider whether a proposed project provides a well-defined plan and reasonable timetable for use of the grant funds. In DOT's experience, a reasonable timetable for use of grant funds includes a year to complete studies, two years for marketing and promotion of the airport, community, carrier, or destination, and three years for projects that target a revenue guarantee, subsidy, or other financial incentives. Applicants should describe how their projects can be accomplished within a reasonable time period.

• *Multiple communities cooperate to submit a regional or multistate application to consolidate air service into one regional airport*—DOT will consider whether a proposed project involves a consortium effort to consolidate air service into one regional airport. This is a new statutory priority criterion, added pursuant to Section 429 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

B. Secondary Selection Criteria

1. *Innovation*—DOT will consider whether an application proposes new and creative solutions to the transportation issues facing the community, including:

• The extent to which the applicant's proposed solution(s) to solving the problem(s) is new or innovative, including whether the proposed project utilizes or encourages intermodal or regional solutions to connect passengers to the community's air service (i.e., cost-effective inter/intra city passenger bus service, marketing of intermodal surface transportation options also available to air travelers, or projects that have a positive impact on travel and tourism); whether the proposed project, if successfully implemented, could serve as a working model for other communities; and

• Whether the proposed project clearly addresses the applicant's stated problems.

2. *Participation*—DOT will consider whether an application has broad community participation, including:

• Whether the proposed project has broad community support; and

• The community's demonstrated commitment to and participation in the proposed project.

3. *Location*—DOT will consider the location and characteristics of a community:

• The geographic location of each applicant, including the community's proximity to larger centers of air service and low-fare service alternatives;

• The population and business activity, as well as the relative size of each community; and

• Whether the community's proximity to an existing or prior grant recipient could adversely affect either its proposal or the project undertaken by the other recipient.

4. *Other Factors*—DOT will also consider:

• The community's existing level of air service and whether that service has been increasing or decreasing;

• Whether the applicant has a plan to provide any necessary continued financial support for the proposed project after the requested grant award expires;

• The grant amount requested compared with total funds available for all communities;

• The proposed federal grant amount requested compared with the local share offered;

• Any letters of intent from airline planning departments or intermodal

surface transportation providers on behalf of applications that are specifically intended to enlist new or expanded air service or surface transportation service in support of the air service in the community;

- Whether the applicant has plans to continue with the proposed project if it is not self-sustaining after the grant award expires; and
- Equitable and geographic distribution of available funds.

C. Additional Guidance

Market Analysis: Applicants requesting funds for a revenue guarantee/subsidy/financial incentive are encouraged to conduct and reference in their applications an in-depth analysis of their target markets. Target markets can be destination specific (e.g. service to LAX), a geographic region (e.g. northwest mountain region) or directional (e.g. hub in the southeastern United States).

Complementary Marketing Commitment: Applicants requesting funds for a revenue guarantee/subsidy/financial incentive are encouraged to designate in their applications a portion of the project funds (federal, local or in-kind) for the development and implementation of a marketing plan in support of the service sought.

Subsidies for a carrier to compete against an incumbent: The Department is reluctant to subsidize one carrier but not others in a competitive market. For this reason, communities that propose to use the grant funds for service in a city-pair market that is already served by a carrier must explain in detail why the existing service is insufficient or unsatisfactory, or provide other compelling information to support such proposals.

Cost Sharing and Local Contributions: Applications must clearly identify the level of federal funding sought for the proposed project. Applications must also identify the community's cash contributions to the proposed project, in-kind contributions from the airport, and in-kind contributions from the community. Cash contributions from airport revenues must be identified separately from cash contributions from other community sources, and cash contributions from the state and/or local government should be separately identified and described.

Types of contributions. Contributions should represent a *new* financial commitment or *new* financial resources devoted to attracting new or improved service, or addressing specific high-fare or other service issues, such as improving patronage of existing service at the airport. For those communities that propose to contribute to the grant project, that contribution can be in the following forms:

Cash from non-airport revenues. A cash contribution can include funds from the state, the county or the local government, and/or from local businesses, or other private organizations in the community. Contributions that are comprised of intangible non-cash items, such as the value of donated advertising, are considered in-kind contributions (see further discussion below).

Cash from airport revenues. This includes contributions from funds generated by airport operations. Airport revenues may not be used for revenue guarantees to airlines, per 49 U.S.C. 47107, 47133. Applications that include local contributions based on airport revenues do not receive priority consideration for selection.

In-kind contributions from the airport. This can include such items as waivers of landing fees, terminal rents, fuel fees, and/or vehicle parking fees.

In-kind contributions from the community. This can include such items as donated advertising from media outlets, catering services for inaugural events, or in-kind trading, such as advertising in exchange for free air travel. Travel banks and travel commitments/pledges are considered to be in-kind contributions,[1] as are reduced fares offered by airlines.

Cash vs. in-kind contributions. Communities that include local contributions made in cash will be viewed more favorably.

III. Evaluation and Selection Process

The Department will first review each application to determine whether it has satisfied the following eligibility requirements:

1. The applicant is an Eligible Applicant;
2. The application is for an Eligible Project (including compliance with the Same Project Limitation); and
3. The application is complete (including submission of a completed SF424 and all of the information listed in Contents of Application, in Section IV below).

To the extent that the Department determines that an application does not satisfy these eligibility requirements, the Department will deem that application ineligible and will not consider it further.

The Department will then review all eligible applications based on the selection criteria outlined above in Section II. Applications that meet one or more of the priority selection criteria will be viewed more favorably than those that do not meet any priority selection criteria.

Grant awards will be made as promptly as possible so that selected communities can complete the grant agreement process and implement their plans. Given the competitive nature of the grant process, the Department will not meet with applicants regarding their applications. All non-confidential portions of each application, all correspondence and ex-parte communications, and all orders will be posted in the above-captioned docket on *www.regulations.gov.*

The Department will announce its grant selections in a Selection Order that will be posted in the above-captioned docket, served on all applicants and all parties served with this Solicitation Order, and posted on the Department's SCASDP Web site at *http://ostpxweb.dot.gov/aviation/X50%20Role_files/smallcommunity.htm.*

IV. How to Apply

Required Steps

- Determine eligibility;
- Register with *www.grants.gov* (*see* Registration with *www.grants.gov,* below);
- Submit an Application for Federal Domestic Assistance (SF424);
- Submit a cover sheet including all required information (*see* Appendix B);
- Submit a completed ''Summary Information'' schedule (*see* Appendix C);
- Submit a detailed application of *up to 25 pages (one-sided only, excluding the completed SF424, cover sheet, Summary Information schedule, and any letters from the community showing support for the application)* that meets all required criteria (*see* Appendix D);
- Attach any letters from the community showing support for the application to the proposal, which should be addressed to Aloha Ley, Associate Director, Small Community Program; and
- Provide separate submission of confidential material, if requested. (*see* Appendix E)

Each application must be no longer than 25 one-sided pages (excluding *the*

[1] A travel bank involves the actual deposit of funds from participating parties (e.g., businesses, individuals) into a designated bank account for purchasing air travel on the selected airline, with defined procedures for the subsequent use or withdrawal of those funds under an agreement with the airline. Often, however, what communities refer to as a travel bank actually involves travel pledges from businesses in the community without any collection of funds or formal procedures for use of the funds. As with other types of in-kind contributions, the Department views travel banks and pledges included in grant applications as an indicator of local community support.

completed SF424, cover sheet, Summary Information schedule, and any letters from the community showing support for the application). DOT will not consider any information contained in pages beyond page 25 (excluding any letters of support).

An application will not be complete and will be deemed ineligible for a grant award until and unless all required materials, including SF424, have been submitted through *www.grants.gov* by 5 p.m. EDT on June 11, 2012.

Registration with www.grants.gov: Communities must be registered with *www.grants.gov* in order to submit an application for funds available under this program. For consortium applications, only the consortium must be registered with *www.grants.gov* in order to submit its application for funds available under this program. *See* Appendix A for additional information on applying through *www.grants.gov.*

Contents of Application: There is no set format that must be used for applications. Each application should, to the extent possible, address the selection criteria set forth in Section II, above, including a clear description of the air service needs/deficiencies and present plans/strategies that directly address those needs/deficiencies. At a minimum, however, each application must include the following information:

• *A description of the community's air service needs or deficiencies,* including information about: (1) Major origin/destination markets that are not now served or are not served adequately; (2) fare levels that the community deems relevant to consideration of its application, including market analyses or studies demonstrating an understanding of local air service needs; and (3) any air service development efforts over the past three years and the results of those efforts (including marketing and promotional efforts).

• *A strategic plan for meeting those needs under the Small Community Program,* including the community's specific project goal(s) and detailed plan for attaining such goal(s). Applicants are advised to obtain firm assurances from air carriers proposing to offer new air services if a grant is awarded. Plans should:

✓ For applications involving new or improved service, explain how the service will become self-sufficient.

✓ Fully and clearly outline the goals and objectives of the project. When an application is selected, these goals and objectives will be incorporated into the grant agreement and define its basic project scope. Once a grant agreement is signed, if an amendment is sought to allow for different activities or a different approach, the Department will consider whether the amendment sought is consistent with the project scope as set forth in the grant agreement. Amendments that would alter the scope will not be permitted.

✓ Include alternative or back-up strategies for achieving their desired goals and objectives. These strategies will be incorporated into the grant agreement.

• *A detailed description of the funding necessary for implementation of the proposed project* (including federal and non-federal contributions).

• *An explanation of how the proposed project differs from any previous projects for which the community received SCASDP funds* (*see* Same Project Limitation, above).

• *Designation of a legal sponsor responsible for administering the proposed project.* The legal sponsor of the proposed project *must* be a government entity. If the applicant is a public-private partnership, a public government member of the organization must be identified as the community's sponsor to receive project cost reimbursements. A community may designate only one government entity as the legal sponsor, even if it is applying as a consortium that consists of two or more local government entities. Private organizations may not be designated as the legal sponsor of a grant under the Small Community Program. The community has the responsibility to ensure that the recipient of any funding has the legal authority under state and local laws to carry out all aspects of the grant.

V. Air Service Development Zone Designation

As part of the Small Community Program, the Department may also designate one grant recipient as an Air Service Development Zone. The purpose of the designation is to provide communities interested in attracting business to the area surrounding the airport and/or developing land-use options for the area to work with the Department on means to achieve those goals. The Department will assist the designated community in establishing contacts with and obtaining advice and assistance from appropriate government agencies, including the Department of Commerce and other offices within the Department of Transportation, and in identifying other pertinent resources that may aid the community in its efforts to attract businesses and to formulate land-use options. However, the community receiving this designation will be responsible for developing, implementing, and managing activities related to the air service development zone initiative. Only communities that are interested in these objectives and have a plan to accomplish them should apply for this designation. There are no additional funds associated with this designation, and applying for this designation will provide no special benefit or priority to a community applying for a SCASDP grant.

Grant applicants interested in selection for the Air Service Development Zone designation must include in their applications a separate section, titled, *Support for Air Service Development Zone Designation.* The community should provide as detailed a plan as possible, including what goals it expects to achieve from the air service development zone designation and the types of activities on which it would like to work with the Department in achieving those goals. The community should also indicate whether further local government approvals are required in order to implement the proposed activities.

VI. Grant Administration

Grant Agreements: Communities awarded grants are required to execute a grant agreement with the Department *before* they begin to expend funds under the grant award. Applicants should not assume they have received a grant, nor should they obligate or expend local funds prior to receiving and fully executing a grant agreement with the Department. Expenditures made prior to the execution of a grant agreement, including costs associated with preparation of the grant application, will *not* be reimbursed. Moreover, there are numerous assurances that grant recipients must sign and honor when federal funds are awarded. All communities receiving a grant will be required to accept the responsibilities of these assurances and to execute such the assurances when they execute their grant agreements. Copies of assurances are available online at *http://ostpxweb.dot.gov/aviation/X50%20Role_files/smallcommunity.htm,* (click on ''SCASDP Grant Assurances'').

Carrier Assurances for New Air Service: Applicants are advised to obtain firm assurances from air carriers proposing to offer new air service if a grant is awarded. The Department will grant an extension only when the community can provide strong evidence of a firm commitment on the part of an air carrier to deliver the desired service.

Payments: The Small Community Program is a reimbursable program; therefore, communities are required to

make expenditures for project implementation under the program prior to seeking reimbursement from the Department. Project implementation costs are reimbursable from grant funds only for services or property delivered during the grant term. Reimbursement rates are calculated as a percentage of the total federal funds requested divided by the federal funds plus the local cash contribution (which is not refundable). The percentage is determined by: (SCASDP Grant Amount) ÷ (SCASDP Grant Amount + Local Cash Contribution + State Cash Contribution, if applicable). Payments/expenditures in forms other than cash (e.g. in-kind) are not reimbursable. For example, if a community requests $500,000 in federal funding and provides $100,000 in local contributions, the reimbursement rate would be 83.33 percent: ((500,000)/(500,000 + 100,000)) = 83.33.

Grantee Reports: Each grantee must submit quarterly reports on the progress made during the previous quarter in implementing its grant project. In addition, each community will be required to submit a final report on its project to the Department, and 10 percent of the grant funds will not be reimbursed to the community until such final report is received. Additional information on award administration for selected communities will be provided in the grant agreement.

Grant Amendments: Any amendment to a grant agreement must be approved by the Department. A grantee may wish to amend its agreement with the Department in the event of a change in circumstances after the date the agreement is executed. Typically, amendments involve an extension to the time period for completing the grant or a change in the types of activities authorized for reimbursement under the goals and objectives of the grant agreement. Grantees are cautioned, however, that the Department cannot authorize amendments that are incompatible with the scope of the agreement.

VII. Questions and Clarifications

For further information concerning this notice please contact Aloha Ley at *Aloha.Ley@dot.gov* or (202) 366–2347, or Brooke Chapman at *Brooke.Chapman@dot.gov* or (202) 366–0577. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993. The Department may post answers to questions and other important clarifications in the above-captioned docket on *www.regulations.gov* and on the program Web site at *http://ostpxweb.dot.gov/aviation/X-50%20Role_files/smallcommunity.htm.*

This order is issued under authority delegated in 49 CFR 1.56a(f).

Accordingly,

1. Applications for funding under the Small Community Air Service Development Program should be submitted via *www.grants.gov* as an attachment to the SF424 by June 11, 2012; and

2. This order will be published in the **Federal Register**, posted on *www.grants.gov,* and served on the Conference of Mayors, the National League of Cities, the National Governors Association, the National Association of State Aviation Officials, County Executives of America, the American Association of Airport Executives, and the Airports Council International-North America.

Issued May 9, 2012.

By:

Robert A. Letteney,

Deputy Assistant Secretary for Aviation and International Affairs.

Appendix A

Additional Information on Applying Through *www.grants.gov*

Applications must be submitted through *www.grants.gov*. To apply for funding through *www.grants.gov*, applicants must be properly registered. Complete instructions on how to register and apply can be found at *www.grants.gov*. If applicants experience difficulties at any point during registration or application process, please call the *www.grants.gov* Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EDT. Registering with *www.grants.gov* is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after June 11, 2012; delayed registration is not an acceptable reason for extensions.

In order to apply for SCASDP funding and to apply for funding through *www.grants.gov*, all applicants are required to complete the following:

1. Acquire a DUNS Number. A DUNS number is required for *www.grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for federal funds include a DUNS (Data Universal Numbering System) number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1–866 705–5711 or by applying online at *http://fedgov.dnb.com/webform.*

2. Acquire or Renew Registration with the Central Contractor Registration (CCR) Database. All applicants for federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in *www.grants.gov*. The CCR database is the repository for standard information about federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via *www.grants.gov* are already registered with CCR, as it is a requirement for *www.grants.gov* registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at *www.ccr.gov.*

3. Acquire an Authorized Organization Representative (AOR) and a *www.grants.gov* Username and Password. Complete your AOR profile on *www.grants.gov* and create your username and password. You will need to use your organization's DUNS Number to complete this step. For more information about the registration process, go to *www.grants.gov/applicants/get_registered.jsp.*

4. Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC). The E-Biz POC at your organization must log in to *www.grants.gov* to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. Search for the Funding Opportunity on *www.grants.gov*. Please use the following identifying information when searching for the SCASDP funding opportunity on *www.grants.gov*. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 20.930, titled Payments for Small Community Air Service Development.

6. Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement. Within 24–48 hours after submitting your electronic application, you should receive an email validation message from *www.grants.gov*. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, and .xls. While you may imbed picture files such as .jpg, .gif, .bmp, in your files, please do not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Experiencing Unforeseen *www.grants.gov* Technical Issues

If you experience unforeseen *www.grants.gov* technical issues beyond your control that prevent you from submitting your application by 5 p.m. EDT on June 11, 2012, you must contact us at Brooke.Chapman@dot.gov or (202) 366–0577 within the 24 hours following the deadline and request approval to submit your application after the deadline has passed. At that time, DOT staff will require you to provide your DUNS number and your *www.grants.gov* Help Desk tracking number(s). After DOT staff review all of the information submitted and contact the *www.grants.gov* Help Desk to validate the technical issues you reported, DOT staff will contact you to either approve or deny your request to submit a late application through *www.grants.gov*. If the technical issues you reported cannot be validated, your application will be rejected as untimely. To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow *www.grants.gov* instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Appendix B

Cover Sheet

The cover page for all applications should bear the title ''Application Under the Small Community Air Service Development Program, Docket DOT–OST–2012–0069'' and should include:

(1) The name of the community or consortium of communities applying for the grant;

(2) The legal sponsor and its Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number, including + 4; Employee Identification Number (EIN) or Tax ID; and

(3) The 2-digit Congressional district code applicable to the sponsoring organization and, if a consortium, to each participating community.

BILLING CODE 4910–9X–P

Appendix C

Small Community Air Service Development Program

Docket Dot-Ost-2012-0069

Summary Information

All applicants must submit this information with their proposal, along with a completed form SF424 on www.grants.gov.

A. APPLICANT INFORMATION: (CHECK ALL THAT APPLY)

☐ **Not a Consortium** ☐ **Interstate Consortium** ☐ **Intrastate Consortium**

☐ **Community now receives EAS subsidy**

☐ **Community (or Consortium member) previously received a Small Community Grant**

If previous recipient: Date of grant: _____ Expiration date of grant: _____

Federal Funds Requested: _____

Carrier(s) Service Obtained: _____

Destination(s) Served: _____

B. PUBLIC/PRIVATE PARTNERSHIPS: (LIST ORGANIZATION NAMES)

PUBLIC	PRIVATE
1.	1.
2.	2.

3.	**3.**
4.	**4.**
5.	**5.**

C. PROJECT PROPOSAL: (CHECK ALL THAT APPLY)

☐ Marketing ☐ Upgrade Aircraft ☐ New Route

☐ Travel Bank ☐ Service Restoration ☐ Subsidy

☐ Surface Transportation ☐ Regional Service ☐ Revenue Guarantee

☐ Launch New Carrier ☐ Start-up Cost Offset ☐ First Service

☐ Study ☐ Secure Additional Service ☐ Other (explain below)

D. EXISTING LANDING AIDS AT LOCAL AIRPORT:

☐ Full ILS ☐ Outer/Middle Marker ☐ Published Instrument Approach

☐ Localizer ☐ Other (specify)

E. PROJECT COST: DO NOT ENTER TEXT IN SHADED AREA

LINE	DESCRIPTION		SUB TOTAL	TOTAL AMOUNT
1	Federal amount requested			
2	State cash financial contribution			
	Local cash financial contribution			
	3a	Airport cash funds		

	3b	Non-airport cash funds		
3	Total local cash funds (***3a + 3b***)			
4	TOTAL CASH FUNDING (***1+2+3***)			
	In-Kind contribution			
	5a	Airport In-Kind contribution**		
	5b	Other In-Kind contribution**		
5	TOTAL IN-KIND CONTRIBUTION (***5a + 5b***)			
6	TOTAL PROJECT COST (***4+5***)			

F. IN-KIND CONTRIBUTIONS**

For funds in lines 5a (Airport In-Kind contribution) and 5b (Other In-Kind contribution), please describe the source(s) of fund(s) for each.

F. IS THIS APPLICATION SUBJECT TO REVIEW BY STATE UNDER EXECUTIVE ORDER 12372 PROCESS?

☐ a. This application was made available to the state under the Executive Order 12372 Process for review on (date) _____.

☐ b. Program is subject to E.O. 12372, but has not been selected by the state for review.

☐ c. Program is not covered by E.O. 12372.

G. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? (IF "YES", PROVIDE EXPLANATION)

☐ No ☐ Yes (explain)

_____

_____

Appendix D

Application Checklist

INCLUDED?	ITEM
	For Immediate Action
	Determine Eligibility
	New Grants.gov users must register with www.grants.gov. Existing Grants.gov users *must verify existing www.grants.gov account has not expired and the Authorized Organization Representative (AOR) is current.*
	For Submission by 5:00 pm EDT on June 11, 2012
	Communities with active SCASDP grants: notify DOT/X50 of intent to terminate existing grant in order to be eligible for selection in FY2012.
	Complete Application for Federal Domestic Assistance (SF424) via www.grants.gov
	Cover Sheet (see **Appendix B**)
	Summary Information sheet (see **Appendix C**)
	Application of up to 25 one-sided pages (excluding any letters from the community showing support for the application), to include:
	• A description of the community's air service needs or deficiencies.
	• A strategic plan for meeting those needs under the Small Community Program.
	• A detailed description of the funding necessary for implementation of the community's project.

	• An explanation of how the proposed project differs from any previous projects for which the community received SCASDP funds (if applicable).
	• Designation of a legal sponsor responsible for administering the program.
	• A motion for confidential treatment (if applicable).

BILLING CODE 4910–9X–C

Appendix E

Confidential Commercial Information

Applicants will be able to provide certain confidential business information relevant to their proposals on a confidential basis. Under the Department's Freedom of Information Act regulations (49 CFR 7.17), such information is limited to commercial or financial information that, if disclosed, would either likely cause substantial harm to the competitive position of a business or enterprise or make it more difficult for the Federal Government to obtain similar information in the future.

Applicants seeking confidential treatment of a portion of their applications must segregate the confidential material in a sealed envelope marked ''Confidential Submission of X (the applicant) in Docket DOT–OST–2012–0069,'' and include with that material a request in the form of a motion seeking confidential treatment of the material under 14 CFR 302.12 (Rule 12) of the Department's regulations. The applicant should submit an original and two copies of its motion and an original and two copies of the confidential material in the sealed envelope.

The confidential material should *not* be included with the original of the applicant's proposal that is submitted via *www.grants.gov.* The applicant's original submission, however, should indicate clearly where the confidential material would have been inserted. If an applicant invokes Rule 12, the confidential portion of its filing will be treated as confidential pending a final determination. All confidential material must be received by June 11, 2012, and delivered to the Office of Aviation Analysis, 8th Floor, Room W86–310, 1200 New Jersey Ave. SE., Washington, DC 20590.

A template for the confidential motion can be found at *http://ostpxweb.dot.gov/aviation/X-50%20Role_files/smallcommunity.htm.*

Applicants will be able to provide certain confidential business information relevant to their proposals on a confidential basis. Under the Department's Freedom of Information Act regulations (49 CFR 7.17), such information is limited to commercial or financial information that, if disclosed, would either likely cause substantial harm to the competitive position of a business or enterprise or make it more difficult for the Federal Government to obtain similar information in the future.

Applicants seeking confidential treatment of a portion of their applications must segregate the confidential material in a sealed envelope marked ''Confidential Submission of X (the applicant) in Docket DOT–OST–2011–0119,'' and include with that material a request in the form of a motion seeking confidential treatment of the material under 14 CFR 302.12 (Rule 12) of the Department's regulations. The applicant should submit an original and two copies of its motion and an original and two copies of the confidential material in the sealed envelope.

The confidential material should *not* be included with the original of the applicant's proposal that is submitted via *www.grants.gov.* The applicant's original submission, however, should indicate clearly where the confidential material would have been inserted. If an applicant invokes Rule 12, the confidential portion of its filing will be treated as confidential pending a final determination. All confidential material must be received by August 2, 2011, and delivered to the Office of Aviation Analysis, 8th Floor, Room W86–310, 1200 New Jersey Ave. SE., Washington, DC 20590.

A template for the confidential motion can be found at *http://ostpxweb.dot.gov/aviation/X-50%20Role_files/smallcommunity.htm.*

[FR Doc. 2012–11718 Filed 5–10–12; 4:15 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Land Release for Plattsburgh International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice, Request for Public Comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the Plattsburgh International Airport (PBG), Plattsburgh, New York, Notice of Proposed Release from Aeronautical Use, and from the Airport, of approximately 1.73 +/− acres of airport property, to allow for non-aeronautical development.

The parcel is located on the southeast corner of the Plattsburgh International Airport. The Tract (Tract I–901) is currently part of Plattsburgh International Airport and is currently vacant. The requested release is for the purpose of permitting the airport owner (Clinton County) to sell and convey title of 1.73 +/− acres for expansion of a single family residence owned by Mr. Brian K. and Karen L. Dumesnil.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Office of the Clinton County Legislature and the FAA New York Airport District Office.

DATES: Comments must be received by June 14, 2012.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Steven M. Urlass, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530. In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. James R. Langley, Chairman, Clinton County Legislature, at the following address: Clinton County Government Center, 137 Margaret Street, Plattsburgh, New York 12901.

FOR FURTHER INFORMATION CONTACT: Steven M. Urlass, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; email *Steven.Urlass@faa.gov.*

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 1st Century (AIR21) requires the FAA to provide an opportunity for public notice and comment before the Secretary may waive a Sponsor's Federal obligation to use certain airport land for aeronautical use.

Issued in Garden City, New York, on May 7, 2012.

Steven M. Urlass,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 2012–11698 Filed 5–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order (TSO)–C91a, Emergency Locator Transmitters (ELTs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of Technical Standard Order (TSO)–C91a, Emergency Locator Transmitter (ELT) Equipment.

SUMMARY: This notice announces the FAA's cancellation of TSO–C91a, Emergency Locator Transmitter (ELT) Equipment. The effect of the cancelled TSO will result in no new TSO–C91a design or production approvals being issued. Applicants wanting to apply for TSO Authorization (TSOA) for new Emergency Locator Transmitters (ELTs) after December 1, 2012, must seek authorization for TSO–C126a, 406 MHz Emergency Locator Transmitter (ELT), or subsequent.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Sayadian, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4652, fax (202) 385–4651, email to: *Albert.Sayadian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2009 Cospas-Sarsat satellite system stopped processing signals from 121.5 MHz ELTs and now only processes signals from 406 MHz ELTs. The decision to discontinue processing of the 121.5 MHz signal was made by the International Cospas-Sarsat program with guidance from the United Nations. This was made due to the problems within the 121.5 MHz frequency band which inundated SAR authorities with reports of poor accuracy and numerous false alerts, thus impacting the effectiveness of lifesaving services.

The 406 MHz ELT technology is an advance over the older 121.5 MHz ELT technology. TSO–C126a ELT equipment is more accurate and reliable than the 121.5 MHz ELT equipment. Examples of these improvements are: (1) Global satellite coverage; (2) a unique beacon identification which is required to be registered so that if an alert is activated the rescue coordination center can confirm whether the distress is real, who they are looking for, and where the search should begin; (3) 406 MHz ELTs can be received by geostationary satellites which are always visible and provide instantaneous alerting, and (4) increased position accuracy which reduces the search area to less than two nautical miles in radius. Additionally, 406 MHz ELTs can optionally include a GPS position which can potentially reduce the search area to within 100 meters of the accident site.

The performance and benefits of TSO–C126a equipment surpasses TSO–C91a equipment. The 406 MHz technology is mature and prevalent in the ELT market today. New TSO authorizations for ELTs should be accomplished to TSO–C126a, or subsequent, thus the FAA is canceling TSO–C91a.

Comments

On January 11, 2012, a notice was published in the **Federal Register** which requested comments on the cancellation of TSO–C91a (77 FR 1779).

The FAA received comments from four organizations in response to the **Federal Register** Notice. Comments from Cobham Beacon Products were comprised of several questions. The first question regarded permissibility of minor and major changes to existing TSO–C91a designs. In response, minor changes to an existing TSO–C91a ELT design will still be allowed in accordance with Title 14 of the Code of Federal Regulation (14 CFR) 21.611(a), however, after December 1, 2012, a major change that is extensive enough to require issuance of a new ELT TSO authorization will have to meet the minimum performance standards contained in TSO–C126a. Cobham's second question requested clarification on repair and overhaul of TSO–C91a ELTs. The FAA clarifies that repair and overhaul of TSO–C91a articles will continue to be permissible. Cobham's third question involved permissibility of continued installation of TSO–C91a ELTs. The FAA reiterates that articles with previous TSO–C91a authorizations may still be produced, sold, and installed. Cobham also inquired if the FAA will update 14 CFR § 91.207 to exclude TSO–C91a equipment if the Federal Communication Commission (FCC) changes the rules governing the 121.5 MHz frequency. The FAA can not comment on future FCC actions, however at this time the FAA has no plans to revise 14 CFR 91.207.

The second commenter, Astronics DME Corporation, provided two comments. First, Astronics commented that cancellation of TSO–C91a eliminates procedural access to the TSO requirements of 14 CFR 21, Subpart O when a major change to the TSO's article is required. Under 14 CFR Part 21, a major change requires the TSO authorization holder to apply for a new TSO authorization utilizing the latest revision of the TSO. Major changes to TSO–C91a articles will be accepted when applied for utilizing the latest revision of TSO–C126.

Astronics also commented that elimination of satellite detection on the 121.5 MHz frequency is not sufficient justification for TSO–C91a cancellation. The FAA acknowledges that the 121.5 MHz ELT signal is still monitored in many cases and provides limited search and rescue functionality. However, TSO–C126a is a more mature standard, and the 406 MHz signal provides satellite detection, which enhances search and rescue efforts. Because the 121.5 MHz ELT continues to provide this basic functionality, the TSO–C91a ELTs can continue to be used to meet 14 CFR § 91.207, however because a more mature standard is available, it is appropriate to require new ELTs designs to meet the standards of TSO–C126a, or subsequent.

Astronics also commented that the TSO–C126a requirement to include a 121.5 MHz homing beacon in the 406 MHz ELT should be modified to allow manufacturers to include a GPS locator instead of the 121.5 homing beacon. The FAA acknowledges the benefits of including GPS position with the 406 MHz ELT transmission, and encourages this optional capability. However, this action is canceling TSO–C91a, and is not modifying TSO–C126a.

The General Aviation Manufacturers Association (GAMA) and the Aircraft Owners and Pilots Association (AOPA) both provided comments that they do not oppose the TSO–C91a cancelation, but that they would oppose any future retrofit requirement. Both organizations requested the FAA reiterate that cancelation of TSO–C91a does not impact the continued production of articles with an existing TSO authorization nor impact the sale, installation, or the use of 121.5 MHz ELTs to comply with 14 CFR 91.207.

The General Aviation Manufacturers Association (GAMA) also conducted a survey of the manufacturers of general aviation aircraft and determined that all current production airplanes include dual or tri-band ELTs. Additionally, these dual or tri-band ELTs have been installed in new production airplanes for over the past 5-years.

The FAA reiterates in this final notice that cancelation of TSO–C91a does not affect production under an existing TSO authorization. Articles produced under an existing TSO–C91a authorization can still be installed according to existing airworthiness approvals and applications for new installation approvals will still be processed. This

action does not impact operation of TSO–C91a ELTs, and these ELTs will continue to satisfy the 14 CFR 91.207 ELT equipage requirement.

GAMA also commented that the FAA should reconsider the ELT operational mandate as newer technology, such as ADS–B, becomes more commonplace. The FAA has determined that the ADS–B system currently cannot replace the ELT function. The ADS–B system is not required to be crashworthy and, thus, may not be operable or able to transmit following an aircraft accident. Additionally, current search-and-rescue technology is not compatible with ADS–B operations because ELTs broadcast on 121.5 or 406 MHz (not 1090 or 978 MHz). The FAA recognizes the value of a ground application that could allow for timely and accurate flight tracking of downed aircraft and is evaluating this capability separate from this action.

Conclusion

TSO–C91a is canceled effective December 1, 2012. Manufacturers applying for new ELT technical standard order authorizations after December 1, 2012 must use TSO–C126a, or a subsequent ELT technical standard order.

Issued in Washington, DC, on May 9, 2012.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–11678 Filed 5–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0086]

Pipeline Safety: Information Collection Activities, Excess Flow Valve Census

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on a new one-time Information Collection (IC) on Excess Flow Valves (EFVs). PHMSA will request approval for this new information collection from the Office and Management and Budget (OMB). The collection involves a census of gas operators to gather data on operators' experiences, practices, benefits, and costs associated with the use of EFVs. This data is necessary to conduct a cost-benefit analysis of requiring an expansion in the use of EFVs.

DATES: Interested persons are invited to submit comments on or before July 16, 2012.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. DOT, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2012–0086, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2012–0086.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new one-time information collection request that PHMSA will be submitting to OMB for approval. The information collection will be titled: ''Information Collection on Excess Flow Valves.''

In 1996, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), issued a final rule adopting a performance standard for the use of excess flow valves (EFVs) in single-family-residence service lines (61 FR 31449; codified at 49 CFR 192.381). That standard only applied to the EFVs voluntarily installed on service lines that operated at pressures at or above 10 pounds per square inch gas (psig) on a continuous basis throughout the year.

In 2001, the National Transportation Safety Board (NTSB) issued Safety Recommendation P–01–2 to RSPA. This recommendation, which was based on the results of NTSB's investigation into a 1998 natural pipeline accident that occurred in South Riding, Virginia, advised RSPA to require the installation of EFVs in all new and renewed gas service lines, regardless of a customer's classification, when operating conditions are compatible with readily available valves.

On December 29, 2006, Congress enacted the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006 (Pub. L. 109–468). Section 9 of the PIPES Act (codified at 49 U.S.C. 60109(e)) stated that ''[n]ot later than December 31, 2007, the Secretary [of Transportation] shall prescribe minimum standards for integrity management programs for distribution pipelines.'' Section 9 further stated that those ''minimum standards shall include a requirement for an operator of a natural gas distribution system to install an excess flow valve on each single family residence service line'' under certain prescribed conditions.

In 2009, PHMSA issued the Distribution Integrity Management Program (DIMP) final rule (74 FR 63906). The DIMP final rule required that operators install EFVs on all new or

replaced service lines serving single family residences, subject to certain exceptions (e.g., if a line does not operate at or above 10 psig throughout the year, if contaminants in the gas stream could affect the operation of an EFV or cause service interruptions, if installation of an EFV could interfere with operations and maintenance activities, or if an acceptable EFV is not commercially available) (codified at 49 CFR 192.383).

In 2011, PHMSA also published an Advance Notice of Proposed Rulemaking (ANPRM) (November 25, 2011; 76 FR 72666) seeking public comment on several issues relating to the expanded use of EFVs in gas distribution systems. During the comment period, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. Section 22 of the Act (codified in Section 60109(e)(3)(B)) states that ''[n]ot later than 2 years after the date of enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, and after issuing a final report on the evaluation of the National Transportation Safety Board's recommendation on excess flow valves in applications other than service lines serving one single family residence, the Secretary, if appropriate, shall by regulation require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial facilities.''

To comply with Congress's recent mandate and address NTSB's prior safety recommendation, PHMSA needs comprehensive data on the operations, costs, and benefits of EFVs, as well as information on how those operations, costs, and benefits may vary for other customer classification service lines (in addition to single family residence service lines). This information collection will provide the data necessary to conduct a cost-benefit analysis of EFVs for different customer classification service lines.

PHMSA is proposing to use an online census for this information collection. A copy of the census will be placed in the docket for comment. The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity.

PHMSA requests comments on the following information collection:

Title: Information Collection on Excess Flow Valves.

OMB Control Number: Pending.

Type of Request: New information collection.

Abstract: PHMSA is conducting a census of gas operators to gather data on operators' experiences, practices, benefits, and costs with EFVs. This data is necessary in order to conduct a cost-benefit analysis of requiring an expansion in the use of EFVs.

Affected Public: Gas Operators.

Estimated number of responses: 1,235 operators.

Estimated annual burden hours: 19,760.

Frequency of collection: One-time collection.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) 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;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Dated: Issued in Washington, DC, on May 3, 2012.

Alan K. Mayberry,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2012–11715 Filed 5–14–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the four individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant

role in international narcotics trafficking.

On May 8, 2012 the Director of OFAC designated the following four individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. GUZMAN SALAZAR, Ivan Archivaldo (a.k.a. ''El Chapito''; a.k.a. GUZMAN SALAZAR, Archivaldo Ivan; a.k.a. GUZMAN SALAZAR, Ivan Archibaldo); Mexico; DOB 02 Oct 1980; POB Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]
2. GUZMAN LOPEZ, Ovidio, Mexico; DOB 29 Mar 1990; POB Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GULO900329HSLZPV09 (Mexico); (INDIVIDUAL) [SDNTK]
3. LIMON SANCHEZ, Ovidio, Calle Plan de Iguala #2951, Colonia Emiliano Zapata, Culiacan, Sinaloa, Mexico; DOB 24 Jul 1968; Alt. DOB 24 Jun 1968; Alt. DOB 16 Oct 1962; POB Badiraguato, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LISO680724HSLMNV03 (Mexico); (INDIVIDUAL) [SDNTK]
4. SALGUEIRO NEVAREZ, Noel (a.k.a. ''El Flaco''); Mexico; DOB 06 Jun 1969; POB Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

Dated: May 8, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–11660 Filed 5–14–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant an Exclusive License

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Office of Research and Development, intends to grant to algorithmRx, LLC, 7400 Beaufont Springs Drive—Suite 300, North Chesterfield, Virginia 23225, an exclusive license to practice the following: U.S. Patent Application Serial No. 12/928,894 (Methods for Predicting the Response to Statins) filed December 21, 2010, and published on October 6, 2011, under Publication No. US–2011–0245283.

DATES: Comments must be received by VA on or before May 30, 2012.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Lee A. Sylvers, Technology Transfer Program, Office of Research and Development (10P9TT), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 443–5646. This is not a toll free number. Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov.*

SUPPLEMENTARY INFORMATION: The interests of the Federal Government and the public will be best served if this license is awarded to algorithmRx, LLC because the invention can lead to a more efficacious use of statins. 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. The prospective exclusive license may be granted unless, within 15 days from the date of this published Notice, VA's Office of Research and Development receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Approved: May 9, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–11707 Filed 5–14–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 94 May 15, 2012

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnace Fans; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0010]

RIN 1904–AC21

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnace Fans

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish test procedures for residential products that use electricity for purposes of circulating air through duct work, hereafter referred to as ''furnace fans.'' Specifically, this notice proposes to establish a test method for measuring the airflow performance and electrical consumption of these products. Concurrently, DOE is undertaking an energy conservation standards rulemaking to address the electrical energy used by these products for circulating air. Once these energy conservation standards are promulgated, the adopted test procedures will be used to determine compliance with the standards. DOE is also announcing a public meeting to discuss and receive comments on issues presented in this test procedure rulemaking.

DATES: *Meeting:* DOE will hold a public meeting on Friday, June 15, 2012, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than July 30, 2012. For details, see section V, ''Public Participation,'' of this NOPR.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards at the phone number above to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section V, ''Public Participation,'' of this NOPR.

Any comments submitted must identify the NOPR on Test Procedures for Residential Furnace Fans, and provide docket number EERE–2010–BT–TP–0010 and/or regulatory information number (RIN) number 1904–AC21. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: FurnFans-2010-TP-0010@ee.doe.gov* Include docket number EERE–2010–BT–TP–0010 and RIN 1904–AC21 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html.* This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. Email: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] These include products that use electricity for the purposes of circulating air through duct work, hereinafter referred to as ''residential furnace fans'' or simply ''furnace fans,'' the subject of today's notice. (42 U.S.C. 6295(f)(4)(D)).

Under the Act, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)). Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)).

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)). Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of a covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)). If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)).

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption.[3] Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (1) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (2) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)). Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301, *Household electrical appliances—Measurement of standby power,* and IEC Standard 62087, *Methods of measurement for the power consumption of audio, video, and related equipment.*[4]

Pursuant to EPCA under 42 U.S.C. 6295(f)(4)(D), DOE is currently conducting a rulemaking to consider new energy conservation standards for furnace fans. EPCA directs DOE to establish test procedures in conjunction with new or amended energy conservation standards, including furnace fans. (42 U.S.C. 6295(o)(3)(A). To fulfill these requirements, DOE is simultaneously initiating a test procedure rulemaking for furnace fans. DOE intends for the test procedure to include: (1) An annual electrical energy consumption metric normalized by total annual operating hours and airflow capacity in the maximum airflow-control setting; and (2) the methods necessary to measure the performance of the covered products. The metric will also account for the electrical energy consumption in standby mode and off mode for furnace fans used in heating ventilation and air-conditioning (HVAC) products for which consumption in those modes is not already fully accounted for in other DOE rulemakings. Manufacturers will be required to use these methods and this metric for the purposes of verifying compliance with the new energy conservation standards when they take effect.

DOE does not currently have a test procedure for furnace fans. On June 3, 2010, DOE published a Notice of Public Meeting and Availability of the Framework Document to initiate the energy conservation standard rulemaking for furnace fans. 75 FR 31323. DOE posted the furnace fans

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] Given EISA 2007's focus on comprehensively addressing standby mode and off mode energy consumption and in order to conserve limited resources, DOE believes it is appropriate to address these issues in this new test procedure, rather than needing to wait for a subsequent rulemaking to ''amend'' the test procedure.

[4] EISA 2007 directs DOE to also consider IEC Standard 62087 when amended its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

framework document, hereinafter referred to as the June 2010 framework document, to its Web site. In the June 2010 framework document, DOE requested feedback from interested parties on many issues related to test methods for evaluating the electrical energy consumption of furnace fans. DOE held the framework public meeting on June 18, 2010. DOE originally scheduled the framework comment period to close on July 6, 2010. However, due to the large number and broad scope of questions and issues raised in the June 2010 framework document (and during the public meeting), DOE subsequently published a notice in the **Federal Register** reopening the comment period from July 15, 2010 until July 27, 2010, to allow additional time for interested parties to submit comments. 75 FR 41102 (July 15, 2010).

II. Summary of the Notice of Proposed Rulemaking

In this notice of proposed rulemaking, DOE proposes to establish a test method for measuring the electrical energy consumption of furnace fans, as well as airflow performance (which has a direct effect on efficiency), and the standby mode and off mode energy consumption of such fans. DOE intends for the proposed test procedure to be broadly applicable to electrically-powered devices used in residential central HVAC systems for the purposes of circulating air through duct work (*i.e.,* furnace fans). Furnace fans include, but are not limited to, the air distribution fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, modular blowers, and hydronic air handlers. The proposed test procedure is not intended to be applicable to any non-ducted products, such as whole-house ventilation systems without duct work, central air-conditioning (CAC) condensing unit fans, room fans, and furnace draft inducer fans.

Pursuant to EPCA, DOE must establish these test procedures in order to allow for the development of energy conservation standards that will address the electrical consumption of these products. (42 U.S.C. 6295(o)(3)(A)) As further required by EPCA, the NOPR also includes proposed methods for measuring the standby mode and off mode electrical energy consumption for furnace fans used in HVAC products, to the extent that electrical energy consumption in these modes is not already covered (*i.e.,* the NOPR proposes standby mode and off mode test methods for hydronic air handlers). (42 U.S.C. 6295(gg)(2)(A)) DOE proposes to integrate measurements for standby mode and off mode electrical energy consumption with the active mode energy consumption in the proposed metric for hydronic air handlers. DOE's proposed approach to these test procedure issues is summarized below and addressed in further detail later in this notice.

To rate the electrical efficiency of furnace fans (active mode energy consumption), DOE proposes to incorporate by reference into the test procedure specific provisions from American National Standards Institute (ANSI)/Air Movement and Control Association International, Inc. (AMCA) 210–07 | ANSI/American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) 51–07, *Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating,* hereinafter referred to as ''ANSI/AMCA 210–07.'' The specific provisions DOE proposes to include from ANSI/AMCA 210–07 are definitions, test setup and equipment, test conditions, and procedures for measuring airflow and external static pressure. In addition to these provisions, DOE proposes provisions for measuring electrical energy consumption using an electrical power meter. DOE also proposes to specify the methods for measuring standby mode and off mode energy consumption from the DOE residential furnaces test procedure to measure energy consumption in these modes for hydronic air handlers. (10 CFR part 430, subpart B, appendix N, section 8.0) In addition, DOE proposes calculations to derive the rating metric (*i.e.,* fan efficiency rating) based on the measured values.

DOE proposes to use as the furnace fan efficiency rating metric the ''estimated annual electrical energy consumption'' normalized by: (a) The total number of annual operating hours, and (b) the airflow in the maximum airflow-control setting in standard cubic feet per minute. Standard cubic feet per minute (scfm) is a measure of airflow corrected for predetermined standard air conditions. The estimated annual electrical energy consumption, as proposed, is a weighted average of the input power (in Watts) measured separately for multiple airflow-control settings at different external static pressures (ESPs). These ESPs are determined by a reference system that represents national average duct work system characteristics. The airflow-control settings proposed to be rated correspond to operation in cooling mode, heating mode, and constant-circulation mode. Table II.1 illustrates the airflow-control settings that will be rated for various product types.

TABLE II.1—PROPOSED RATED AIRFLOW-CONTROL SETTINGS BY PRODUCT TYPE

Product type	Rated airflow-control setting 1	Rated airflow-control setting 2	Rated airflow-control setting 3
Single-stage Heating	Default constant-circulation	Default heat	Maximum.
Multi-stage or Modulating Heating	Default constant-circulation	Default low heat	Maximum.
Heating-only	Default constant-circulation	None	Maximum.

For products with single-stage heating, the three proposed rating airflow-control settings are the maximum setting, the default heating setting, and the default constant-circulation setting. For products with multi-stage heating or modulating heating, the proposed rating airflow-control settings are the maximum setting, the default low heating setting, and the default constant-circulation setting. For products that are not designed to be paired with an evaporator coil, hereinafter referred to as ''heating-only products,'' the proposed rating airflow-control settings are the maximum airflow-control setting (expected to be the default heat airflow-control setting) and the default constant-circulation setting. The lowest default airflow-control setting is used to represent constant circulation if a constant-circulation setting is not specified. DOE proposes to weight the Watt measurements using designated annual operating hours for each function (*i.e.,* cooling, heating, and constant circulation) that are intended to represent national average operation. The specified operating hours for the heating mode for multi-stage heating or modulating heating products are modified to account for variation in

time spent in this mode associated with turndown of heating output.

DOE also proposes to establish methods for measuring the standby mode and off mode electrical energy consumption of furnace fans for which consumption in these modes is not already covered by existing standards or currently proposed amendments to those standards (*i.e.,* the NOPR proposes standby mode and off mode test methods for hydronic air handlers). EPCA requires that DOE integrate into the energy conservation standard the energy use associated with standby mode and off mode, unless the current standard already accounts for standby mode and off mode energy consumption or integration is not technically feasible. In the latter case, EPCA requires that DOE prescribe a separate efficiency standard to address standby mode and off mode energy use, unless that is not feasible. (42 U.S.C. 6295(gg)(3)) DOE efficiency metrics for furnaces already fully account for the energy use associated with the standby mode and off mode of their furnace fans. (10 CFR part 430, subpart B, appendix N, section 8.0) On September 13, 2011, DOE published a NOPR in the **Federal Register** proposing to update the DOE test procedure for furnaces through incorporation by reference of the latest edition of the relevant industry standard, specifically IEC Standard 62301 (Second Edition). 76 FR 56339. For central air conditioners (CAC), DOE has proposed such metrics in a notice of proposed rulemaking. 75 FR 31224, 31270 (June 2, 2010). Subsequently, DOE published two supplemental notices of proposed rulemaking (SNOPR). DOE published the first SNOPR on April 1, 2011 (76 FR 18105) and the second SNOPR on October 24, 2011 (76 FR 65616). Hence, including standby mode and off mode energy use in the furnace fan efficiency metric for these HVAC products would not be appropriate, because it is already fully addressed. Products for which standby mode and off mode energy use is already accounted elsewhere include weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. However, test procedures that include measurement of furnace fan standby mode and off mode energy consumption have been neither established nor proposed for hydronic air handlers, so DOE proposes to do so in this rulemaking.

III. Discussion

A. Scope

Under 42 U.S.C. 6295(f)(4)(D), EPCA directs DOE to consider and prescribe standards for electricity used for purposes of circulating air through duct work. Although the title of this statutory section refers to ''furnaces and boilers,'' this particular provision was written using notably broader language than the other provisions within the same section. Consequently, in the June 2010 framework document for the energy conservation standards rulemaking, DOE tentatively interpreted this relevant statutory language to allow DOE to cover the electricity used by any electrically-powered device used in residential, central HVAC systems for the purpose of circulating air through duct work. 75 FR 31323 (June 3, 2010).

Ultimately, the scope of applicability of the proposed test procedure will be determined by the scope of coverage of the energy conservation standards rulemaking for furnace fans. Therefore, DOE proposes a scope of applicability for this notice that is broad enough to cover the products currently under consideration for the energy conservation standards rulemaking, including single-phase, electrically-powered devices that circulate air through duct work in HVAC systems with heating input capacities less than 225,000 Btu per hour, cooling capacities less than 65,000 Btu per hour, and airflow capacities less than 3,000 cfm. These specifications are consistent with the DOE definitions for residential ''furnace'' and ''central air conditioner'' (10 CFR 430.2), and the airflow typically required to provide these levels of heating and cooling. DOE proposes to exclude from the scope of applicability of the test procedure any non-ducted products, such as whole-house ventilation systems without duct work, CAC condensing unit fans, room fans, and furnace draft inducer fans because these products do not circulate air through duct work. DOE believes this proposed scope of applicability is broad enough to anticipate the scope of coverage of the energy conservation standard.

B. Definitions

DOE proposes to incorporate by reference in section 2 of Appendix AA to Subpart B of Part 430, all definitions in section 3.1 of ANSI/AMCA 210–07. DOE also proposes to include in section 2 of Appendix AA to Subpart B of Part 430 the additional and modified definitions listed below:

- *Active mode* means any mode in which the HVAC product is connected to the power source and circulating air through duct work.
- *Airflow-control settings* are differing ranges of airflow that a fan motor is programmed or wired to achieve in a single control system configuration (*i.e.,* without manual adjustments) often designated for performing a specific HVAC function (*e.g.,* cooling, heating, or constant circulation).
- *ANSI/AMCA 210–07* means the test standard published by ANSI/AMCA 210–07 | ANSI/ASHRAE 51–07 titled ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating.''
- *Default airflow-control settings* are the airflow-control settings that can be achieved in the factory-set control system configuration (*i.e.,* without manual adjustment other than interaction with a user-operable control such as a thermostat).
- *External static pressure* means the difference between the fan total pressure at the air outlet and the total pressure at the air inlet less velocity pressure at the air outlet of an HVAC product containing a furnace fan when operating and installed in accordance with the manufacturer's instructions. External static pressure does not include the pressure drop across appurtenances internal to the HVAC product.
- *Hydronic air handler* means a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by hot water flowing through a hydronic heating coil and the heated air is circulated by means of a fan or blower.
- *Off mode* means the mode during which the HVAC product is not powered.
- *Residential furnace fan* means an electrically-powered device used in residential central heating, ventilation, and air-conditioning (HVAC) systems for the purpose of circulating air through duct work.
- *Seasonal off switch* means the switch on the HVAC product that, when activated, results in a measurable change in energy consumption between the standby and off modes.
- *Standby mode* means the mode during which the HVAC product is connected to the power source and the furnace fan is not activated.

C. Reference Standard

In the June 2010 framework document for the furnace fans energy conservation standards rulemaking, DOE requested interested-party comments on the methods specified in the December 2009 draft version of Canadian Standard CSA C823, *Performance Standard for Air Handlers in Residential Space Conditioning Systems,* which references ANSI/AMCA 210–07 and ANSI/ASHRAE Std 37–2005, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat*

Pump Equipment. The December 2009 draft CSA C823 test procedure specifies use of the methods described in the aforementioned industry standards to measure the electrical power consumption of a furnace fan at specific operating points in each of a furnace fan's available airflow-control settings. The December 2009 draft of CSA C823 includes a rating metric with units of kWh that is called the annual electricity consumption rating (AECR). This rating is a time-weighted sum of the energy use measurements.

Rheem and the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) stated that ANSI/AMCA 210–07 is a well-known and widely-used reference test procedure (Rheem, No. 29 at pp. 4–5; AHRI, No. 20 at pp. 3–4). Rheem recommended that DOE use ANSI/AMCA 210–07 as its reference test procedure (Rheem, No. 29 at pp. 4–5). AHRI proposed basing the standard on ANSI/AHRI Standard 210–240–2008, but conceded that this test method might increase burden because it is different from the way furnaces are currently tested (AHRI, No. 20 at p. 5). Ingersoll Rand suggested that DOE use the methods specified in DOE's existing residential furnace test procedure codified in 10 CFR part 430, subpart B, appendix N, because the test procedures referenced in CSA C823 (*i.e.,* ANSI/AMCA 210–07) would add test burden by requiring additional test measurements and an alternate test set-up. (Ingersoll Rand, No. 12 at p. 1)

After carefully considering these comments, DOE is proposing to incorporate by reference ANSI/AMCA 210–07. DOE believes that ANSI/AMCA 210–07 is an appropriate reference standard because it is a well-known and widely-used industry standard for measuring fan performance. DOE is aware that manufacturers use ANSI/AMCA 210–07 to generate the airflow performance data tables that they publish in product specification sheets. These tables include measurements of airflow (and sometimes electrical consumption) at various ESPs across a wide range. These tables and comments from interested parties indicate that manufacturers already possess or have access to test facilities suitable for ANSI/AMCA 210–07 testing. DOE also expects that manufacturers are practiced in or at least familiar with the methods necessary to take these measurements. AHRI stated that manufacturers currently perform furnace fan tests according to ANSI/AMCA 210–07 to generate airflow data for intended application of products (AHRI, No. 21 at pp. 3, 4). For these reasons, DOE does not expect that these methods would be overly burdensome to manufacturers. In addition, ANSI/AMCA 210–07 is more suitable for measuring airflow and electrical consumption across a range of ESPs and in multiple airflow-control settings; in contrast, the DOE residential furnace test procedure and ANSI/AHRI 210–240–2008 specify methods for measuring these parameters in a single airflow-control setting per heating stage as long as a minimum ESP has been achieved. The benefits of measuring performance in multiple airflow-control settings is discussed in detail in section III.F.1 While the ESP values specified in the DOE residential furnace test procedure and ANSI/AHRI 210–240–2008 are appropriate for rating furnaces, they are inconsistent with the values determined to be appropriate for rating furnace fan electrical performance, as proposed in this notice. A detailed discussion of the ESP values proposed in this notice compared to the suggested methods is provided in section III.E.

DOE proposes to incorporate by reference most aspects of ANSI/AMCA 210–07, except for specifications related to measuring rotational speed, beam load, torque, and mechanical measurement of input power. Specifically, DOE proposes to incorporate by reference the following provisions from ANSI/AMCA 210–07:

- Definitions, units of measure, and symbols (section 3);
- Instruments and methods of measurement (sections 4.1 through 4.3 and 4.6), excluding those for mechanical measurement of fan input power and motor calibration (section 4.4) and rotational speed (section 4.5);
- Test setup and equipment provisions (section 5) and observation and conduct of test guidelines (section 6), excluding test data to be recorded for rotational speed (N), beam load (F), or torque (T);
- Calculations (sections 7.1 through 7.7 and section 7.9), excluding calculations for fan power input or fan efficiency (sections 7.7 and 7.8); and
- Report and results of test requirements (section 8).

In addition to the methods incorporated by reference from ANSI/AMCA 210–07, DOE proposes to include specification of the range and increments of ESPs at which determinations are to be made. ANSI/AMCA 210–07 defines a ''determination'' as a complete set of measurements for a particular point of operation for a fan. For this notice, a complete set of measurements at a particular point of operation includes airflow, electrical consumption, and ESP.

DOE also proposes to include provisions for using an electrical meter to measure electrical energy consumption at each determination to replace the mechanical methods specified in section 4.4 of ANSI/AMCA 210–07. The proposed provisions are necessary because measuring electrical energy consumption using electrical power meters is a more widely used method by manufacturers of HVAC products. In addition, the voltage requirements in ANSI/AMCA 210–07 are specified in relation to the results of its specified motor calibration procedure (section 4.4.1.1), which DOE is not proposing to adopt in this notice. The proposed voltage requirements are consistent with those included in the DOE test procedures for residential furnaces and central air conditioners and heat pumps and are, therefore, also widely used by HVAC product manufacturers. DOE proposes to specify the use of an electrical meter with a certified accuracy of ±1 percent of observed readings to measure the electrical input power consumption of the HVAC product in which the furnace fan is incorporated at each determination. In addition, DOE proposes to specify that the electrical power supplied to the HVAC product be maintained within 1 percent of the nameplate voltage of the HVAC product. If a dual voltage is used for nameplate voltage, DOE proposes that the electrical supply be maintained within 1 percent of the higher voltage.

D. Rating Metric

In the June 2010 framework document, DOE requested comment to aid in determining an appropriate metric for rating furnace fan performance. Specifically, DOE identified two possible metrics: (1) the annual electrical energy consumption rating (AECR), as specified in the December 2009 draft version of Canadian Standard Association (CSA) C823, *Performance Standard for Air Handlers in Residential Space Conditioning Systems,* and (2) the blower power measurement (BE), as specified in the current DOE test procedure for residential furnaces codified in 10 CFR part 430, subpart B, appendix N. AECR uses operating hour multipliers based on climate, consumer behavior assumptions, and product characteristics (*e.g.,* multi-stage or modulating heating and cooling capability) to weight electrical consumption measurements in all possible airflow-control settings in order to estimate the annual electrical energy consumption of furnace fans, reported in kilowatt hours (kWh). BE is a

measurement of the steady-state power consumption of furnace fans in watts (W) at a minimum ESP determined by fuel type and input capacity.

Several interested parties stated that using an annualized energy consumption rating metric, such as AECR, is inappropriate for rating furnace fan performance. The American Council for an Energy-Efficient Economy (ACEEE) commented that it is not sure that fans can be rated both simply and meaningfully using a single certifiable number, like AECR, because of the diversity of expected furnace fan electricity consumption levels, depending on house size, duct restrictions, local climate, whether the unit is run in full-time ''circulate'' mode, and myriad other factors. (ACEEE, No. 19 at p. 2) Ingersoll Rand stated that adopting a rule that estimates the annualized energy usage would be confusing and misleading to consumers, as operating hours vary greatly across the country and from house to house. (Ingersoll Rand, No. 25 at p. 1) AHRI commented that an annual electrical energy consumption metric is not appropriate because of variations in climate, usage patterns, and installation. (AHRI, No. 21 at p. 3) Rheem expressed a similar view, that a less complicated, less specific, and less technically detailed energy descriptor would be a more powerful tool to guide HVAC professionals and consumers in the selection of energy-efficient equipment for specific climates, installations, and use patterns (Rheem, No. 29 at p. 1).

Many interested parties stated that cubic feet per minute per watt (cfm/W), or a similar efficiency metric should be used to rate furnace fan performance. The Northeast Energy Efficiency Partnership (NEEP) recommended that the efficiency metric be based on cfm/W or watts per cubic feet per minute (W/cfm). According to NEEP, this approach would avoid making the calculation overly complicated and potentially watered down with conditional assumptions, which contribute to a very difficult and, potentially, misleading metric to use for comparison. (NEEP, No. 16 at p. 3) Ingersoll Rand stated that the use of the single descriptor, cfm/W, provides the most direct way to compare furnace fan performance regardless of geography and how closely the furnace is sized to the house load. (Ingersoll Rand, No. 25 at p. 1) The Northwest Energy Efficiency Alliance (NEEA) recommended use of an air-delivery efficiency metric, such as cfm/W, to avoid the expectedly large standard deviation of actual energy use values around the rating value, which would be misleading for most installations. (NEEA, No. 9 at p. 2) Regal Beloit and the American Gas Association (AGA) also expressed support for the use of a rating metric expressed in cfm/W or W/cfm. (Regal Beloit, No. 32 at p. 3 and AGA, No. 7 at p. 101)

Interested parties also suggested a number of alternative metrics. AHRI and certain manufacturers, including Rheem, Nordyne, and Lennox, suggested that DOE use ''e,'' a dimensionless descriptor that expresses the electrical consumption of a furnace, including electrical components other than the furnace fan, as a percentage of its total (electrical and fuel) energy consumption. The ''e'' metric is a function of the average annual auxiliary electrical energy consumption, E_{ae}. E_{ae} is a well-known industry metric that is specified in the current DOE test procedure for residential furnaces. The ''e'' metric is currently used to determine furnace eligibility for Federal tax credits. (AHRI, No. 21 at p. 4, Rheem, No. 29 at p. 3; Nordyne, No. 31 at p. 2; and Lennox, No. 23 at p. 2) AHRI also recommended that DOE use ''e_b.'' The ''e_b'' metric is a ratio of the electrical energy consumed by the furnace fan to the total fuel and electrical energy consumed by the furnace. The ratio is similar to the ''e'' metric but differs in that the numerator only accounts for the electrical energy consumed by the furnace fan and not the total electrical consumption of the furnace. (AHRI No. 34 at pp. 1–3) Regal Beloit, a fan motor manufacturer, suggested that DOE use air horsepower (Air HP) to rate furnace fans. Air HP is the theoretical power required to deliver a specified quantity of air under a specified pressure condition and can be characterized as a function of the airflow, static pressure, and a constant. Regal Beloit did not provide details about the value or nature of the constant. (Regal Beloit, No. 32 at p. 3) Nordyne suggested that DOE use the air mover efficiency ratio (AMER) if ''e'' is not used. AMER is the ratio of the heating output capacity and the power consumed by the furnace fan. For AMER, Nordyne recommended that power be measured at a rating point defined by an airflow that is 0.175 times the output capacity on the lowest speed tap that would yield that airflow at 0.5 in.w.c. (Nordyne, No. 31 at p. 2) ACEEE recommended that DOE require furnace fan efficiency to be reported using three different energy consumption values that correspond to three different application classes: (1) Continuous circulation; (2) hot climate; and (3) average-to-cold climate (heating-dominated air handler energy use). (ACEEE, No. 19 at p. 3)

In order to determine an appropriate metric for furnace fan efficiency to propose in this notice, DOE carefully considered the suggestions and other points raised in public comments, and conducted additional research, as explained below. One tentative conclusion that DOE reached is that a furnace fan efficiency metric must capture operation at multiple key operating points. DOE's investigation of furnace fan performance data indicates that input power can drop dramatically as airflow is reduced. In addition, different furnace fans exhibit very different behavior with respect to their range of achievable airflows and the corresponding reduction in power input as airflow is reduced. DOE expects that examination of a furnace fan at a single operating point would not likely provide a full representation of energy use of a furnace fan in a typical installation. Therefore, DOE is proposing a metric that evaluates the furnace fan operation at multiple key operating points, as suggested by ACEEE. DOE proposes that the energy use in these modes is combined into a single metric, however, because DOE cannot set energy conservation standards based on multiple metrics.[5] The incorporation of multiple operating points in evaluation of furnace fan efficiency would ensure that the operating characteristics throughout the expected operating range are accounted for in the efficiency metric, and would, thus, rate at higher efficiency a furnace fan with the potential for airflow-control setting reduction and with greater reduction in input power as airflow is reduced.

Another tentative conclusion which DOE reached was that, consistent with comments received from interested parties, a metric in units of watts per cfm at specified ESPs would provide a useful metric for interested parties to compare and evaluate furnace fan performance. DOE finds that interested parties are familiar with discussing fan efficiency in terms of watts per 1000 cfm, as this is how fan performance is estimated in the alternative rating method for coil-only CAC products. Accordingly, in DOE's proposed metric (discussed below), the average power

[5] EPCA defines ''energy conservation standard'' as a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a covered product. (42 U.S.C. 6291(6)(A)) This definition does not allow prescription of multiple minimum levels of energy efficiency or maximum quantities of energy use, as would be required if multiple efficiency metrics were prescribed by the test procedure for energy conservation standards compliance purposes.

input is normalized by maximum airflow (in cfm), to allow for comparison across HVAC products of different capacities.

Finally, DOE tentatively concluded that it would not be possible for a furnace fan efficiency metric to capture all aspects of field operation. Several interested parties pointed out the dependence of furnace fan operating hours in the field on a wide range of factors such as climate, house size, duct characteristics, etc., as discussed above. However, the field performance of many products is dependent on the range of field installation and operating conditions. For example, the integrated combined energy efficiency ratio (CEER) for room air conditioners is based on active mode operation for 750 hours in outdoor temperature conditions of 95 °F dry bulb temperature and 75 °F wet bulb temperature.[6] A product's rating provides an indication of energy use in a typical installation, but actual field energy use may vary. The annual operating hours for the proposed fan efficiency metric, which allow calculation of typical annual energy use, are intended to be representative of typical national average hours, and they allow determination of annualized performance over a typical annual cycle.

In light of the parameters discussed above, DOE proposes to use a new rating metric called the ''fan efficiency rating'' (FER). FER is not included in the aforementioned industry standards, but is derived from data collected using the methods specified in ANSI/AMCA 210–07. The proposed FER is the estimated annual electrical consumption normalized by total operating hours and the airflow measured in the maximum airflow-control setting at a specified ESP. The proposed estimate of annual electrical consumption is a weighted average of Watts measured separately for multiple airflow-control settings at different ESPs. These ESPs are determined by a reference system curve, which is developed using a specified airflow-control setting and ESP. This reference system curve is intended to represent typical duct work systems used for circulation of air. DOE determined the reference system criteria specified in this notice through analysis of measured ESP field data. Section III.E discusses in greater detail the reference system concept proposed in this notice.

The airflow-control settings in which determinations are specified to be made depend on the number of heating stages that the HVAC product has and whether the HVAC product is designed to be used for cooling. Two-stage and modulating controls allow HVAC products to meet heating load requirements more precisely. When low heating load conditions exist, a two-stage or modulating HVAC product can operate at a reduced input rate for an extended period of burner on-time to meet the reduced heating load. For products with single-stage heating, the three proposed rating airflow-control settings are the maximum setting, the default heating setting, and the default constant-circulation setting. For products with multi-stage or modulating heating, the proposed rating airflow-control settings are the maximum setting, the default low-heating setting, and the default constant-circulation setting. For heating-only products (*i.e.,* HVAC products not designed to be paired with an external cooling coil), the proposed rating airflow-control settings are the maximum airflow-control setting (expected to be the default heating airflow-control setting) and the default constant-circulation setting. The lowest default airflow-control setting is used to represent constant-circulation if a constant circulation setting is not specified.

DOE understands that furnace fans typically have three or more airflow-control settings which are designated for specific functions. DOE is also aware that some furnace fans have more than one airflow-control setting designated for heating and/or cooling in multi-stage or modulating products. DOE requests comments on whether rating furnace fans using multiple but fewer than the total number of available airflow-control settings is appropriate, including multi-stage products. DOE expects that furnace fan factory settings typically designate the highest default airflow settings for cooling, median default airflow settings for heating, and the lowest default airflow settings for constant circulation. DOE also requests comments on the proposed assumptions for factory set airflow-control setting designations for specific functions. (See Issue 1 under ''Issues on Which DOE Seeks Comment'' in section V.E of this NOPR.)

DOE proposes to weight the input power at the operating points of the proposed rating airflow-control settings using estimates of the annual operating hours that the furnace fan spends performing each of the functions typically designated for each airflow-control setting. The proposed average annual operating hours for furnace fans take into account differences in climate and constant-circulation operation. DOE recognizes that furnace fan annual operating hours vary significantly by region, but DOE believes the proposed values provide a reasonable estimate of average national annual operating hours by function. The following paragraphs include a detailed description of the approach and sources used to derive the proposed operating hour values, which are included in Table III.2.

DOE proposes to specify one set of annual operating hours for products with single-stage heating and another for products with multi-stage or modulating heating. This proposed rule specifies use of the default low-heating setting to rate multi-stage or modulating furnaces because DOE expects that these furnaces spend most of their heating operating time in the low-heating mode. In addition, as compared to single-stage furnaces, multi-stage and modulating furnaces also spend more total time operating in heating mode, due to the reduced heat output for the low-heating mode. Consequently, the proposed heating mode hours used to calculate annual energy use in the metric are calculated based on the reduced heat output, as described below. DOE does not propose to account for multi-stage cooling because the presence and capacity of low-stage cooling is dependent on the cooling system with which the furnace fan HVAC products are paired. DOE found in its review of publicly-available product literature that detailed characteristics of the cooling system are not provided in the product literature for furnace fan HVAC products. In addition, multi-stage heating is not necessarily associated with multi-stage cooling capability (*e.g.,* multi-stage cooling equipment is much less common than multi-stage heating equipment).

For products with single-stage heating, national average annual heating operating hours are calculated using the following formula:

[6] ''Wet bulb temperature'' is the temperature measured by a thermometer having its bulb cooled by a wet ''sock.'' The measurement gives an indication of the relative humidity of the surrounding air. For 95 °F dry bulb and 75 °F wet bulb temperatures at sea level under standard barometric pressure, the relative humidity is 40 percent.

$$HH_{ss} = y \times \frac{[(WF_{heat} \times HE]_{Annual})}{Q_{in}}$$

Where:

HH_{ss} = estimated annual furnace heating hours for products with single-stage heating, in hours;

y = ratio of blower on-time to average burner on-time;

WF_{heat} = heating weather adjustment factor; and

HE_{Annual} = average annual heating energy use, in MMBtu/year; and

Q_{in} = average input heating capacity, in MMBtu/hour.

The inputs to this equation are determined as follows. The ratio of blower on-time to average burner on-time is derived from manufacturer default blower delay settings for non-weatherized gas furnace models found in the 2007 Furnace Database [7] from DOE's 2007 Furnace and Boiler Final Rule. 72 FR 65136 (Nov. 19, 2007). Using these data, the median values are 2 minutes for blower off-delay and 0.5 minutes for blower on-delay. The average burner on-time per cycle is 3.87 minutes for single-stage furnaces with fan delay based on DOE's furnace test procedure.[8] Therefore, ratio of blower on-time to average burner on-time, *y,* is estimated to be 1.39.

The average annual heating energy use is derived using the average Energy Information Administration's (EIA) RECS 2005 [9] heating energy use data for households with a gas or oil-fired furnace.[10] The average heating energy use, HE_{Annual}, in 2005 from these data is 49.8 MMBtu/year. Because heating energy use varies every year due to climate variations and because 2005 was a warmer than average year, an average weather factor, WF_{heat}, was applied to this value. To calculate the average weather factor, DOE used annual National Oceanic and Atmospheric Administration (NOAA) heating degree day (HDD) per Census Division.[11] To represent average conditions, DOE used the 30-year annual average HDD from 1981–2010 and compared it to 2005 HDD (weighting both sets of data by the number of households with a gas and oil-fired furnace in RECS 2005 found in each Census Division). The resulting average weather factor is 1.04. This factor (1.04) is then multiplied times average 2005 heating energy use (49.8 MMBtu/year) to yield 51.6 MMBtu/year average heating energy use. The average input capacity is calculated to be 86.3 kBtu/hour based on gas furnace 2001 gas furnace shipment data by input capacity bins [12] and number of models in the 2010 AHRI directory [13] for non-weatherized gas furnaces.[14] Using these values, DOE calculates the average annual heating operating hours to be 830 hours per year.

DOE proposes to account for the differences in operation between single-stage and multi-stage or modulating units in its estimated annual heating operating hours. When heating a residential building, a certain amount of heat is required to reach a desired indoor temperature in that given building. The heat output of the HVAC product installed in that building is the rate at which the product provides that heat. The lower the heating output capacity of the installed HVAC product in that building, the longer that HVAC product must operate to provide the necessary heat to reach a desired temperature rise. For products with multi-stage or modulating heating, DOE is aware that heating operation hours are distributed between two or more heating operating modes that have different output capacities, referred to as ''stages.'' DOE finds that product literature refers to multi-stage/modulating heating as a comfort feature characterized by long run-times in the low-heat setting, which can account for 90 percent or more of heating operation time. As a result, DOE recognizes that total heating operating hours for multi-stage and modulating furnace fans will likely be higher than for single-stage furnace fans in a given installation, because the HVAC product will be operating at its lower output capacity for a majority of these hours. Therefore, for the purposes of this test procedure, DOE proposes to rate multi-stage and modulating furnace fans using input power in the default low-heating stage only. The increase in heating operating hours, and ultimately the energy consumed for heating, in multi-stage and modulating furnace fans is determined by the ratio of high-output heating capacity to low-output heating capacity. DOE proposes to use the following equation to determine average annual heating operating hours for multi-stage and modulating furnace fans:

$$HH_m = \frac{830}{HCR}$$

Where:

HH_m = estimated annual furnace fan heating hours for products with multi-stage or modulating heating, in hours; and

830 = estimated annual heating hours for products with single-stage heating;

HCR = heating capacity ratio (output capacity in lowest heat mode divided by output capacity in highest heat mode).

Because fans can also be used to circulate cool air through duct work, DOE is also proposing calculations intended to capture energy use for that purpose. DOE estimates national average cooling operating hours using the following formula:

$$CH = y_C \times \frac{(WF_{cool} \times CE_{Annual} \times SEER)}{Q_{in}}$$

[7] The 2007 Furnace Database (Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fb_fr_analysis.html.*)

[8] 10 CFR part 430, subpart B, Appendix N.

[9] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey (RECS), Public use data files (2005) (Last accessed Sept. 2011.) (Available at: *http://www.eia.doe.gov/emeu/recs/recspubuse05/pubuse05.html*).

[10] Electric furnaces are excluded because they are mostly associated with heat pumps, and average input capacity data for electric furnaces is scarce. Also, RECS does not provide information to distinguish which households have hydronic air-handlers. Potentially adding electric furnaces and hydronic equipment might slightly lower BOH, since this equipment tends to be located in warmer climates.

[11] National Oceanic and Atmospheric Administration (NOAA) National Data Center Climate Data Online: HDD Data by Census Division (Last accessed Sept. 5, 2011) (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*).

[12] GAMA, GAMA Shipment Data by Input Capacity Bins (2002) (Provided to DOE for the 2007 Furnace and Boiler Standards rulemaking) (EERE–2006–STD–0102–0056).

[13] Air Conditioning Heating and Refrigeration Institute (AHRI), Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment (AHRI Directory February 2010) (Last accessed September 2011).

[14] It is assumed that the input capacity proxy value is very close to the average value for all gas and oil-fired furnaces (especially since non-weatherized gas furnaces represent more than 80 percent of all gas and oil furnaces).

Where:

CH = estimated annual furnace fan cooling operating hours;

y_C = ratio of blower on-time to average compressor on-time;

WF_{cool} = cooling weather adjustment factor; and

CE_{Annual} = average annual cooling energy use, in kWh/year;

$SEER$ = seasonal energy efficiency ratio; and

Q_{in} = average cooling capacity, in Btu/hour.

Most furnace fans come with a cooling blower-on and blower-off delay feature. To account for this feature, DOE estimated the ratio of blower on-time to average compressor on-time based on manufacturer default blower delay settings listed in publically-available product literature for non-weatherized gas furnace models. DOE found that the median values are 45 seconds for blower off-delay and 2 seconds for blower on-delay. The average compressor on-time per cycle is 6 minutes for single-stage central air conditioners based on DOE's central air conditioner test procedure (10 CFR part 430, subpart B, Appendix M). Therefore, DOE estimates the ratio of blower on-time to average compressor on-time, y_C, to be 1.12.

The average cooling energy use is derived using the average EIA's RECS 2005 [15] cooling energy use data for households with both a central air conditioner and either a gas or oil-fired furnace.[16] The average annual cooling energy use, CE_{Annual}, in 2005 from these data is 2025 kWh/year. Because cooling energy use varies every year due to climate and because 2005 was a warmer-than-average year, an average weather factor was applied to this value. To calculate the average weather factor, DOE used annual NOAA cooling degree day (CDD) per Census Division.[17] To represent average conditions, DOE used the 30-year annual average CDD from 1981–2010 and compared it to 2005 CDD (weighting both sets of data by the number of households with both a central air conditioner and either a gas or oil-fired furnace in RECS 2005 found in each Census Division). The resulting average cooling weather factor, WF_{cool}, is 0.89. This factor (0.89) is then multiplied times average 2005 cooling energy use (2025 kWh/year) to come up with 1794 kWh/year average cooling energy use adjusted for weather. The average seasonal energy efficiency ratio (SEER) in the U.S. stock in 2005 is estimated to be 11.06 based on *Annual Energy Outlook* (*AEO*) 2008 data for central air-conditioner efficiency.[18] The average cooling capacity in the U.S. stock in 2005 is estimated to be 34,884 Btu/h based on 2007–2010 AHRI shipments data.[19] Using these values, the average annual furnace fan cooling operating hours is estimated to be 637 hours. For the purposes of the test procedure, this number is rounded to 640 hours.

The average annual constant-circulation hours are based on data from surveys. The first survey was conducted by researchers in Wisconsin in 2003.[20] The second survey was conducted by the Center for Energy and the Environment (CEE) in Minnesota, the results of which were provided by CEE in a written comment that is included in the docket for the furnace fan energy conservation standard (Docket Number EERE–2010–BT–STD–0011), which can be viewed as described in the *Docket* section at the beginning of this notice. (CEE, No. 22 at pp. 1–3) DOE combined both studies and derived average annual furnace fan constant-circulation operating hours for each survey, as shown in Table III.1. DOE did not use these data directly, however, because it believes they are not representative of consumer practices for the U.S. as a whole. In Wisconsin and Minnesota, many homes have low air infiltration, and there is a high awareness of indoor air quality issues, which leads to significant use of continuous ventilation. To develop U.S. average values, DOE modified the data from the surveys using information from manufacturer product literature and consideration of climate conditions in other regions.

TABLE III.1—RESULTS FROM CONSTANT-CIRCULATION USE STUDIES AND ESTIMATED CONSTANT-CIRCULATION HOURS

How often is continuous fan used?	Combined data from studies		National weighted average percentage of consumers (%)	Assumed average number of hours	National weighted average number of hours
	Number of households	Percentage (%)			
No continuous fan	69	68	89	0	0
Year-round	14	14	5	7290	365
During heating season	4	4	1	1097	16
During cooling season	4	4	1	541	8
Other (some continuous fan)	10	10	4	365	13
Total	101	100	100	.....	401

DOE assumed a value for average number of constant-circulation hours for each survey response. For ''no constant circulation'' responses, DOE assumed zero annual furnace fan constant-circulation hours. For ''year-round'' responses, DOE assumed 7,290 average annual furnace fan constant-circulation hours, which DOE calculated by subtracting furnace fan heating and cooling operating hours for single-stage furnace fans (830 and 640, as estimated above) from the total annual hours (8,760). For ''during heating season'' responses, DOE assumed 1,097 hours, which is half of the quantity of heating season operating hours less furnace fan heating operating hours. More specifically, DOE calculated this value by subtracting furnace fan heating operating hours (830, as estimated

[15] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey (RECS), Public use data files (2005) (Last accessed Sept. 2011). (Available at: *http://www.eia.doe.gov/emeu/recs/recspubuse05/pubuse05.html*).

[16] Similar to the heating operating hours calculation, electric furnaces and hydronic air-handlers are not included. The data include both heat pump and non-heat pump central air-conditioners.

[17] National Oceanic and Atmospheric Administration (NOAA). NNDC Climate Data Online: CDD Data by Census Division (Last accessed Sept. 5, 2011) (Available at: *www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*).

[18] Energy Information Administration, Annual Energy Outlook 2008 with Projections to 2030, Report No. DOE/EIA–0383 (2008) (Available at: *http://www.eia.doe.gov/oiaf/aeo/*).

[19] Air Conditioning Heating and Refrigeration Institute (AHRI), Monthly Shipment Statistics: 2007–2010 (Available at: *http://www.ahrinet.org/monthly+shipments.aspx*).

[20] Piggs, S. 2003. Central Electricity Use by New Furnaces: A Wisconsin Field Study. (URL: *http://www.doa.state.wi.us/docview.asp?docid=1812*).

above) from the total heating season operating hours (5,216) [21] and multiplying by 25 percent to account for the consumers that use fan constant-circulation only during part of the heating season. For ''during cooling season'' responses, DOE assumed 541 hours. DOE calculated this value by subtracting furnace fan cooling operating hours (640, as estimated above) from the total cooling season hours (2,805) [22] and multiplying by 25 percent to account for the consumers that use fan constant-circulation only during part of the cooling season. For other or ''some constant circulation'' responses, DOE assumed 365 hours, which is 5 percent of year-round operation.

Table III.1 also shows the estimated weighted average national fraction of consumers and derived annual constant-circulation hours. To derive the annual constant-circulation hours, DOE assumed that on average, the combined data from the Wisconsin/Minnesota studies overestimate the fraction of consumers that use constant-circulation by 50 percent in the North and South Hot Dry region and by 90 percent in the South Hot Humid region.[23] Using EIA's RECS 2005 data, DOE estimated that 65 percent of furnace fans are located in the North and South Hot Dry region, while the remaining 35 percent are located in the South Hot Humid region.

As shown in Table III.1, the weighted average annual constant-circulation hours is 401 hours, rounded to 400 hours for the purposes of this test procedure.

For hydronic air handlers, DOE proposes to use a variation of FER that integrates standby mode and off mode electrical energy consumption with active mode electrical energy consumption. This variation of FER will be referred to as the integrated fan efficiency rating (IFER). The proposed standby mode hours are the remainder of annual hours not designated for cooling, heating, constant circulation, or off mode. Therefore:

$$SBH = 8760 - HH - CCH - CH - OH$$

Where:

SBH = annual furnace fan standby mode operating hours;
8760 = number of hours in a year;
HH = annual furnace fan heating operating hours;
CCH = annual furnace fan constant-circulation hours;
CH = annual furnace fan cooling operating hours; and
OH = annual furnace fan off mode operating hours.

DOE proposes a value of zero for hydronic air handler off mode operating hours because DOE expects that hydronic air handlers are not typically equipped with a seasonal off switch or that consumers will not turn off power to the hydronic air handler. Consideration of standby mode and off mode is discussed in more detail in section III.G. Table III.2 shows the proposed furnace fan annual operating hours by mode, as estimated according to the methods detailed above.

TABLE III.2—PROPOSED FURNACE FAN ANNUAL OPERATING HOURS BY MODE

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Heating mode	HH	830	830/HCR.
Circulation mode	CCH	400	400.
Cooling mode	CH	640	640.
Off mode (if applicable)	OH	0	0.
Standby mode (if applicable)	SBH	8760–HH–CCH–CH–OH	8760–HH–CCH–CH–OH.

DOE is aware that climate conditions vary across the United States. DOE seeks comment on the appropriate values and methods for estimating these values for weighting fan efficiency in each rated airflow-control setting. DOE also seeks comment on how these operating hours may vary for multi-stage products. (See Issue 2 under ''Issues on Which DOE Seeks Comment'' in section V.E of this NOPR.)

DOE believes the AECR metric specified by CSA C823 is less appropriate than FER, because AECR is more burdensome without providing any additional useful information. AECR is more burdensome because it requires as many as 26 more determinations for the proposed range of ESP (0.1 in.w.c. to 0.75 in.w.c.). The number of determinations proposed to be specified for FER is discussed in detail in section III.F.2. In contrast to the proposed metric, DOE believes the approach suggested by ACEEE is also less appropriate, because DOE cannot set standards based on multiple metrics, as explained above. Furthermore, DOE believes the metric variations based on the current DOE furnace test procedure (*i.e.,* BE, e, and e_b) are less appropriate than FER, because they are based on measurements at one operating point for units with single-stage heating or measurements at two operating points for units with multi-stage or modulating heating. These metrics do not account for operation in cooling or constant-circulation modes. As stated previously, DOE anticipates that a rating metric based on a single operating point would not provide a good indication of the variation of typical annual energy use exhibited by the range of available furnace fan products. The issue of the appropriate number of airflow-control settings for rating furnace fans is discussed further in section III.F.1. In addition, DOE believes the BE, ''e,'' and ''e_b'' metrics are inappropriate because they are measured at ESPs that are not representative of field conditions. DOE believes Air HP, as it is described by Regal Beloit, is an important concept when considering the efficiency of fans and blowers. However, Air HP does not include a measurement of electrical consumption, which is a necessary part of a test procedure supporting an energy conservation standard. DOE believes AMER would be less appropriate than FER, because it is based on furnace output capacity instead of air delivery. DOE expects that AMER would reward furnaces that have higher output capacities, regardless of whether any improvement in fan efficiency would result. For these reasons, DOE is proposing FER as the most appropriate metric for rating furnace fan performance.

E. Reference System

In the June 2010 framework document, DOE sought comment on the appropriate reference system for the purposes of rating furnace fan performance. 75 FR 31323 (June 3,

[21] Based on June 2, 2010 Test Procedure NOPR for Residential Central Air Conditioners and Heat Pumps. 75 FR 31224, 31270.

[22] *Id.*

[23] The regions are described in June 27, 2011 Direct Final Rule for Residential Furnaces, Central Air Conditioners and Heat Pumps. 76 FR 37408.

2010). DOE proposes to specify a reference system, which provides a standardized set of airflow characteristics to model duct work. The energy use of a furnace fan depends heavily on the duct work system through which it circulates air, but duct work characteristics vary between installations and are outside the control of manufacturers of residential HVAC products. Use of a reference system for rating furnace fans allows for consistent comparison across HVAC products. Furthermore, the reference system provides a basis for estimating the airflow, ESP, and electrical consumption of the fan in the rating airflow-control settings and, therefore, for different furnace fan functions (*i.e.,* cooling, heating, constant-circulation).

To circulate air through duct work, a furnace fan motor rotates an impeller, which increases the velocity of an airstream. As a result, the airstream gains kinetic energy. This kinetic energy is converted to a static pressure increase when the air slows downstream of the impeller blades. This static pressure created by the fan must be enough to overcome the pressure losses the airstream will experience throughout the duct work, and to a smaller degree, within the HVAC product itself, to provide sufficient delivery of conditioned air to the residence. Pressure losses are the result of directional changes in the duct work, friction between the moving air and surfaces of the duct work, and possible appurtenances in the airflow path. (In layman's terms, the conditioned air slows and eventually would stop the further it travels from the fan. However, in effective systems, continued action of the furnace fan overcomes such resistance and provides conditioned air to the intended space.) Therefore, the geometry of any HVAC component that obstructs the airflow path, the length of the duct work path, and number and nature of direction changes in the ductwork of a given system contribute to the pressure losses of the system. In most duct systems, the static pressure required to move the air is approximately equal to the square of the airflow rate. The duct static pressure is the ESP, which can be represented as follows:

$$ESP = K_{ref} \times Q^2$$

Where:

ESP = external static pressure in inches water column (in.w.c.);

K_{ref} = a constant that characterizes the reference system; and

Q = airflow in cfm.

A reference system is defined by specifying an airflow-control setting and a standardized ESP to determine values for Q and ESP. Once these values are known, K, which characterizes the reference system, can be calculated. The quadratic relationship described above is assumed for the duct work system to relate ESP to airflow in different airflow-control settings.

In the June 2010 framework document, DOE requested comment on a definition of the reference system based on a standardized ESP of 0.5 in.w.c. for the default heating airflow-control setting. For the framework document, DOE identified this reference system definition so as to be consistent with the reference system specified in the December 2009 draft of CSA C823.

Rheem recommended testing at an external static pressure of 0.2 in. w. c. in the default heating speed, and Morrison made the same point. (Rheem, No. 7 at p. 76; Morrison, No. 7 at p. 77) Mortex stated that 0.3 in. w.c. in cooling mode is used to test coil-only units and that similar criteria would be appropriate for furnace fans. (Mortex, No. 7 at p. 86) Ingersoll Rand stated that the default heating mode speed does not match up with any other conditions under which furnaces are already tested. Ingersoll Rand added that default heating speeds are typically lower than cooling speeds, which would result in better ratings when compared to air conditioners. (Ingersoll Rand, No. 7 at p. 79) Rheem commented that it expects ducting is designed for the highest airflow, which is typically the cooling mode, so specifying a heating speed for the reference system can be problematic, because it could result in extrapolating operating points for higher airflow-control settings that are beyond the manufacturer-recommended operating points. (Rheem, No. 7 at pp. 74–75)

Many interested parties stated that the ESP at which furnace fans are rated should reflect the ESP that furnace fans will face in the field. The National Resources Defense Council (NRDC), ACEEE, Center for Energy and Environment (CEE), NEEP, and Adjuvant Consulting all stated that an ESP of at least 0.5 in.w.c. should be used because it would best reflect actual field conditions. (ACEEE, No. 19 at p. 2; NRDC, No. 28 at p. 4; NEEP, No. 16 at pp. 3–4; Adjuvant Consulting, No. 7 at p. 80; CEE, No. 22 at p. 1) Pacific Gas and Electric Company asserted that the ESPs at which furnace fans are tested should be higher than those at which furnaces are currently rated in order to mirror the ESPs of systems in the field. (Pacific Gas and Electric Company, No. 7 at p. 81) CEE measured the ESP in 81 homes and found that the average was 0.55 in.w.c. in heating mode. (CEE, No. 22 at p. 1)

Not all interested parties agreed with setting the reference ESP at 0.5 in.w.c. AHRI and Morrison stated that DOE should utilize the methods outlined in ANSI/ASHRAE Standard 103, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (*i.e.,* the reference standard for DOE's residential furnaces test procedure), for determining ESP rating points as a function of capacity, and the commenters further stated that 0.5 in.w.c. in the default heating airflow setting is too high to conduct testing. (AHRI, No. 20 at p. 5; Morrison, No. 26 at p. 4) Rheem recommended that the ESP used for rating furnace fans reflect the ESP that is recommended by manufacturers for appropriate operation of their products. Rheem added that specifying the rating criteria to mimic field conditions is not appropriate, because poor installation practices and misinformed consumer demands are pushing products outside the range of recommended operation. Rheem further stated that setting a standard based on these practices would perpetuate and escalate the misuse of the products, thereby increasing energy consumption. (Rheem, No. 7 at p. 91) Morrison, NEEA, Rheem, and AHRI remarked that the ESP in the furnace fan test procedure should reflect the methods in the existing DOE test procedures for residential furnaces and central air conditioners to reduce manufacturer testing burden and to maintain consistency. (NEEA, No. 11 at p. 3; Morrison, No. 26 at p. 3; Rheem, No. 29 at pp. 4–5; Rheem, No. 7 at p. 54; AHRI, No. 20 at pp. 3–4)

DOE proposes to use an ESP value that is consistent, to the extent possible, with known field conditions. DOE expects this approach would result in ratings that are most representative of field energy use. DOE also expects that the use of manufacturer-recommended ESPs might overestimate furnace fan efficiency, because the ESP of field-installed HVAC systems typically exceeds the ESP recommended by manufacturers. Like manufacturers, DOE is also concerned about the energy use impact of installations with high static pressures. However, DOE does not expect that a reduction in average field ESPs that approaches the manufacturer-recommended levels is likely to occur, because installing new, larger, and more-efficient ducts in existing homes is generally cost-prohibitive. DOE is concerned that a metric based on a low, albeit desirable, static pressure level would not best represent furnace fan efficiency. Also, DOE is concerned that

a metric based on a low static pressure may lead to excessive energy use by furnace fan designs which do not achieve high efficiency levels when operating at the higher, real-world static pressures. Adapting the efficiency metric to the real-world conditions better facilitates meaningful comparisons of furnace fans operating under these conditions.

In addition, DOE does not agree with contentions from Morrison, NEEA, Rheem, and AHRI that defining the reference system using an ESP value other than those already specified in associated DOE test procedures would be overly burdensome. Based on DOE's review of publicly-available product literature, airflow performance data is already measured and listed by manufacturers at ESPs that exceed those specified in the DOE test procedures for residential furnaces and central air conditioners. The ESPs specified in the residential central air conditioner test procedure at 10 CFR part 430, subpart B, Appendix M range from 0.1 to 0.2 in.w.c. for conventional split systems. The ESPs specified in the furnace test procedure at 10 CFR part 430, subpart B, Appendix N range from 0.12 to 0.58 in.w.c., depending on the fuel source and rated input capacity of the furnace. In contrast, most of the publicly-available product specification sheets that DOE reviewed include airflow performance data up to 1 in.w.c.

DOE gathered field data from available studies and research reports to determine an appropriate ESP value to propose for the reference system. DOE compiled over 1300 field ESP measurements from several studies that included furnace fans in single-family and manufactured homes in different regions of the country. DOE has included a list of citations for these studies in the docket for this rulemaking. A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket number for this rulemaking is EERE–2010–BT–TP–0010.

Data across studies were not consistent because some included external evaporator coil and/or filter pressure drops in their ESP measurements, whereas others did not. So that DOE could compare the data, DOE calculated adjusted ESP values for each study to derive one value that included the measured/estimated evaporator coil pressure drop and one that did not for each residence. All values included a measured or estimated filter pressure drop. Three of the aforementioned studies included filter and coil pressure drop data that DOE used to estimate average filter and coil pressure drops for these adjustments.[24] DOE found that on average, the pressure drop measured for the evaporator coil was 0.20 in.w.c., and the pressure drop for the filter was 0.21 in.w.c.

Table III.3 includes the weighted average ''with-coil'' and ''without-coil'' ESP results for single-family homes and manufactured homes.

TABLE III.3—SUMMARY OF ADJUSTED FIELD ESP DATA

Household type	With coil ESP (in.w.c.)	Without coil ESP (in.w.c.)
Single-family Home	0.73	0.52
Manufactured Home	0.37	0.17

DOE identified four installation types with unique reference system ESP considerations:

- Heating-only units;
- Units with an internal evaporator coil;
- Units designed to be paired with an evaporator coil; and
- Manufactured home units.

DOE proposes to treat these types of units as follows. DOE is aware that some hydronic air handlers are not designed to provide cooling. DOE has identified these as heating-only products. DOE proposes to specify a lower reference system ESP for these products, because they do not experience the additional pressure drop of circulating air past an evaporator coil.

DOE has identified weatherized gas furnaces as units with an internal evaporator coil. DOE proposes to specify a reference system ESP for these products that does not include the pressure drop of circulating air past an evaporator coil because FER already accounts for internal losses.

DOE is aware that non-weatherized gas furnaces, oil-fired furnaces, electric furnaces, modular blowers, and some hydronic air handlers are designed to accommodate an evaporator coil for cooling. DOE has identified these products as products not originally supplied with an evaporator coil but designed to be paired with an evaporator coil in the field. DOE proposes a higher reference system ESP for these products to ensure their FER accounts for the pressure drop of circulating air past an evaporator coil.

DOE proposes to use a different reference system ESP for manufactured home products to account for the space constraints and installation requirements that are unique to the manufactured home market.

DOE recognizes that units designed to be paired with an evaporator coil and manufactured home products are not always paired with evaporator coils, even though they are designed for this option. Using EIA's RECS 2005 data, DOE estimated the fraction of furnace installations paired with an evaporator coil in the field. DOE determined that 72.9 percent of single-family households with a non-weatherized gas or oil-fired furnace had central air-conditioners (*i.e.,* are paired with an evaporator coil).[25] DOE determined that 50.2 percent of manufactured home households with a non-weatherized gas or oil-fired furnace had central air-conditioners. For manufactured homes and units designed to be paired with an evaporator coil in single-family homes,

[24] Piggs, S. 2008. Central Air Conditioning in Wisconsin: A Compilation of Recent Field Research. Energy Center of Wisconsin. (Two studies reported 2005 and 2007) (URL: *http://www.ecw.org/resource_detail.php?resultid=289*); and Wilcox, B.J. Proctor, R. Chitwood, and K. Nittler. 2006. Furnace Fan Watt Draw and Air Flow in Cooling and Air Distribution Modes. 2008 California Building Energy Efficiency Standards. (URL: *http://www.energy.ca.gov/title24/2008standards/prerulemaking/documents/2006-07-12_workshop/reviewdocs/FAN_WATT_DRAW_AND_AIR_FLOW.pdf.*)

[25] For simplicity, electric furnaces are excluded since they are mostly associated with heat pumps. Also, RECS does not provide information to distinguish which households have hydronic air-handlers. Adding electric furnaces and hydronic equipment will increase the fraction of households with central air-conditioners, since this equipment tends to be located in warmer climates.

DOE used these percentages to weight the with-coil and without-coil ESP values (see Table III.3) to derive the proposed reference system ESP value. DOE proposes to specify the reference system values, as reflected in Table III.4 for each installation type. The proposed values are rounded to the nearest 0.05 in.w.c. DOE seeks comment on its proposed reference system ESP values. DOE also welcomes additional field data. In addition, DOE seeks comment on whether the specified reference system ESP should be dependent on capacity. (See Issue 3 under ''Issues on Which DOE Seeks Comment'' in section V.E of this NOPR.)

TABLE III.4—PROPOSED REFERENCE SYSTEM ESP VALUES FOR ALL FURNACE FAN INSTALLATION TYPES

Installation type	Weighted average ESP (in. w.c.)
Heating-only units	0.50
Units with an internal evaporator coil	0.50
Units designed to be paired with an evaporator coil	0.65
Manufactured home [26]	0.30.

DOE proposes to use the maximum airflow-control setting to define the reference system for each installation type. DOE is aware that furnace fan control schemes typically include airflow-control settings, each often designated for specific functions (*e.g.,* cooling, heating, and constant circulation). DOE found that the maximum airflow-control setting is often factory set for cooling operation or for high or default heating for heating-only units that do not have a cooling setting. DOE has tentatively concluded that specifying the maximum airflow-control setting for the reference system would preclude the need to extrapolate performance data outside the desired range of operation, which might be necessary if DOE selected an airflow-control setting other than the maximum. Extrapolating performance outside the recommended and tested range is less desirable than interpolation because extrapolation will not account for dramatic changes in furnace fan performance that may occur beyond a certain ESP threshold. In addition, comments from interested parties indicate that, unlike in Canada, U.S. HVAC systems and components (including furnace fans) are often designed for cooling operation (*i.e.,* maximum required airflow).

DOE found that field ESP values vary compared to manufacturer-recommended ESP values and considered the use of multiple reference systems. This notice refers to the December 2009 draft version of CSA C823, because that was the version that was referenced in the June 2010 furnace fan framework document. For the reasons discussed in section III.C, DOE is not proposing to use CSA C823 as a reference standard for this notice. However, DOE is aware that for the final version of CSA C823, CSA considered specifying multiple reference systems to account for differences in ESP and ultimately, fan performance at manufacturer-recommended operating conditions and typical, poor field operating conditions. Rheem supported the use of two reference system curves if the rating must include the effects of incorrect and potentially unsafe installation practices that occur in the field in spite of the manufacturers' installation instructions. Rheem suggested that these two curves should be based on a static pressure of 0.3 in.w.c. and 0.6 in.w.c. in the default heating airflow-control setting. (Rheem, No. 29 at p. 6)

DOE proposes to use only one reference system curve for each installation type, as described above because for the reasons discussed previously, DOE cannot set standards based on multiple metrics. In addition, DOE investigated the use of a combined metric based on multiple reference system curves. For a subset of fans, DOE averaged an FER based on a high reference system ESP value and an FER based on a low reference system ESP value by increasing and decreasing the proposed ESP values by 0.15 in.w.c. For example, the resulting high and low reference system ESP values for this investigation for furnace fan products that are designed to be paired with evaporator coils (*i.e.,* non-weatherized gas furnaces, oil-fired furnaces, electric furnaces, some hydronic air-handlers, and modular blowers) were 0.8 in.w.c. and 0.5 in.w.c., respectively. These values are higher than those suggested by Rheem because they are specified for the maximum airflow-control setting, which is expected to be higher than the default heating airflow-control setting. Using the reference system equation described above and assuming that default heating airflow is in the range of 80 percent to 90 percent of the maximum airflow, the high and low reference system ESP values for the default heating airflow-control setting used for this comparison are roughly equivalent to those suggested by Rheem. DOE found that the combined, multiple reference system FER values varied on average by less than 2 percent with a standard deviation of 2 percent compared to the proposed, single reference system FER and did not alter the ranking of furnace fans by efficiency. Therefore, DOE believes the use of multiple reference system curves is unnecessary. DOE requests comment on whether a multiple reference system rating approach would provide a better indication of the overall performance. (See Issue 4 under ''Issues on Which DOE Seeks Comment'' in section V.E of this NOPR.)

F. Performance Curves

1. Number of Airflow-Control Settings

In the June 2010 framework document, DOE requested feedback on the appropriate number of measurements (*i.e.,* determinations) needed to characterize the performance of a furnace fan, which is dependent in part on the number of airflow-control settings used to rate the furnace fan.[27] Installed furnace fans can have as many as five or more airflow-control settings. In a given HVAC system, energy consumption of the furnace fan increases as airflow increases. Therefore, airflow-control settings have varying energy use profiles. As mentioned, DOE finds that airflow-control settings are each often designated for a specific function, such as cooling, heating, or constant circulation. In addition, the relative

[26] Manufactured home external static pressure is much smaller due to the fact there is no return air duct work in manufactured homes. Also, the United States Department of Housing and Urban Development (HUD) requirements stipulate that the duct work for cooling should be set at 0.3 in. w.c.

[27] See Issue 10 on page 11 of the June 2010 framework document. DOE posted the framework document to the DOE Web site, which can be accessed at this link: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans_framework.html.*

efficiency of certain furnace fan technologies varies with airflow-control setting. The extent to which energy consumption across a furnace fan's operating range is accounted is determined by the number of airflow-control settings used to rate the furnace fan.

Comments from interested parties indicate that some are in favor of a metric that accounts for fan electrical consumption while operating in a single airflow-control setting, while others are in favor of a metric that accounts for operation in multiple airflow-control settings. AHRI and certain manufacturers, including Rheem, Nordyne, and Lennox, suggested that DOE should use ''e,'' which is based on the measured electrical energy consumption of the fan at a single operating point. (AHRI, No. 21 at p. 4; Rheem, No. 29 at p. 3; Nordyne, No. 31 at p. 2; and Lennox, No. 23 at p. 2) Ingersoll Rand added that it questions whether more than one test point per airflow-control setting and whether more airflow-control settings than there are heat stages (with possible consideration of an additional point for cooling) is necessary to rate furnace fans, given that they perform quite predictably in accordance with well-established ''fan laws.'' (Ingersoll Rand, No. 25 at p. 1) Johnson Controls stated that electrically-commutated motors (ECM) have an efficiency advantage over permanent split capacitor (PSC) motors at low or partial-load conditions but not necessarily at higher/maximum-load conditions. (Johnson Controls, No. 7 at p. 145) In contrast, ACEEE remarked that DOE should not use a single annual energy consumption metric, but instead, the minimum efficiency standard should be based on the power for circulation, heating, and cooling modes weighted by average annual operating hours in each mode. (ACEEE, No. 30 at p. 3) NEEP recommended that DOE use a rating system based on two or three fan speeds to capture the efficiency of fans that use ECM motors. (NEEP, No. 16 at p. 3)

After considering available information and public comments on this issue, DOE has tentatively concluded that a metric based on measurements in multiple airflow-control settings would be appropriate to account for furnace fan energy consumption across its entire operating range. DOE recognizes that furnace fans are used not just for circulating air through duct work during heating operation, but also for circulating air during cooling and constant-circulation operation. As mentioned previously, DOE understands that higher airflow-control settings are factory set for cooling operation. Therefore, DOE expects that the electrical energy consumption of a furnace fan is generally higher while performing the cooling function. Consequently, DOE expects that using a metric based on a single measurement in an airflow-control setting designated for heating could result in an incomplete assessment of overall performance. DOE further recognizes that the potential for significant power reduction occurs when the fan is operating in its lowest airflow-control setting, which DOE finds is typically factory set for constant-circulation. This significant power reduction is consistent with the theory that fan input power is proportional to the cube of the airflow. Consequently, a ''snapshot approach'' which specifies only a single airflow-control setting may not be representative of the product's average use. However, some fan technologies may not reduce power input in this fashion. DOE is concerned that rating furnace fan performance at a single airflow-control setting would incentivize manufacturers to design fans optimized to perform efficiently at the selected rating airflow-control setting but that are not efficient over the broad range of field operating conditions. DOE expects that a rating metric that includes measurements at multiple airflow-control settings would help ensure that the rating metric captures the efficiency advantages of using motor technologies that maintain higher efficiencies over a broad range of operating conditions. DOE is aware that other technologies, such as improved impeller designs, may also improve efficiency in some, but not all, of the expected range of operation.

For the reasons above, DOE proposes that FER be based on measurements taken in multiple airflow-control settings, which have been selected to represent the main product functions that have varied energy usage profiles. For products with single-stage heating, the three proposed rating airflow-control settings would be the maximum setting, the default heating setting, and the default constant-circulation setting. For products with multi-stage heating or modulating heating, the proposed rating airflow-control settings would be the maximum setting, the default low-heating setting, and the default constant-circulation setting. For heating-only products, the proposed rating airflow-control settings would be the default heating setting and the default constant-circulation setting. The lowest default airflow-control setting would be used to represent constant circulation, for units in which a constant-circulation setting is not specified. The default low-heat setting would be the airflow-control setting used to circulate air when the HVAC product is operating at its lowest nominal heating input capacity. DOE believes that using the FER metric would ensure that the operating characteristics of all of the relevant airflow-control settings are accounted for in the efficiency metric, and it would, thus, rate at higher efficiency a furnace fan that does reduce power more consistently with the theoretical cubic relationship. In selecting the multiple airflow-control settings discussed above, it is noted that DOE is aware that some furnace fans are designed to have more than three airflow-control settings. DOE compared ratings that use measurements in two, three, and five airflow-control settings and found that a metric that uses measurements in three (or two for heating-only products) of the available airflow-control settings appropriately captures the efficiency advantages of using more-efficient technologies while minimizing burden on manufacturers.

2. Number of Determinations

In the June 2010 framework document, DOE sought comment on the appropriate total number of determinations that DOE should specify that manufacturers make in each airflow-control setting to develop performance curves without being overly burdensome.[28] As defined in ANSI/AMCA 210–07 and incorporated by reference in this notice, a determination is a complete set of measurements for a particular point of operation of a fan. For the purposes of this test procedure, a complete set of measurements includes measurements of airflow, electrical consumption, and external static pressure. The total number of determinations per performance curve depends on the ESP range and measurement increments specified in the test procedure.

As described above in section III.D, the proposed active mode metric incorporates furnace fan input power at multiple operating points, which are determined by the intersections of the performance curves (*i.e.,* airflow-ESP relationship) of the rating airflow-control settings and a specified reference system curve. Determinations are not necessarily measured at the operating points, because reproducing

[28] See Issue 10 on page 11 of the June 2010 framework document. DOE posted the framework document to the DOE Web site, which can be accessed at this link: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans_framework.html.*

the exact ESP and airflow of the operating points during testing is extremely burdensome. Instead, a series of determinations are made for each rating airflow-control setting that bracket the operating point for that setting. Separate best-fit curves for the determination test results are developed in which airflow and input power are equal to second order polynomial of ESP.[29] These curves estimate the relationship between airflow and electrical consumption to ESP within the range of ESP specified for each product in this notice. When evaluating FER, the performance curve for the airflow-control setting and the reference curve constant, K_{ref}, are used to determine the operating point ESP. Subsequently, the power input curve for the airflow-control setting is used to calculate the input power for each operating point. The input power values are used in the FER calculations. The methodology for calculating FER is described in more detail in section III.H. The issues addressed in this section are: (a) The number of determinations required to develop the airflow and power input curves for each airflow-control setting, and (b) the range of ESPs over which these determinations must be made.

Rheem commented that the maximum ESP for PSC motors is typically 0.7 in.w.c. and that the maximum ESP for ECM motors is documented up to 1 in.w.c. (Rheem, No. 29 at p. 4) Ingersoll Rand expressed a similar view, stating that the maximum reported testing data are taken at about 1 in.w.c. ESP for ECM motors and 0.8 in.w.c. for PSC motors. (Ingersoll Rand, No. 7 at p. 67)

Many interested parties commented that fewer determinations are necessary than are specified in the December 2009 draft version of CSA C823. The December 2009 draft of CSA C823 required measurements at increments of at least 0.1 in.w.c. for the desired range of operation, so under that approach, a furnace fan with 5 airflow-control settings and a range of operation from 0 to 1 in.w.c. would require 50 determinations. ACEEE recommended that manufacturers be required to certify the smallest set of data required to build performance maps for intended applications. ACEEE added that few measurements would need to be certified. (ACEEE, No. 19 at p. 4) Rheem stated that, theoretically, only three points are required to develop a performance curve. Rheem also stated that it is important to get the high and low points correct to avoid extrapolation. (Rheem, No. 7 at p. 67) Ingersoll Rand, NRDC, Johnson Controls, and AHRI recommended that determinations be made in 0.2 in.w.c. increments. (Ingersoll Rand, No. 7 at pp. 65–66; NRDC, No. 28 at p. 4; Johnson, No. 7 at pp. 67–69; and AHRI, No. 20 at p. 5) Regal Beloit recommended that DOE rate furnace fans at ESPs from 0.5 in.w.c. to 1.4 in.w.c. at 0.1 in.w.c. increments. Regal Beloit added that there must be multiple static points to help define the operating range of the blower with 0.5 in.w.c. maximum difference between points. (Regal Beloit, No. 32 at p. 2)

DOE agrees that the total number of determinations resulting from measuring at 0.1 in.w.c. increments would be unnecessary to derive reasonably accurate ratings for furnace fans. In seeking to determine the appropriate number of measurements, DOE explored three determination methods by generating FER values using airflow and electrical consumption measurement data from testing and publically-available product literature at: (1) 0.1 in.w.c. increments; (2) 0.2 in.w.c. increments; and (3) the minimum, mid-point, and maximum ESP. The test data and product-literature data were measured according to ANSI/AMCA 210–07, and the methodology used to derive the FER values is described in detail in section III.H. DOE analyzed measurements for 15 furnace fans used in various product types, including non-weatherized condensing and non-condensing gas furnaces, weatherized gas furnaces, oil-fired furnaces, electric furnaces, hydronic air handlers, and modular blowers. DOE found that the FER changes by an average of less than 1 percent (with a standard deviation of 3 percent) when using the 3-point determination method, as compared to the 0.1 in.w.c. increment method. Similar differences resulted for the 0.2 in.w.c. increment determination method, as compared to the 0.1 in.w.c. increment method. DOE expects that the FER differences between the 0.1 in.w.c. and 3-point determination methods are small enough that using the 3-point determination method would still result in reasonably accurate ratings and rankings of furnace fan efficiency. Therefore, DOE proposes to specify that 3 determinations be made for each rating airflow-control setting. DOE proposes to specify determinations at: (1) 0.1 in.w.c.; (2) an ESP equal to the applicable reference system ESP divided by 2; and (3) an ESP between the applicable reference system ESP and 0.1 in.w.c. above that reference system ESP.

G. Standby Mode and Off Mode Energy Consumption

EPCA, as amended by EISA 2007, requires that any final rule for a new or amended energy conservation standard adopted after July 1, 2010, must address standby mode and off mode energy use pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) Thus, the statute implicitly directs DOE, when developing new test procedures to support new energy conservation standards, to account for standby mode and off mode energy consumption. EISA 2007 also requires that such energy consumption be integrated into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already accounts for standby mode and off mode energy use. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Accordingly, DOE must address the standby mode and off mode energy use of residential furnace fans in this test procedure. However, DOE has already incorporated standby mode and off mode energy use in the test procedures (or proposed test procedures) for several of the products to which this test procedure rulemaking is applicable.

Table III.5 summarizes the test procedure rulemaking vehicles through which DOE is addressing standby mode and off mode energy consumption for the various types of products which circulate air through duct work.

[29] In other words, $Q = A \times ESP^2 + B \times ESP + C$ and input power $E = X \times ESP^2 + Y \times ESP + Z$. The coefficients A, B, and C which provide the best fit to the data for flow are determined, as are the coefficients X, Y, and Z with provide the best fit to the data for input power.

TABLE III.5—RULEMAKING ACTIVITIES ADDRESSING FURNACE FAN STANDBY MODE AND OFF MODE ENERGY CONSUMPTION

HVAC Products	Status	DOE Rulemaking activity
• Gas Furnaces • Oil-fired Furnaces • Electric Furnaces	Addressed in separate rulemaking	• Codified Furnaces Test Procedure October 20, 2010 final rule (75 FR 64621) (10 CFR part 430, subpart B, appendix N, section 8.0). • September 13, 2011 NOPR (76 FR 56339).
• Modular Blowers • Weatherized Gas Furnace	Addressed in separate rulemaking	• Codified CAC Test Procedure October 22, 2007 final rule (72 FR 59906). (10 CFR part 430, subpart B, appendix M). • June 2, 2010 NOPR (75 FR 31224). • April 1, 2011 SNOPR (76 FR 18105). • October 24, 2011 SNOPR (76 FR 65616).
• Hydronic Air Handlers	Addressed in current rulemaking	• N/A.

1. Residential Furnaces and Central Air Conditioner Products

Measurement of standby mode and off mode energy use for non-weatherized gas furnaces, oil-fired furnaces, and electric furnaces is already prescribed in the furnace test procedure (10 CFR part 430, subpart B, appendix N, section 8.0). In a September 13, 2011 NOPR, DOE proposed amendments to the furnaces test procedure related to standby mode and off mode. 76 FR 56339. DOE proposed coverage of standby mode and off mode energy use for modular blowers and weatherized gas furnaces in a June 2, 2010 NOPR. 75 FR 31224. DOE subsequently published one SNOPR on April 1, 2011 and another on October 24, 2011 regarding standby mode and off mode test procedures for these products. 76 FR 18105; 76 FR 65616. Furnace fans are integrated in the electrical systems of the HVAC products in which they are used and controlled by the main control board. Therefore, there is no standby mode and off mode energy use associated with furnace fans used in the aforementioned products that would not already be measured by the established or proposed test procedures associated with these products. Hence, given that the standby mode and off mode energy consumption of these types of furnace fans either has been or is in the process of being fully addressed, there is no need for DOE to adopt additional test procedure provisions for these modes in this rulemaking.

2. Hydronic Air Handlers

There are no current DOE test procedures for measurement of electrical energy use in hydronic air handlers nor is there an ongoing rulemaking for which such test procedures have been proposed. Hence, the standby mode and off mode energy use for furnace fans that are incorporated into these products must be considered in this rulemaking. DOE proposes to incorporate in this notice test methods to measure the standby mode and off mode energy of hydronic air handlers that are identical to those specified in the DOE test procedure for residential furnaces and boilers (10 CFR part 430, subpart B, appendix N, section 8.0). On September 13, 2011, DOE published a NOPR to update the DOE test procedure for furnaces through incorporation by reference of the latest edition of the relevant industry standard, specifically IEC Standard 62301 (Second Edition). 75 FR 56339. DOE proposes to also adopt the updates proposed in the September 2011 furnaces test procedure NOPR for measurement of standby mode and off mode energy of furnace fans incorporated in hydronic air handlers. DOE believes these methods are appropriate, because both furnaces and hydronic air handlers are used primarily in central heating applications, and DOE expects that the electrical systems (*i.e.,* electrical components and controls) of hydronic air handlers are similar to the electrical systems of furnaces. DOE proposes to integrate the steady-state standby mode and off mode electrical energy consumption measurements for hydronic air handlers, E_{SB} and E_{OFF}, into the active mode metric for these furnace fans, as required by EPCA. DOE proposes to weight the standby mode and off mode measurements by the representative hours proposed for these modes. The hours associated with these modes are discussed in section III.D. Similar to furnaces, DOE expects that hydronic air handlers are not typically equipped with a seasonal off switch or that consumers would not turn off power to the hydronic air handler. Therefore, DOE expects that E_{OFF} and the estimated annual off mode operating hours, HO, would effectively be equal to zero. The integrated metric for hydronic air handlers is described in more detail in section III.H. DOE seeks comment on whether the methods for measuring standby mode and off mode energy consumption specified in the DOE test procedure for residential furnaces and boilers are appropriate for hydronic air handlers. DOE notes that this integration of standby mode and off mode hours is proposed only for hydronic air handlers, since, as discussed above, the energy use of these modes is already addressed in other established or proposed metrics for the other furnace fan products covered by this rulemaking. DOE further seeks comment on whether hydronic air handlers are typically equipped with a seasonal off switch or if consumers would turn off power to the hydronic air handler. If so, DOE also requests comment on the expected off mode electrical energy consumption, the number of hours that should be allocated to standby mode and the number that should be allocated to off mode, as well as data to support these allocations.

H. Methodology for Deriving the Fan Efficiency Rating

First, three determinations (*i.e.,* measurements of airflow and electrical consumption at a measured ESP) will be made for each rating airflow-control setting according to the methods proposed in this notice and incorporated by reference and modified from ANSI/AMCA 210–07. DOE proposes to specify determinations at: (1) 0.1 in.w.c.; (2) an ESP equal to the applicable reference system ESP divided by 2; and (3) an ESP between the applicable reference system ESP and 0.1 in.w.c. above that reference system ESP. DOE proposes the following calculations to derive FER using these measured values. First, fit separate quadratic curves to the airflow and ESP measurements of the determinations for each rating airflow-control setting to derive a performance curve (relates airflow to ESP). The best-fit relationship would minimize the sum of the squares

of the differences between the measured and calculated airflow rates of the three determinations. The derived quadratic performance curves should express airflow as a function of ESP in the following form:

$$Q_i = a_i ESP^2 + b_i ESP + c_i$$

Where:

Q_i = airflow in cfm for rating airflow-control setting *i;*

ESP = external static pressure in in.w.c.; and

a_i, b_i, c_i = quadratic coefficients for rating airflow-control setting *i.*

Next, calculate the reference system airflow using the quadratic performance curve derived for the maximum airflow-control setting and the appropriate reference system ESP, ESP_{ref}, for the product (see Table III.4). Using this maximum airflow, Q_{max}, determine the reference system curve coefficient, K_{ref}, as follows:

$$K_{ref} = \frac{ESP_{ref}}{Q_{max}^2}$$

Where:

K_{ref} = a constant that characterizes the reference system;

ESP_{ref} = specified reference system external static pressure in in.w.c.; and

Q_{max} = airflow in maximum airflow control setting at ESP_{ref}, in cfm.

The intersections of the reference system curve and the performance curves of each rating airflow-control setting are the expected operating points for the furnace fan in ducting with the characteristics of the reference system. Determine the airflows of the operating points in the other (non-maximum) rating airflow-control settings by identifying at which airflows the reference system curve intersects each performance curve. Do this by solving separately for each control setting the set of two equations representing the reference system curve and performance curve. To calculate the ESPs of the operating points, use the previously calculated airflows and the reference system equation.

Electrical consumption at the operating points is determined using curve fits for power input derived from the power measurements made for the rating airflow-control settings. Fit a separate quadratic curve to the electrical consumption and ESP measurements made for each airflow-control setting to derive an equation providing electrical consumption as a function of ESP for each rating airflow-control setting in the following form:

$$E_i \cdot X_i ESP^s + Y_i ESP + Z_i$$

Where:

E_i = electrical consumption in watts for rating airflow-control setting *i;*

ESP = external static pressure in in.w.c.; and

x_i, y_i, z_i = quadratic coefficients for rating airflow-control setting *i.*

Input the previously calculated ESPs of the operating points into the electrical consumption curve to derive the expected electrical consumption at the operating point for each rating airflow-control setting. Use these electrical consumption measurements to calculate FER.

A general form of the FER equation is as follows:

$$FER = \frac{(CH \times E_{max}) + (HH \times E_{heat}) + (CCH \times E_{circ}) + (SOH \times E_{SB}) + (OH \times E_{OFF})}{(CH + HH + CCH + SBH + OH) \times Q_{max}} \times 1000$$

Where:

FER = fan efficiency rating in watts/1000 cfm;

CH = annual furnace fan cooling operating hours;

E_{max} = electrical consumption at maximum airflow-control setting operating point;

HH = annual furnace fan heating operating hours;

E_{heat} = electrical consumption at the default heating airflow-control setting operating point for units with single-stage heating or the default low-heating airflow control setting operating point for units with multi-stage heating;

CCH = annual furnace fan constant circulation hours;

E_{circ} = electrical consumption at the default constant-circulation airflow-control setting operating point (or lowest default airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified);

SBH = annual furnace fan standby mode operating hours;

E_{SB} = electrical consumption in standby mode;

OH = annual furnace fan off mode operating hours;

E_{OFF} = electrical consumption in off mode;

Q_{max} = airflow at maximum airflow-control setting operating point; and

1000 = constant to put metric in terms of watts/1000 cfm, which is consistent with industry practice.

There are a number of variations of the FER equation depending on the product type. For furnace fans used in HVAC products other than hydronic air handlers, standby mode and off mode electrical energy consumption is not integrated in the FER calculation, because such energy consumption is captured in other test procedure provisions. The standby mode and off mode variables (*i.e.,* SBH, E_{SB}, OH, and E_{OFF}) are eliminated from the above equation as a result. For furnace fans used in hydronic air handlers, electrical energy consumption in standby mode and off mode is integrated in the FER metric. DOE proposes to designate the hydronic air handler variation of the FER metric as integrated fan efficiency rating (IFER). Section III.G includes a detailed discussion addressing standby mode and off mode electrical energy consumption. For hydronic air handlers that are used in both heating and cooling applications, all terms shown in the above equation are used in the calculation. For hydronic air handlers that are not used in cooling applications, the cooling mode energy consumption is excluded from the equation. For single-stage, heating-only products, E_{heat} equals E_{max}. For multi-stage, heating-only products, the reference system is still defined by the maximum airflow-control setting (expected to be the default high-heat setting), but E_{heat} is the electrical consumption in the default low-heat airflow control setting. For non-hydronic air handler products (*i.e.,* weatherized and non-weatherized gas furnaces, oil-fired furnaces, electric furnaces, and modular blowers), the standby mode energy consumption is excluded from the calculation, because electrical energy consumption in this mode is already fully accounted for in other established or proposed DOE test procedures, as described in Table III.5.

Table III.6 presents the proposed values for the operating hour variables in the above FER equations.

TABLE III.6—PROPOSED OPERATING HOUR VALUES FOR CALCULATING FER

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Heating mode	HH	830	830/HCR.

TABLE III.6—PROPOSED OPERATING HOUR VALUES FOR CALCULATING FER—Continued

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Circulation mode	CCH	400	400.
Cooling mode	CH	640	640.
Off mode (if applicable)	OH	0	0.
Standby (if applicable)	SBH	8760–HH–CCH–CH–OH	8760–HH–CCH–CH–OH.

I. Sampling Plans and Certification Report Requirements for Residential Furnace Fans

DOE provides sampling plans for all covered products. The purpose of these sampling plans is to provide uniform statistical quality for the various test procedure representations of energy consumption and energy efficiency for each covered product. These sampling plans apply to all aspects of the EPCA program for consumer products, including public representations, labeling, and energy conservation standards. 10 CFR 429.11 DOE proposes that the existing sampling plans used for furnaces be adopted and applied to measures of energy consumption for furnace fans, with some exceptions as noted in the discussion below.

For purposes of certification testing, the determination that a basic model complies with the applicable energy conservation standard must be based on testing conducted using DOE's test procedures and the sampling procedures, which are found at 10 CFR 429.18 for residential furnaces. The sampling procedures provide that ''a sample of sufficient size shall be randomly selected and tested to ensure [compliance].'' A minimum of two units must be tested to certify a basic model as compliant. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values. Under no circumstances is a sample size of one (1) authorized. Manufacturers may need to test more than two samples depending on the variability of their sample. Therefore, the sample size can be an important element when evaluating the compliance of a basic model.

DOE uses statistically meaningful sampling procedures for selecting test specimens of residential products, which would require the manufacturer to select a sample at random from a production line and, after each unit or group of units is tested, either accept the sample or continue sampling and testing additional units until a rating determination can be made. DOE did not propose a specific sample size for each product because the sample size is determined by the validity of the sample and how the mean compares to the standard, factors which cannot be determined in advance.

In this notice, DOE proposes to create a provision at 10 CFR 429.55 for furnace fan certification. This section would include sampling procedures and certification report requirements for furnace fans. DOE proposes that 10 CFR 429.55 adopt, for furnace fans, the same statistical sampling procedures that are applicable to residential furnaces, which are contained in 10 CFR 429.18. DOE proposes that these statistical sampling procedures be applied to covered products addressed by the test procedures in this NOPR. DOE believes product variability and measurement repeatability associated with the electrical energy consumption measurements proposed for rating residential furnace fans are similar to the variability and measurement repeatability associated with electrical energy consumption measurement required for residential furnaces. Hence, DOE believes that the existing statistical sampling procedures for furnace measures of energy consumption and efficiency are appropriate for the corresponding measures for furnace fans.

Although the statistical sampling procedures would be the same for furnaces and furnace fans, DOE proposes to create the new section 429.55 within 10 CFR part 429, because certification reporting requirements for furnace fans will be different than those specified for furnaces. DOE proposes that this section specify reporting of the general certification report requirements within 10 CFR 429.12, as well as the following additional information in certification reports for furnace fans:

• *Residential furnace fans used in HVAC products other than hydronic air-handlers:* The fan efficiency rating (FER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system external static pressure (ESP) in cubic feet per minute (cfm); whether the HVAC product has multi-stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

• *Residential furnace fans used in hydronic air-handlers:* The integrated fan efficiency rating (IFER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system ESP in cubic feet per minute (cfm); whether the HVAC product has multi-stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

DOE requests comment on whether the sampling plan specified in 10 CFR 429.18 for residential furnaces is appropriate for residential furnace fans. DOE also requests comment on whether the proposed certification report requirements are appropriate. (See Issue 10 under ''Issues on Which DOE Seeks Comment'' in section V.E of this NOPR.)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR

53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*www.gc.doe.gov*).

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE has tentatively concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (NAICS) that are available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*. The threshold number for NAICS classification for 333415, which applies to Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (including furnace fan manufacturers) is 750 employees.[30] DOE reviewed the Air-Conditioning, Heating, and Refrigeration Institute's Directory of Certified Product Performance for Residential Furnaces and Boilers (2009),[31] the ENERGY STAR Product Databases for Gas and Oil Furnaces (May 15, 2009),[32] the California Energy Commission's Appliance Database for Residential Furnaces and Boilers,[33] and the Consortium for Energy Efficiency's Qualifying Furnace and Boiler List (April 2, 2009).[34] From this review, DOE found 11 small businesses within the furnace fan industry. DOE does not believe the test procedure amendments described in this proposed rule would represent a substantial burden to any manufacturer, including small manufacturers, as explained below. DOE requests comments on its characterization of the furnace fan industry in terms of the number of and impacts on small businesses.

This proposed rule would establish test procedures that would be used for representations of energy use and to test compliance with new energy conservation standards, which are being developed in a concurrent rulemaking, for the products that are the subject of this rulemaking. This notice proposes new test procedures for active mode testing for all covered products, and, for furnace fans used in hydronic air handlers, it proposes test procedures for standby mode and off mode testing as well. For active mode testing, the proposed rule would require the use of the testing methods prescribed in ANSI/AMCA 210–07. As discussed in section III.C above, this would not represent a substantial burden to any furnace fan manufacturer, small or large. According to AHRI, the trade organization that represents manufacturers of furnace fans, manufacturers currently routinely perform furnace fan tests according to ANSI/AMCA 210–07 to generate airflow data for intended application of products (AHRI, No. 21 at pp. 3,4). Therefore, DOE expects little or no additional cost as the result of the new test procedure. If there were to be a new manufacturer which does not own the necessary equipment (*i.e.,* an ANSI/AMCA 210–07-compliant airflow chamber), DOE anticipates an investment of less than $150,000 would be required to both acquire it and to train personnel to use it properly. Alternatively, a manufacturer could conduct testing through an independent third-party facility. In DOE's experience, third-party active mode furnace fan testing costs less than $2,000 per test. DOE estimates the time to complete a single active mode furnace fan test according to the proposed test procedure to be 3 to 4 hours, including setup.

For standby mode and off mode testing, the proposed rule would require the use of the testing methods prescribed in IEC Standard 62301 (Second Edition). As discussed in section III.G, the proposed rule would only result in additional testing related to standby mode and off mode electrical energy consumption for manufacturers of furnace fans used in hydronic air handlers. Manufacturers of furnace fans used in HVAC products other than hydronic air handlers are (or will be) required to conduct standby mode and off mode testing pursuant to other rulemakings. DOE expects that furnace fan manufacturers would incur no additional equipment costs as a result of the proposed standby mode and off mode testing because an electrical power meter is already required to conduct the proposed active mode testing. Also, manufacturers of furnace fans used in hydronic air handlers are often manufacturers of furnace fans used in other HVAC products. These manufacturers should already possess or will have to purchase an electrical power meter as a result of other rulemakings that require standby mode and off mode testing of the non-hydronic products covered in this rulemaking. DOE estimates the cost per unit for standby mode and off mode testing to be less than $300 and the time to complete a single standby mode and off mode test according to the proposed test procedure to be less than one hour.

Even in the unlikely scenario that a small manufacturer with low annual shipments has to purchase testing equipment or contract with a third-party test facility as a result of this rule, DOE estimates that the per-unit investment would not be significant. For example, a small manufacturer that ships 1,000 units per year could choose to purchase the necessary equipment for approximately $150,000. DOE estimates that, over the life of the test equipment (20 years), the additional cost of testing for the manufacturer would be $7.50 per unit shipped. A less costly option for the same manufacturer would be to use third-party testing to certify its products. In this scenario, the small manufacturer would likely pay less than $2,300 per test for at least two tests to certify one new product every two years. DOE estimates that this would cost the small manufacturer $2.30 per unit shipped. DOE finds that the selling price for HVAC products that incorporate furnace fans ranges from approximately $400 to $4,000. Therefore, the added cost of testing, at most, would be less than 2 percent of the manufacturer selling price (and lower than 0.1 percent in some cases).

For these reasons, DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a

[30] U.S. Small Business Administration, Table of Small Business Size Standards (August 22, 2008) (Available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

[31] The Air-Conditioning, Heating, and Refrigeration Institute, Directory of Certified Product Performance (June 2009) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*).

[32] The U.S. Environmental Protection Agency and the U.S. Department of Energy, ENERGY STAR Furnaces—Product Databases for Gas and Oil Furnaces (May 15, 2009) (Available at: *http://www.energystar.gov/index.cfm?c=furnaces.pr_furnaces*).

[33] The California Energy Commission, Appliance Database for Residential Furnaces and Boilers (2009) (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx*).

[34] Consortium of Energy Efficiency, Qualifying Furnace and Boiler List (April 2, 2009) (Available at: *http://www.ceedirectory.org/ceedirectory/pages/cee/ceeDirectoryInfo.aspx*).

regulatory flexibility analysis for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

There is currently no information collection requirement related to the test procedure for residential furnace fans. In the event that DOE proposes an energy conservation standard with which manufacturers must demonstrate compliance, or otherwise proposes to require the collection of information derived from the testing of residential furnace fans according to this test procedure, DOE will seek OMB approval of such information collection requirement.

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the applicable DOE test procedure, including any amendments adopted for that test procedure.

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification was estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As stated above, in the event DOE proposes an energy conservation standard for residential furnace fans with which manufacturers must demonstrate compliance, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

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.

D. Review Under the National Environmental Policy Act of 1969

In this notice of proposed rulemaking, DOE proposes a new test procedure for furnace fans. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule proposes a test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that does not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process

to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.gc.doe.gov.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must provide a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which would prescribe the test procedure for measuring the energy efficiency of residential furnace fans, is not a significant energy action because the proposed test procedure 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, nor has it been designated as a significant energy action by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977. (Pub. L. 95–70) 15 U.S.C. 788. Section 32 provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in ANSI/AMCA 210–07 | ANSI/ASHRAE 51–07, ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating''; IEC Standard 62301 (Second Edition), *''Household electrical appliances—Measurement of standby power'';* and ANSI/ASHRAE Standard 103, ''*Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.''* While today's proposed test procedure is not exclusively based on these standards, some components of the DOE test procedure would adopt definitions, test setup, measurement techniques, and additional calculations from them without amendment. The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards in order to initiate the necessary procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, request to give an oral presentation should ask for such alternative arrangements.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov*

provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a compact disk (CD), if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Airflow-Control Setting Function Designations

DOE is aware that furnace fan control schemes typically include airflow-control settings (*i.e.,* set ranges of differing operating airflows), each often designated for specific functions (*e.g.,* cooling, heating, and circulation). DOE found that the maximum airflow-control setting is often designated for cooling operation, that median default airflow-control settings are designated for heating operation, and that the lowest default airflow-control setting is designated for constant-circulation operation. DOE is aware, however, that airflow-control settings are not always designated for the same function across all products, models, and manufacturers. DOE is also aware that some furnace fans have more than three airflow-control settings and that multiple airflow-control settings can be designated for heating and/or cooling in multi-stage products. DOE seeks comment on the appropriateness of the proposed assumptions regarding which airflow-control settings are designated for which functions and whether these assumed designations are appropriate for deriving FER. DOE also seeks comment on airflow-control setting designations for multi-stage products.

2. Operating Hour Values for Calculating the Fan Efficiency Rating

DOE is aware that climate conditions and consumer behavior vary in the United States. DOE's proposed furnace fan annual operating hour values are intended to be representative of the national average operating hours that furnace fans are expected to spend performing each primary function: cooling, heating, and constant-circulation. DOE proposes to specify one set of annual operating hours for products with single-stage heating and another for products with multi-stage or modulating heating. DOE does not propose to account for multi-stage cooling, because detailed characteristics of the cooling system with which furnace fan HVAC products are paired, such as the presence and capacity of low-stage cooling, are not known. In addition, multi-stage heating is not necessarily associated with multi-stage cooling capability (*e.g.,* multi-stage cooling is much less common than multi-stage furnace equipment). DOE also requests comments on whether hydronic air handlers are designed to provide multi-stage or modulated heat. DOE requests comments on whether the proposed operating hour values and proposed rating airflow-control settings are appropriate for rating multi-stage and modulating hydronic air handlers.

Table V.1 below summarizes the proposed operating hour values to be specified for calculating FER.

TABLE V.1—PROPOSED AVERAGE ANNUAL OPERATING HOURS BY MODE

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Heating mode	HH	830	830/HCR.
Circulation mode	CCH	400	400.
Cooling mode	CH	640	640.
Off mode (if applicable)	OH	0	0.
Standby mode (if applicable)	SBH	8760–HH–CCH–CH–OH	8760–HH–CCH–CH–OH.

DOE requests comment on whether the proposed operating hour values are reasonable estimations of national average operating hours for each furnace fan function. DOE also requests comment on the methodology and assumptions used to estimate these values, which are described in detail in section III.D.

3. Reference System ESP Values

As described in section III.E, DOE compiled field ESP data to determine reference system ESP values that are representative of field conditions. Based on the data collected, DOE proposes the reference system ESP values in Table V.2 below for the four identified installation types.

TABLE V.2—PROPOSED REFERENCE SYSTEM ESP VALUES BY INSTALLATION TYPE

Installation type	Weighted average ESP (in. w.c.)
Heating-only units	0.50
Units with an internal evaporator coil	0.50
Units designed to be paired with an evaporator coil	0.65
Manufactured homes [35]	0.30

DOE seeks comment and data regarding these values and the assumptions used to estimate them, which are detailed in section III.E, are appropriate. DOE also seeks comment on whether the specified reference system ESP should vary with the HVAC product capacity.

4. Multiple Reference System Method

DOE is aware that field ESPs can be higher than recommended by manufacturers. DOE is also aware that CSA considered rating fan performance in multiple reference systems for the finalized version of CSA C823: one at 0.3 in.w.c. in the heating speed to represent a manufacturer-recommended installation, and one at 0.6 in.w.c. in the heating speed to be more representative of a typical (poor) field installation. A multiple-reference system rating metric would specify reference systems to represent the expected range of installations. DOE expects that a furnace fan may provide enough airflow for 4 tons of cooling in a house with generously-sized ducts, but it may only provide enough airflow for 3 tons of cooling in a house with a more restrictive duct system. Therefore, a furnace fan with these performance characteristics might be installed in 2-ton to 4-ton cooling systems in large-duct houses and 1.5-ton to 3-ton cooling systems in tight-duct houses. DOE recognizes that rating the furnace fan using one reference system defined by a high ESP and one reference system defined by a low ESP (determined by statistical methods from field ESP data) could give a good indication of the ability of the furnace fan to provide good performance over a range of ESP. DOE investigated the use of a combined, multi-reference system FER, but found that it provided no additional useful information compared to the proposed, single-reference system FER. This comparison is discussed in detail in section III.E. DOE requests comment on multiple-reference system rating approaches and whether they would give a better indication of the overall performance, as compared to the proposed single reference system approach.

5. Standby Mode and Off Mode Electrical Energy Consumption for Furnace Fans Used in Hydronic Air Handlers

DOE proposes to incorporate in this test procedure the methods specified in the DOE test procedure for residential furnaces and boilers (10 CFR part 430, subpart B, appendix N, section 8.0) to measure the standby mode and off mode energy consumption for furnace fans used in hydronic air handlers. On September 13, 2011, DOE published a NOPR to update the DOE test procedure for furnaces through incorporation by reference of the latest edition of the industry standard, specifically IEC Standard 62301 (Second Edition). 76 FR 56339. DOE proposes to also adopt the updates proposed in the September 2011 furnaces test procedure NOPR for measurement of standby mode and off mode energy of furnace fans incorporated in hydronic air handlers. The standby mode and off mode electrical energy consumption of the other HVAC products discussed in this notice are already fully accounted for in other proposed or established DOE test procedures. DOE believes the methods specified in the DOE test procedure for residential furnaces and boilers to measure the standby mode and off mode energy consumption are appropriate because both furnaces and hydronic air handlers are used primarily in central heating applications, and DOE expects that the electrical systems (*i.e.,* components and controls) of hydronic air handlers are similar to the electrical systems of furnaces. DOE seeks comment on whether the assumed similarities between the electrical systems of furnaces and hydronic air handlers are appropriate.

DOE proposes to integrate the standby mode and off mode electrical energy consumption measurements, E_{SB} and E_{OFF}, with the active mode metric for hydronic air handlers. DOE seeks comment on whether the methods for measuring standby mode and off mode energy consumption specified in the DOE test procedure for residential furnaces and boilers are appropriate for hydronic air handlers. As mentioned previously, similar to furnaces, DOE expects that hydronic air handlers are not typically equipped with a seasonal off switch or that consumers would turn off power to the hydronic air handler. Therefore, DOE expects that E_{OFF} and the estimated annual off mode operating hours, HO, would effectively be equal to zero. DOE seeks comment on whether hydronic air handlers have a seasonal off switch or consumers would turn off power to the hydronic air handler. If so, DOE also requests comment on the expected electrical energy consumption in off mode, the number of hours that should be allocated to standby mode, and the number of hours that should be allocated to off mode, as well as data to support these allocations.

6. Controlling ECM Motors for Testing

DOE is aware that higher-efficiency motors have complicated control schemes that make selecting their available airflow-control settings during performance testing difficult. The ability to select and operate a furnace fan in multiple airflow-control settings is imperative to conducting the proposed test procedure as intended and to derive FER. While this may be simple for manufacturers who are familiar with HVAC controls, independent test labs may need guidance. Therefore, DOE seeks comment on the appropriateness of the proposed test procedures for controlling furnace fans that use higher-efficiency motors, including recommendations for any necessary modifications.

7. Test Setup

DOE recognizes that ANSI/AMCA 210–07 includes 16 setup variations. DOE requests comments on which of these setups are best-suited for the purposes of this test procedure. DOE expects that the blow-through setups, such as test setup 12, may be more appropriate than pull-through setups, such as setup 13, because they are more representative of typical installations of the HVAC products discussed in this notice. DOE also requests comments on

[35] Manufactured home external static pressure is much smaller due to the fact there is no return air duct work in manufactured homes. Also, HUD requirements stipulate that the duct work for cooling should be set at 0.3 in. w.c.

whether any of these test setups are inappropriate and should be disallowed for the purposes of this test procedure.

8. External Static Pressure

DOE expects that measurements referred to as ''external static pressure'' in manufacturer product literature are the same as ''fan static pressure'' measurements in ANSI/AMCA 210–07 (ANSI/AMCA 210–07 section 3.1.25). The ANSI/AMCA 210–07 ''fan static pressure'' measurement is defined to be equal to the outlet total pressure minus the inlet total pressure minus the outlet velocity pressure. Therefore, this notice proposes an equivalent definition for ''external static pressure.'' However, DOE notes that this value is not equal to the difference between outlet and inlet static pressure—it is less than such a difference by an amount equal to the inlet velocity pressure. DOE requests comments on the proposed definition of ''external static pressure'' and whether DOE is correct in assuming that external static pressure ratings reported in product literature are equivalent to ANSI/AMCA 210–07 fan static pressure measurements.

9. Ambient Pressure Conditions

DOE is aware that barometric pressure changes may have an impact on test measurement results and notes that the ANSI/AMCA 210–07 standard does not appear to include correction for this effect. DOE requests comment on whether any limitations on the barometric pressure range or adjustments to address the impact of barometric pressure should be included in the test procedure.

10. Sampling Plan Procedures and Certification Report Requirements

DOE proposes to adopt the existing sampling plan procedures applicable to residential furnaces for certification of residential furnace fans. DOE requests comments on whether the sampling plan procedures for residential furnaces are appropriate for representation and certification of residential furnace fans measures of electrical energy consumption. DOE also proposes to specify the general certification report requirements within 10 CFR 429.12, as well as the following additional information in certification reports for furnace fans:

• *Residential furnace fans used in HVAC products other than hydronic air-handlers:* The represented value of fan efficiency rating (FER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system ESP in cubic feet per minute (cfm); whether the HVAC product has multi-stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

• *Residential furnace fans used in hydronic air-handlers:* The represented value of integrated fan efficiency rating (IFER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system ESP in cubic feet per minute (cfm); whether the HVAC product has multi-stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

DOE also requests comment on whether these certification report requirements are appropriate.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 1, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of Title 10 of the Code of Federal Regulations to read as set forth below:

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

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

Authority: 42 U.S.C. 6291–6317.

2. Add new § 429.55 to read as follows:

§ 429.55 Residential furnace fans.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to residential furnace fans; and

(2) For each basic model of heating, ventilation, and air-conditioning (HVAC) product using a furnace fan, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of fan efficiency rating (FER) or integrated fan efficiency rating (IFER) for which consumers would favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ 8 is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A)

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to residential furnace fans; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) *Residential furnace fans used in HVAC products other than hydronic air-handlers:* The represented value of fan efficiency rating (FER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system ESP in cubic feet per minute (cfm); whether the HVAC product has multi-stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

(ii) *Residential furnace fans used in hydronic air-handlers:* The represented value of integrated fan efficiency rating (IFER) in watts per thousand cubic feet per minute (W/cfm); the maximum airflow capacity at the reference system ESP in cubic feet per minute (cfm); whether the HVAC product has multi-

stage or modulating heating, and if so, the maximum and minimum output heat capacities in British thermal units per hour (Btu/h); and whether the HVAC product is designated for use in manufactured homes.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

4. Section 430.3 is amended by:

a. Adding paragraph (d)(1);

b. Redesignating paragraphs (d)(1) through (d)(18) as (d)(2) through (d)(19);

c. Removing, in paragraph (f)(9) ''and appendix N to subpart B'' and adding in its place ''appendix N and appendix AA to subpart B'';

d. Removing, in paragraph (m)(2), ''IBR approved for Appendix J2 and AA to subpart B'' and adding in its place ''IBR approved for appendix G, N, O, P, and AA'' .

The addition reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(d) *ANSI.* * * *

(1) ANSI/AMCA 210–07 √ ANSI/ASHRAE 51–07 (''ANSI/AMCA 210–07''), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, approved 2007, IBR approved for Appendix AA to Subpart B.

* * * * *

5. Section 430.23 is amended by adding a new paragraph (cc) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(cc) *Furnace Fans.* The energy efficiency of a residential furnace fan expressed in watts per1000 standard cubic feet per minute (scfm) to the nearest integer shall be calculated in accordance with section 6 of appendix AA of this subpart.

6. Appendix AA to subpart B of part 430 is added to read as follows:

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Efficiency of Residential Furnace Fans

1. *Scope.* This appendix covers the test requirements used to measure the energy efficiency of residential furnace fans, including the energy use contributions of standby mode and off mode of residential furnace fans used in hydronic air handlers.

2. *Definitions, Units of Measure, and Symbols.* Definitions, units of measure, and symbols include the definitions, units of measure, and symbols specified in section 3 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3) and the following additional and modified definitions, units of measure, and symbols:

2.1. *Active mode* means any the mode of operation in which the HVAC product is connected to a power source and circulating air through duct work.

2.2. *Airflow-control setting* means any distinct operating mode characterized by nominal fan speed or airflow that a furnace fan is programmed or wired to achieve when installed in accordance with manufacturer instructions and which is often designated for performing a specific HVAC function (e.g., cooling, heating, or constant-circulation).

2.3. *ANSI/AMCA 210–07* means the test standard published by ANSI/AMCA 210–07 | ANSI/ASHRAE 51–07 titled ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating'' (incorporated by reference, see § 430.3).

2.4. *Default airflow-control settings* are the airflow-control settings that can be achieved in the factory-set control system configuration (i.e., without manual adjustment other than interaction with a user-operable control such as a thermostat).

2.5. *External static pressure* means the difference between the total pressure at the air outlet and the total pressure at the air inlet less velocity pressure at the air outlet of an HVAC product containing a furnace fan when operating and installed in accordance with the manufacturer's instructions. External static pressure does not include the pressure drop across appurtenances internal to the HVAC product.

2.6. *Hydronic air handler* means a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by hot water flowing through a hydronic heating coil and the heated air is circulated by means of a fan or blower.

2.7. *Off mode* means the mode of operation during which the HVAC product is not powered.

2.8. *Residential furnace fan* means an electrically-powered device used in residential central heating, ventilation, and air-conditioning (HVAC) systems for the purpose of circulating air through duct work.

2.9. *Seasonal off switch* means a switch on the HVAC product that, when activated, results in a measurable change in energy consumption between the standby and off modes.

2.10. *Standby mode* means the mode during which the HVAC product is connected to the power source and the furnace fan is not activated.

2.11. *Symbols and subscripts.* The following units of measure and symbols are provided in addition to those specified in section 3.2 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3).

E_{circ} = furnace fan electrical consumption at the default constant-circulation airflow-control setting operating point (or lowest default airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified), in watts

E_{heat}—furnace fan electrical consumption in the default heat airflow-control setting for single-stage heating products or the default low-heat setting for multi-stage heating products, in watts

CH = annual furnace fan cooling hours

CCH = annual furnace fan constant-circulation hours

E_{max}—furnace fan electrical consumption at the maximum airflow-control setting operating point, in watts

E_{OFF} = furnace fan electrical consumption in off mode, in watts

E_{SB} = furnace fan electrical consumption in standby mode, in watts

ESP—external static pressure, in in.w.c.

FER—Fan efficiency rating for furnace fans used in HVAC products other than hydronic air handlers, in watts per 1000 cfm at specified operating points

HH = annual furnace fan heating hours

IFER—Integrated fan efficiency rating for furnace fans used in hydronic air handlers, in watts per 1000 cfm at specified operating points

K_{ref}—physical descriptor characterizing the reference system

OH = annual furnace fan off mode operating hours

Q_{max} = airflow in the maximum airflow-control setting at the specified reference system ESP, in cfm

SBH = annual furnace fan standby mode operating hours

8760 = total annual hours

3. *Instruments and Methods of Measure.* Instruments and methods of measure are as specified in section 4 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3), excluding those for mechanical measurement of fan input power and motor calibration (sections 4.4) and rotational speed (section 4.5). Instruments and methods of measure for active mode electrical power consumption are as specified in section 3.1 of this appendix.

3.1. *Measurement of electrical active mode power consumption.*

3.1.1. *Electrical meter.* An electrical meter shall have a certified accuracy of ±1% of the observed reading.

3.1.2. *Voltage.* Electrical power shall be supplied to the HVAC product in which the furnace fan is incorporated within 1% of the nameplate voltage for the duration of the test. If a dual voltage is used for nameplate voltage, maintain the electrical supply within 1% of the higher voltage.

4. *Test Setups and Equipment.* Test setups and equipment are as specified in section 5 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3). Furnace fans shall be tested as factory-installed in the HVAC product in which they are integrated.

5. *Observations and Conduct of Test.* Observations and procedures for the conduct of test are as specified in section 6 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3), except for test data to be recorded related to rotational speed, beam load, or torque as specified in Table 3 of ANSI/AMCA 210–07. Additional observations and procedures for the conduct

of test are as specified in section 5.1 of this appendix, which modifies section 6.1.1 of ANSI/AMCA 210–07. Observations and procedures for the conduct of test to measure standby mode and off mode energy consumption are as specified in section 5.2 of this appendix which modifies the methods specified in appendix N of subpart B of part 430 to be applicable to hydronic air handlers.

5.1. *Determinations.* Determinations shall be made at: (1) 0.1 in.w.c.; (2) an ESP equal to the applicable reference system ESP divided by 2; and (3) an ESP between the applicable reference system ESP and 0.1 in.w.c. above that reference system ESP. Determinations shall include measurements of input electrical power, external static pressure, and airflow.

5.2. *Measurement of electrical standby mode and off mode power for hydronic air handlers.*

5.2.1. *Standby mode power measurement.* With the hydronic air handler powered but with all electrical auxiliaries not activated, measure the standby mode power (E_{SB}) in accordance with the procedures in IEC Standard 6230, Edition 2.0, 2011–01 (incorporated by reference, see § 430.3), except that section 8.5, ''Room Ambient Temperature,'' of ASHRAE 103–1993 (incorporated by reference, see § 430.3) and the voltage provision of section 8.2.1.4, ''Electrical Supply,'' of ASHRAE 103—1993 shall apply in lieu of the corresponding provisions of IEC Standard 62301 at section 4.2, ''Test room,'' and the voltage specification of section 4.3, ''Power supply.'' Frequency shall be 60Hz. Clarifying further, IEC Standard 62301 section 4.4, ''Power measurement instruments,'' and section 5, ''Measurements,'' shall apply in lieu of section 6.10, ''Energy Flow Rate,'' of ASHRAE 103—1993. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. The recorded standby power (E_{SB}) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

5.2.2. *Off mode power measurement.* If the unit is equipped with a seasonal off switch or there is an expected difference between off mode power and standby mode power, measure off mode power (E_{OFF}) in accordance with applicable procedures in IEC Standard 62301, Edition 2.0, 2011–01 (incorporated by reference, see § 430.3), except that section 8.5, ''Room Ambient Temperature,'' of ASHRAE 103—1993 (incorporated by reference, see § 430.3) and the voltage provision of section 8.2.1.4, ''Electrical Supply,'' of ASHRAE 103—1993 shall apply in lieu of the corresponding provisions of IEC Standard 62301 at section 4.2, ''Test room,'' and the voltage specification of section 4.3, ''Power supply.'' Frequency shall be 60Hz. Clarifying further, IEC Standard 62301 section 4.4, ''Power measurement instruments,'' and section 5, ''Measurements,'' shall apply for this measurement in lieu of section 6.10, ''Energy Flow Rate,'' of ASHRAE 103—1993. Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. The recorded off mode power shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

6. *Calculations.* Calculations are as specified in section 7 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3), except for sections 7.7 and 7.8, and as specified in section 6.1, 6.2, 6.3, 6.4, 6.5, and 6.6 of this appendix, which are supplemental to ANSI/AMCA 210–07.

6.1. *Performance curve.* A performance curve shall be determined for each rated airflow-control setting by fitting a quadratic curve to the three airflow and corresponding ESP measurements taken for the determinations associated with that respective airflow-control setting. The derived quadratic performance curves is to express airflow as a function of ESP in the following form:

$$Q_i = a_i ESP^2 + b_i ESP + c_i$$

Where:

Q_i = airflow in cfm for rating airflow-control setting i;

ESP = external static pressure in in.w.c.; and

a_i, b_i, c_i = quadratic coefficients for rating airflow-control setting i.

For products with single-stage heating, the rating airflow-control settings are the maximum setting, the default heating setting, and the default constant-circulation setting. For products with multi-stage heating or modulating heating, the rating airflow-control settings are the maximum setting, the default low-heating setting, and the default constant-circulation setting. For hydronic air handlers that are not designed to be paired with an evaporator coil, the rating airflow-control settings are the default heating setting (expected to be the maximum airflow-control setting) and the default constant-circulation setting. The lowest default airflow-control setting is used to represent constant circulation if a constant-circulation setting is not specified.

6.2. *Electrical consumption curve.* An electrical consumption curve shall be derived for each rated airflow-control setting by fitting a quadratic curve to the three electrical consumption measurements and corresponding ESP measurements taken for the determinations associated with that rating airflow-control setting. The derived quadratic electrical consumption curve is to express electrical consumption as a function of ESP in the following form:

$$E_i = x_i ESP^2 + y_i ESP + z_i$$

Where:

E_i = electrical consumption in watts for rating airflow-control setting i;

ESP = external static pressure in in.w.c.; and

x_i, y_i, z_i = quadratic coefficients for rating airflow-control setting i.

6.3. *Reference system curve.* The reference system curve constant, K_{ref}, shall be derived as follows:

$$K_{ref} = \frac{ESP_{ref}}{Q_{max}^2}$$

Where:

K_{ref} = a constant that characterizes the reference system;

ESP_{ref} = 0.65 in.w.c. for furnace fans used in products designed to be paired with an external cooling coil; 0.5 in.w.c. for heating-only products or furnace fans used in products with an internal cooling coil; and 0.3 for manufactured home products

$$Q_{max} = a_{max}^2 ESP_{ref} + b_{max} ESP_{ref} + c_{max}$$

a_{max}, b_{max}, c_{max} = quadratic coefficients of the maximum airflow-control setting performance curve, as derived in section 6.1 of this appendix

6.4. *Operating points.* The operating point in the maximum airflow-control setting is defined by the reference system criteria: ESP_{ref} and Q_{max}. The operating points for the default heat and default constant-circulation settings shall be determined by finding the intersections of the performance curves for these rating airflow-control settings (determined as described in section 6.1 of this appendix) and the reference system curve ($ESP=K_{ref} Q^2$).

6.5. *Electrical consumption.* Electrical consumption at the operating points shall be derived by inputting the operating point ESPs identified, as specified in section 6.4 of this appendix, into the electrical consumption curve for each respective airflow-control setting, as derived in section 6.2 of this appendix.

6.6. *Fan efficiency rating (FER) and integrated fan efficiency rating (IFER).* The fan efficiency rating shall be derived by using the following equations and the specified operating hour values in Table 1 below.

6.6.1. *Heating-only Hydronic Air Handlers.* For heating-only hydronic air handlers, the cooling mode annual

hours and energy consumption variable are eliminated, and the standby mode and off mode energy consumption is integrated with the active mode energy consumption. The IFER equation for heating-only hydronic air handlers is:

$$IFER_{heating-only} = \frac{(HH \times E_{heat}) + (CCH \times E_{circ}) + (SBH \times E_{SB}) + (OH \times E_{OFF})}{(HH + CCH + SBH + OH) \times Q_{max}} \times 1000$$

Where:

$IFER_{heating-only}$ = fan efficiency rating in watts/1000 cfm for hydronic air handlers not designed to be paired with an external cooling coil;

HH = annual furnace fan heating operating hours;

E_{heat} = electrical consumption at the default heat airflow-control setting (*i.e.,* maximum setting for single-stage) operating point;

CCH = annual furnace fan constant-circulation hours;

E_{circ} = electrical consumption at the default constant-circulation airflow-control setting operating point (or lowest default airflow-control setting operating point if no default constant-circulation setting is specified);

SBH = annual furnace fan standby mode operating hours;

E_{SB} = electrical consumption in standby mode;

OH = annual furnace fan off mode hours;

E_{OFF} = electrical consumption in off mode;

Q_{max} = airflow in maximum airflow-control setting at reference system ESP; and

1000 = constant to put metric in terms of watts/1000 cfm.

6.6.2. *Hydronic Air Handlers Designed to be Paired with an Evaporator Coil.* For hydronic air handlers designed to be paired with an evaporator coil, the variables for cooling mode consumption and operating hours are included, and standby mode and off mode energy consumption are integrated with the active mode energy consumption. The IFER equation for hydronic air handlers designed to be paired with an external cooling coil is:

$$IFER_{hydronic} = \frac{(CH \times E_{max}) + (HH \times E_{heat}) + (CCH \times E_{circ}) + (SBH \times E_{SB}) + (OH \times E_{OFF})}{(CH + HH + CCH + SBH - OH) \times Q_{max}} \times 1000$$

Where:

$IFER_{hydronic}$ = fan efficiency rating in watts/1000 cfm for hydronic air handlers designed to be paired with an evaporator coil;

CH = annual furnace fan cooling operating hours;

E_{max} = electrical consumption at maximum airflow-control setting operating point;

HH = annual furnace fan heating operating hours;

E_{heat} = electrical consumption at the default heating airflow-control setting operating point for units with single-stage heating or the default low-heating setting operating point for units with multi-stage or modulating heating;

CCH = annual furnace fan constant-circulation hours;

E_{circ} = electrical consumption at the default constant-circulation airflow-control setting operating point (or lowest default airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified);

SBH = annual furnace fan standby mode operating hours;

E_{SB} = electrical consumption in standby mode;

OH = annual furnace fan off mode hours;

E_{OFF} = electrical consumption in off mode;

Q_{max} = airflow in the maximum airflow-control at the reference system ESP; and

1000 = constant to put metric in terms of watts/1000 cfm.

6.6.3. *Non-hydronic Air Handler Products.* For weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers, the standby mode and off mode energy consumption is excluded, and the FER equation is as follows:

$$FER = \frac{(CH \times E_{max}) + (HH \times E_{heat}) + (CCH \times E_{circ})}{(CH + HH + CCH) \times Q_{max}} \times 1000$$

Where:

FER = fan efficiency rating in watts/1000 cfm for weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers;

CH = annual furnace fan cooling operating hours;

E_{max} = electrical consumption in the maximum airflow-control setting at the reference system ESP;

HH = annual furnace fan heating operating hours;

E_{heat} = electrical consumption at the default heating airflow-control setting operating point for units with single-stage heating or the default low-heating airflow-control setting operating point for units with multi-stage or modulating heating;

CCH = annual furnace fan constant-circulation hours;

E_{circ} = electrical consumption at the default constant-circulation airflow-control setting operating point (or lowest default airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified);

Q_{max} = airflow on the maximum airflow-control setting at the reference system ESP; and

1000 = constant to put metric in terms of watts/1000 cfm.

Table 1 includes the operating hour values to be used to calculate FER.

TABLE 1—FURNACE FAN ANNUAL OPERATING HOURS FOR CALCULATING FER

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Heating mode	HH	830	830/HCR.
Circulation mode	CCH	400	400.
Cooling mode	CH	640	640.
Off mode (if applicable)	OH	0	0.

TABLE 1—FURNACE FAN ANNUAL OPERATING HOURS FOR CALCULATING FER—Continued

Operating mode	Variable	Single-stage (hours)	Multi-stage (hours)
Standby mode (if applicable)	SBH	8760–HH–CCH–CH–OH	8760–HH–CCH–CH–OH.

Where:

HH = annual furnace fan heating operating hours;

HCR = heating capacity ratio (output capacity in lowest-heat mode divided by output capacity in highest-heat mode);

CCH = annual furnace fan constant-circulation operating hours;

CH = annual furnace fan cooling operating hours;

OH = annual furnace fan off mode operating hours; and

SBH = annual furnace fan standby mode operating hours.

7. *Report and results of test.* Test results and information shall be reported as specified in section 8 of ANSI/AMCA 210–07 (incorporated by reference, see § 430.3) and as specified in section 7.1 of this appendix.

7.1. *Additional report information.* The following additional test results and calculated values shall be reported: (1) Fan efficiency rating (FER); (2) the airflow, ESP, and electrical consumption at each operating point, K_{ref}; and (3) the quadratic coefficients for the performance curve and electrical consumption curves for each rated airflow-control setting.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for Eriogonum codium (Umtanum Desert Buckwheat) and Physaria douglasii subsp. tuplashensis (White Bluffs Bladderpod) and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2012–0017: 4500030113]

RIN 1018–AX72

Endangered and Threatened Wildlife and Plants; Threatened Status for Eriogonum codium (Umtanum Desert Buckwheat) and Physaria douglasii subsp. tuplashensis (White Bluffs Bladderpod) and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list Umtanum desert buckwheat (*Eriogonum codium*) and White Bluffs bladderpod (*Physaria douglasii* subsp. *tuplashensis*) as threatened, under the Endangered Species Act of 1973, as amended (Act). We are also proposing to designate critical habitat for both species under the Act. In total, approximately 344 acres (139 hectares) are being proposed for designation as critical habitat for *Eriogonum codium* in Benton County, Washington, and approximately 2,861 acres (1,158 hectares) are being proposed for designation as critical habitat for *Physaria douglasii* subsp. *tuplashensis* in Franklin County, Washington. We also announce the availability of a draft economic analysis (DEA) of the proposed designation and a required determinations section of the proposal.

DATES: We will consider all comments received or postmarked on or before July 16, 2012. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by June 29, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* The draft economic analysis is available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0017 or by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: You may submit your comments or data concerning this proposal by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and submit your comment to Docket No. FWS–R1–ES–2012–0017.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0017; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, Washington 98503–1263, by telephone (360) 753–9440, or by facsimile (360) 753–9405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is endangered throughout all or a significant portion of its range. We are proposing to list Umtanum desert buckwheat and White Bluffs bladderpod as threatened under the Act because of continued threats, and listing can only be done by issuing a rule. Both species occur as single populations in narrow, linear bands on bluffs above and on opposite sides of the Columbia River along the Hanford Reach in Washington State. We are also proposing to designate critical habitat under the Act for both species. Critical habitat represents geographical areas that are essential to a species' conservation, and is designated on the basis of the best scientific information available after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat. This proposed rule also announces the availability of a draft economic analysis (DEA), which evaluates the potential economic impacts that may be attributable to the proposed designation of critical habitat for both species.

The basis for our action. Under the Act, a species may be determined to be endangered or threatened based on any of five factors: (1) Destruction, modification, or curtailment of its habitat or range; (2) Overuse; (3) Disease or predation; (4) Inadequate existing regulations; or (5) Other natural or manmade factors. The Act also requires that we designate critical habitat concurrently with listing determinations, if designation is prudent and determinable.

We have made the following finding related to these criteria:

- Umtanum desert buckwheat is threated by wildfire, nonnative plants, seed predation, small population size, limited geographic range, and low recruitment.
- White Bluffs bladderpod is threatened by wildfire, irrigation-induced landslides and slope failure, harm by recreational activities and off-road vehicle use, nonnative plants, small population size, and limited geographic range.

This rule proposes to designate critical habitat for both species.

- Critical habitat designation would not be expected to increase threats to either species, and we have sufficient scientific information on both species to determine the areas essential to their conservation. Accordingly, we have determined the designation of critical habitat is both prudent and determinable.
- Approximately 2,400 acres of Federal land, 17 acres of State land, and 419 acres of private land are being proposed as critical habitat for both species.
- Based on the best available scientific and commercial data, we have not identified a significant number of small entities that may be impacted by the proposed critical habitat designation. Small entities are consequently anticipated to bear a relatively low cost as a result of the designation of critical habitat.

Peer Review. We will seek the expert opinions of at least three appropriate and independent specialists with scientific expertise to ensure our determinations are based on scientifically sound data, assumptions, and analyses.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Additional information concerning the historical and current status, range, distribution, population size, pollinators and the foraging distances of these species, including the locations of any additional populations of these species.

(2) Any information on the biological or ecological requirements of these species and ongoing conservation measures for these species and their habitat.

(3) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(4) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats, as discussed in this proposed rule.

(5) Current or planned activities in the areas occupied by *Eriogonum codium* or *Physaria douglasii* subsp. *tuplashensis* and the possible impacts of these activities on these species. For purposes of this document, we will refer to *Physaria douglasii* subsp. *tuplashensis* as ''White Bluffs bladderpod'' and *Eriogonum codium* as ''Umtanum desert buckwheat''.

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531, *et seq.*), including whether there are threats to the species from human activity, the degree of which the threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

(a) The amount and distribution of habitat for Umtanum desert buckwheat or White Bluffs bladderpod;

(b) What areas occupied at the time of the proposed listing that contain features essential to the conservation of the species should be included in the designation and why;

(c) Special management considerations or protections that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas that are not occupied at the time of the proposed listing are essential for the conservation of the species and why.

(8) Land use designations and current or planned activities in the area and their possible impacts on the proposed critical habitat.

(9) Information on the projected and reasonably likely impacts of climate change on Umtanum desert buckwheat or White Bluffs bladderpod and the proposed critical habitat areas.

(10) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act and why.

(12) Information on whether the draft economic analysis (DEA) identifies all costs and benefits attributable to the proposed critical habitat designation for each of the plants, and information on any costs or benefits that we have overlooked.

(13) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate critical habitat.

(14) Information on whether the DEA identifies all costs reasonably likely to occur that could result from the critical habitat designation and whether you agree with the analysis.

(15) Economic data on the incremental costs of designating any particular area as critical habitat.

(16) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available,'' and section 4(b)(2) directs that critical habitat designations be made based on the best scientific data available and after consideration of economic and other relevant impacts.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, such as your address, phone number, email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Candidate History: Umtanum desert buckwheat and White Bluffs bladderpod (formerly *Lesquerella tuplashensis*) were identified as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants in our Annual Candidate Notice of Review, published in the **Federal Register** October 25, 1999 (64 FR 57542). Both species were given a Listing Priority number (LPN) of 5 at that time; the LPN is assigned to a species based on the immediacy and magnitude of threats and the species' taxonomic status. In 1999, threats to both species were considered to be of high magnitude, but nonimminent. However, in 2002, the LPN for Umtanum desert buckwheat was revised to LPN 2, which is assigned when threats to a species are of high magnitude and imminence (67 FR 40663), based on new information revealing low reproduction for the

species. The LPN for White Bluffs bladderpod (formerly *Lesquerella tuplashensis*) was revised to LPN 9 in 2009 (74 FR 57810), to reflect new information indicating threats were now moderate to low in magnitude and imminence. In 2009, the Service completed a Spotlight Species Action Plan for White Bluffs bladderpod to set conservation targets and identify actions to achieve those targets for the next 5 years. This plan can be found on the Service's Web site at: *http://www.fws.gov/ecos/ajax/docs/action_plans/doc3090.pdf.* The 2011 Notice of Review, published October 26, 2011 (76 FR 66370), included Umtanum desert buckwheat and White Bluffs bladderpod; both species have been maintained as candidates since 1999.

Petition History: A petition requesting that Umtanum desert buckwheat, White Bluffs bladderpod, and several other species be listed under the Act was received on May 4, 2004 (Center for Biological Diversity *et al.* [CBD] 2004, pp. 49, 100). On July 12, 2011, the Service filed a multiyear work plan as part of a proposed settlement agreement with Center for Biological Diversity (CBD) and others in a consolidated case in the U.S. District Court for the District of Columbia. The settlement agreement was approved by the court on September 9, 2011, and will enable the Service to systematically review and address the conservation needs of more than 250 species, over a period of 6 years, including Umtanum desert buckwheat and White Bluffs bladderpod.

Background

It is our intent to discuss only those topics directly relevant to the proposed listing and critical habitat designations for Umtanum desert buckwheat and White Bluffs bladderpod in this proposed rule. A summary of topics relevant to this proposed rule is provided below. Additional information on both species may be found in the Candidate Notice of Review, which was published October 26, 2011 (76 FR 66370).

Geography, Climate, and Landscape Setting

Umtanum desert buckwheat and White Bluffs bladderpod are found only on the Hanford Reach of the Columbia River, the last free-flowing stretch of the Columbia River within U.S. borders. The Hanford Reach lies within the semi-arid shrub steppe Pasco Basin of the Columbia Plateau in south-central Washington State. The region's climate is influenced by the Pacific Ocean, the Cascade Mountain Range to the west, and other mountain ranges located to the north and east. The Pacific Ocean moderates temperatures throughout the Pacific Northwest, and the Cascade Range generates a rain shadow that limits rain and snowfall in the eastern half of Washington State. The Cascade Range also serves as a source of cold air drainage, which has a considerable effect on the wind regime on the Hanford Installation. Daily maximum temperatures vary from an average of 1.7 °Celsius (C) (35 °Fahrenheit (F)) in late December and early January, to 36 °C (96 °F) in late July. The Hanford Reach is generally quite arid, with an average annual precipitation of 16 centimeters (cm) (6.3 inches (in)). The relative humidity at the Hanford Reach is highest during the winter months, averaging about 76 percent, and lowest during the summer, averaging about 36 percent. Average snowfall ranges from 0.25 cm (0.1 in) in October to a maximum of 13.2 cm (5.2 in) in December, decreasing to 1.3 cm (0.5 in) in March. Snowfall accounts for about 38 percent of all precipitation from December through February (USFWS 2008, pp. 3.8–3.10).

The Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge (Monument), which includes approximately 78,780 hectares (ha) (195,000 acres (ac)), contains much of the Hanford Reach of the Columbia River. All of the land is owned by the Department of Energy (DOE) and was formerly part of the 145,440-ha (360,000-ac) Hanford installation. The Hanford installation was established by the U.S. Government in 1943 as a national security area for the production of weapons grade plutonium and purification facilities. For more than 40 years, the primary mission at Hanford was associated with the production of nuclear materials for national defense. However, large tracts of land were used as protective buffer zones for safety and security purposes and remained undisturbed.

The Hanford Reach National Monument was established by Presidential Proclamation in June 2000, to connect these tracts of land, protecting the river reach and the largest remnant of the shrub steppe ecosystem in the Columbia River Basin. The Hanford Reach National Monument Proclamation identifies several nationally significant resources, including a diversity of native plant and animal species, including rare and sensitive plant species such as Umtanum desert buckwheat and White Bluffs bladderpod (USFWS 2008, p. 1–4). The Proclamation also sets forth specific management actions and mechanisms that are to be followed: (1) Federal lands are withdrawn from disposition under public land laws, including all interests in these lands, such as future mining claims; (2) off-road vehicle use is prohibited; (3) the ability to apply for water rights is established; (4) grazing is prohibited; (5) the Service and DOE (subject to certain provisions) are established as managers of the Monument; (6) a land management transfer mechanism from the DOE to the Service is established; (7) cleanup and restoration activities are assured; and (8) existing rights, including tribal rights, are protected.

All lands included in the Monument are Federal lands under the primary jurisdiction of the DOE. Approximately 66,660 ha (165,000 ac) are currently managed as an overlay refuge by the Service through agreements with the DOE. Overlay refuges exist where the Service manages lands for the benefit of fish and wildlife resources, but is not the primary holder in fee title of lands forming the refuge (Service 2008, p. 1–7). Because the Monument is administered as a component of the National Wildlife Refuge System, the legal mandates and policies that apply to any national wildlife refuge apply to the Monument. The Proclamation directs the DOE and the Service to protect and conserve the area's native plant communities, specifically recognizing the area's biologically diverse shrub steppe ecosystem (USFWS 2008, pp. 1.21, 3.5). The DOE manages approximately 11,716 ha (29,000 ac) of land within the Monument and retains land surface ownership or control on all Monument acreage. Thus, the Service and DOE have joint management responsibility for the Monument.

The parcel of land containing Umtanum desert buckwheat is on part of what was historically called the McGee Ranch, a historical homestead area of more than 364 ha (900 ac) within the greater Hanford installation. Management of this parcel has been retained by DOE due to unresolved issues with contaminants. This is expected to be resolved over time, and management conveyed to the Monument, since this area is not essential to the operation of the Hanford facility. Umtanum desert buckwheat and White Bluffs bladderpod both occur in narrow, linear bands on bluffs above and on opposite sides of the Columbia River. The populations are approximately 15 kilometers (km) (9 miles (mi)) apart, and although relatively near to each other, their habitat has a widely disparate geologic history and subsequent soil

development. These conditions create unique habitats and substrates that support these and other rare endemic plants (see *Species Information* sections) within the Hanford Reach.

Species Information

Umtanum Desert Buckwheat

Umtanum desert buckwheat is a long-lived, woody perennial plant that forms low mats. Individual plants may exceed 100 years of age, based on counts of annual growth rings on cross sections of recently dead plants. Growth rates are also extremely slow, with stem diameters increasing an average of only 0.17 millimeters (mm) (0.007 in) per year (The Nature Conservancy (TNC) 1998, p. 9; Dunwiddie *et al.* 2001, p. 62). A detailed description of the identifying characteristics of Umtanum desert buckwheat is found in Reveal *et al.* (1995, pp. 350–351). Umtanum desert buckwheat is State-listed as Endangered, with a G1 (i.e., critically imperiled world-wide, and particularly vulnerable to extinction) global ranking and an S1 (i.e., critically imperiled State-wide, and particularly vulnerable to extinction) State ranking (WDNR 2011a, p. 5).

Taxonomy

In 1995, Florence Caplow and Kathryn Beck resumed large-scale rare plant surveys on the Hanford Site that were initiated in 1994 by TNC and the DOE, as part of the Hanford Biodiversity Project. Two previously undescribed plant taxa were discovered, including Umtanum desert buckwheat (Caplow and Beck 1996, p. 5). The species was fully described in Reveal *et al.* (1995) and has retained the current nomenclature unchallenged since that time. Umtanum desert buckwheat is recognized as a distinct species, and there is no known controversy concerning its taxonomy.

Habitat/Life History

Umtanum desert buckwheat was discovered in 1995 during a botanical survey of the Hanford installation (Reveal *et al.* 1995, p. 353), and is found exclusively on soils over exposed basalt from the Lolo Flow of the Wanapum Basalt Formation. As the basalt of the Lolo Flow weathers, a rocky soil type is formed that is classified as lithosol, a term describing the well-drained, shallow, generally stony soils over bedrock (Franklin and Dyrness 1973, p. 347), and talus slopes associated with eroding outcrops and cliffs. These cliffs (scarps), and loose rock at the base of cliffs or on slopes (defined as scree) are found along the crests and slopes of local hills and ridges, including east Umtanum Ridge, where Umtanum desert buckwheat occurs. This type of landform in the Columbia Basin is determined by the underlying basalts, which may be exposed above the soil on ridge tops or where wind and water erode the fine soils away (Sackschewski and Downs 2001, p. 2.1.1).

The Lolo Flow contains higher titanium dioxide and lower iron oxide than the neighboring Rosalia Flow, also of the Priest Rapids Member. The flow top material commonly has a high porosity and permeability and has weathered to pebble and gravel-sized pieces of vesicular basalt (Reveal *et al.* 1995, p. 354). This basalt typically contains small (<5 mm (0.2 in)) crystals of the mineral olivine and rare clusters of plagioclase crystals (Reidel and Fecht 1981, pp. 3–13). It is unknown if the close association of Umtanum desert buckwheat with the lithosols of the Lolo Flow is related to the chemical composition or physical characteristics of the bedrock on which it is found, or a combination of factors not currently understood (Reveal *et al.* 1995, p. 354).

Preliminary counts indicate that seed set occurs in approximately 10 percent of flowers observed, potentially limiting reproductive capacity. Based on a pollinator exclusion study (Beck 1999, pp. 25–27), the species is probably capable of at least limited amounts of self-pollination, although the percentage of seed set in the absence of pollinators appears to be low. A variety of insect pollinators were observed on Umtanum desert buckwheat flowers, including ants, beetles, flies, spiders, moths and butterflies (TNC 1998, p. 8). Wasps from the families Vespidae and *Typhiidae* and a wasp from the species *Criosciolia* have been observed in the vicinity of Umtanum desert buckwheat, but not on the plant itself. A bumble bee, Bombus centralis, has been observed utilizing flowers of Umtanum desert buckwheat plants by Washington Department of Natural Resources (WDNR) specialists (Arnett 2011b, pers. comm.).

Common perennial plant associates of Umtanum desert buckwheat include *Artemisia tridentata* (big sagebrush), Grayia spinosa (spiny hopsage), *Krascheninnikovia lanata* (winterfat), *Eriogonum sphaerocephalum* (rock buckwheat), Salvia dorrii (purple sage), *Hesperostipa comata* (needle and thread), *Pseudoroegneria spicata* (bluebunch wheatgrass), *Poa sandbergii* (Sandberg's wheatgrass), *Sphaeralcea munroana* (Munro's Globemallow), *Astragalus caricinus* (buckwheat milkvetch), and *Balsamorhiza careyana* (Carey's balsamroot). Common annual associates include *Bromus tectorum* (cheatgrass), *Phacelia linearis* (threadleaf phacelia), *Gilia leptomeria* (sand gilia). G. *inconspicua* var. *sinuata* (shy gilia), *Camissonia minor* (small evening primrose), and *Cryptantha pterocarya* (wingnut cryptantha).

Historical Range/Distribution

The only known population of Umtanum desert buckwheat occurs along the top edges of the steep slopes on Umtanum Ridge, a wide mountain ridge in Benton County, Washington, where it has a discontinuous distribution along a narrow (25–150 m (82–492 ft) wide by 1.6 km (1 mi) long) portion of the ridge (Dunwiddie *et al.* 2001, p. 59). The species was discovered in 1995 (Reveal *et al.* 1995, p. 354), and there are no records of any collections prior to that year.

Current Range/Distribution

It is unknown if the prehistorical distribution of Umtanum desert buckwheat was different than the species' current distribution, but it is likely the species has been confined to this location during at least the last 150 years, as annual growth ring counts from fire-killed plants revealed individual ages in excess of 100 years. Individual plants with greater stem diameters (and, therefore, presumably older) are present, which supports the 150-year minimum locality occupation estimate.

Population Estimates/Status

The only known population of Umtanum desert buckwheat was fully censused (an accounting of the number of all individuals in a population) in 1995, 1997, 2005, and 2011 (see Table 1). In 1995, researchers counted 4,917 living individual plants, and in 1997, researchers counted 5,228 individuals (Dunwiddie *et al.* 2001, p. 61). The 1995 census was ''roughly counted'' (Beck 1999, p. 3) (i.e., there was a greater degree of estimation), while the 1997 count was more precise. In addition, the 1995 count may have overlooked an isolated patch with 79 plants to the east that was discovered in 2011. It is not uncommon for estimated population counts to be substantially lower than precise counts (Arnett 2011a, pers. comm.).

TABLE 1—UMTANUM DESERT BUCKWHEAT POPULATION COUNTS 1995–2011

Census year	Total plants counted
1995	4,917
1997	5,228

TABLE 1—UMTANUM DESERT BUCKWHEAT POPULATION COUNTS 1995–2011—Continued

Census year	Total plants counted
2005	4,408
2011	5,169

After a 1997 wildfire burned through a portion of the population, a subsequent count found 5,228 living and 813 dead individual plants. A minimum of 75 percent of the 813 dead individual plants observed died as a direct result of the fire (Dunwiddie *et al.* 2001, p. 61). No survival or resprouting was noted in fire-killed plants in following years. Because a more accurate count was used to derive the number of dead individual plants (Beck 1999, p. 3), this total represents a fairly precise measure of the impact of the 1997 wildfire on Umtanum desert buckwheat (Arnett 2011a, pers. comm.), although it is likely some plants were totally consumed by the fire and thereby unidentifiable.

In 2005, researchers reported 4,408 living plants (Caplow 2005, p. 1), which represents a 15 percent decline in the population over an 8-year period. However, this result likely reflects some variability in how the census was performed over the years since the species was discovered in 1995. On July 12, 2011, a complete population census was conducted, which recorded 5,169 living individuals. This was somewhat higher than average, which could be attributable to a more thorough census, the identification of plant clusters not previously documented, and the recording of larger clumps as containing more than one individual plant. These clumps were likely counted as individual plants in previous counts (Arnett 2011a, pers. comm.).

Demographic monitoring of the largest subpopulation within the main population, commenced in 1997, and demonstrated an average 2 percent annual mortality of adult flowering plants. During the 9 years of monitoring, only 4 or 5 seedlings have been observed to survive beyond the year of their germination (Kaye 2007, p. 5). Since 2007, the demographic monitoring plots continue to reflect population declines and minimal recruitment (Arnett 2011b, pers. comm.). Dunwiddie *et al.* (2001, p. 67) documented a lack of plants in the smallest size classes and the absence of any seed survival over 1 year. Their data did not indicate any spikes or gaps in the size distribution of plants that might reflect years of unusually high or low recruitment of plants, although evidence of such could have been obscured by the variable growth rates of the plants. Populations of long-lived species with low adult mortality can survive with relatively low recruitment rates (Harper 1977 in Dunwiddie *et al.* 2001, p. 67). Further, the survival of a few seedlings each year may be sufficient to replace the occasional adult that dies, or alternatively, an occasional bumper crop of seedlings surviving to maturity during several favorable years may ensure the long-term survival of the population (Dunwiddie *et al.* 2001, p. 67). However, no demographic data supported either of these scenarios for this species (Dunwiddie *et al.* 2001, p. 67).

An unpublished draft population viability analysis (PVA) was recently completed by Thomas Kaye (2007, p. 5), based on 9 years of demographic data. A PVA is a quantitative analysis of population dynamics, with the goal of assessing the risk of extinction of a species. The 2007 study, which took into account observed environmental variability, determined there was little or no risk of a 90 percent population decline within the next 100 years; an approximate 13 percent chance of a decline of 50 percent over the next 50 years; and a 72 percent chance of a 50 percent decline within the next 100 years. The PVA concluded the decline is gradual, consistent with the decline noted by Caplow (2005, p. 1) between 1997 and 2005, and will likely take several decades to impact the population (Kaye 2007, p. 7). Although census data indicates more individuals in 2011 compared to the number of individuals in 1995 and 2005, this increase likely reflects some variability in how the census was performed. The inflorescence for Umtanum desert buckwheat consists of a cluster of flowers arranged on a main stem or branch. As stated earlier, the fact that the 2011 census was somewhat higher than previous plant counts may be attributable to the identification of plant clusters not previously documented, or individually counting plants present in plant clusters (rather than counting the cluster itself as one plant) (Arnett 2011a, pers. comm.). Since 1995, numerous surveys have been conducted at other locations within the lower Columbia River Basin, within every habitat that appears to be suitable for Umtanum desert buckwheat. However no other populations or individuals have been found.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists). Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Individual analyses of the above factors have been completed for both Umtanum desert buckwheat and White Bluffs bladderpod and are discussed below.

Umtanum Desert Buckwheat

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Caplow and Beck (1996, pp. 40–41) and other studies indicate that threats to Umtanum desert buckwheat and its habitat are primarily due to wildfire and associated firefighting activities (Beck 1999, pp. 27–29; Dunwiddie *et al.* 2001, p. 66). The invasion of nonnative plants that increase the availability of wildfire fuel sources is also a threat, as discussed below. Livestock trespassing, prospecting, and off-road vehicle use represent potential threats, which appear to be presently reduced because of improved boundary integrity, access controls, fencing, and enforcement. Below is a detailed discussion of these threats and their potential effects on survival and recovery of the species.

Wildfire: Fire may be the primary threat to Umtanum desert buckwheat, and it is likely to become an even greater threat if the frequency or severity of fires increases (TNC 1998 p. 9; Dunwiddie *et al.* 2001, p. 62). Prior to manmade disturbances (livestock grazing, introduction of exotic species, and farming), the historic fire regime was a 32- to 70-year fire return interval of small, high-intensity fires that removed small patches of the fire-intolerant shrub overstory. Small, infrequent fires maintained bunchgrass openings within the shrub-steppe habitat, providing for both shrub and grassland communities. The historic fire regime has been significantly altered by sociopolitical and economic factors.

After the 1900s, human activities interrupted the natural fire interval and patterns of burning. Agricultural development and livestock grazing reduced the light fuels that would normally carry a fire; livestock grazing also had the effect of suppressing native bunchgrasses and allowing nonnative invasive species (*e.g., Bromus tectorum* (cheatgrass)) and native sagebrush densities to increase (USFWS 2008, p. 3–15). Cheatgrass competes with Umtanum desert buckwheat for space and moisture. In turn, the establishment and growth of highly flammable cheatgrass increases the likelihood of fire, potentially further negatively (or adversely) impacting the Umtanum desert buckwheat population.

In mid-August 1984, approximately 80,800 ha (200,000 ac) both on and off the Hanford Site were burned in a fire that expanded westward 20 miles during a 24-hour period. The 1984 fire was initiated by a lightning strike on private land (DOE 2000, p. 3–1). During the summer of 1997, a fire escaped from the Yakima Training Center (U.S. Department of the Army) and traveled down the ridge occupied by Umtanum desert buckwheat. The fire burned on all sides and partially through the population, which caused considerable mortality of adult plants (Dunwiddie *et al.* 2001, p. 60). It was conservatively estimated that at least 10–20 percent of the population may have been killed by the fire event (Dunwiddie *et al.* 2001, p. 62). The fire was most severe where vegetative cover was dense and less severe on thinner soils supporting little or no vegetation. Shrub and grass fuels on parts of the ridge are sparse, and the fire was patchy in the area where Umtanum desert buckwheat is located (Newsome 2011, pers. comm.). In late July 1998, a wildfire triggered by a lightning strike burned approximately 2,828 ha (7,000 ac) before it was contained (DOE 2000, p. 3–1). From 2001 to 2011, there have been 84 wildfire incidents documented, affecting approximately 38,164 ha (94, 460 ac) of lands within the Hanford Reach National Monument and Saddle Mountain National Wildlife Refuge (see Table 2).

TABLE 2—WILDFIRE HISTORY, HANFORD MONUMENT LANDS, HANFORD REACH/SADDLE MOUNTAIN NATIONAL WILDLIFE REFUGE

Year	Number of fires	Acres burned	Hectares burned
2011	2	1	0.4
2010	3	3,350	1,353
2009	10	529	214
2008	6	1,340	542
2007	8	77,319	31,237
2006	5	34	14
2005	8	10,910	4,408
2004	8	41	17
2003	16	512	207
2002	7	299	121
2001	11	125	51
Totals	84	94,460	38,164.4

http://www.fws.gov/fire/program_statistics/ (acres/hectares rounded).

Umtanum desert buckwheat appears to be intolerant of fire, and plants were easily killed. Even plants that were singed but not visibly charred appeared to be negatively affected, and many died the year following the fire. The fire did not stimulate vigorous new growth on established plants or sprouting from the plants' root crowns, which is sometimes observed with other species. In addition, there was no apparent flush of seedlings the following spring. Based on this lack of regeneration, or resprouting from burned plants, the species does not appear to be fire-tolerant (Dunwiddie *et al.* 2001, p. 66). Due to the intensity of the fire in some areas, many plants were entirely consumed and no traces remained that could be definitively identified, which led researchers to believe that the total impact of the 1997 fire on the population was likely to have been considerably higher than the 813 plants documented. The long-term impact of the fire to the population is unknown, but may be significant given the slow growth rates, minimal recruitment, and the increase in cheatgrass on the site following the fire. Cheatgrass plants tended to cluster with Umtanum desert buckwheat plants, likely increasing their flammability (Dunwiddie *et al.* 2001, pp. 62, 67). Mortality from the fire occurred primarily among plants growing where associated vegetation was more abundant, thereby providing fuel to carry the fire. After the fire, a reduction in native plant diversity and loss of shrub components were also observed in areas adjacent to the population. Based on the best available information, wildfire represents an ongoing threat to Umtanum desert buckwheat.

Fire Suppression Activities: In addition to wildfire itself, fire suppression activities could present a threat to the species if they were to occur within the population, since this species appears to be highly sensitive to any physical damage (see discussion under off-road vehicles below). The Umtanum desert buckwheat population is located on a flat natural fire break of rocky soils above steep-slopes, where fire lines and firefighting equipment would tend to be concentrated (Whitehall 2012, pers. comm.; Newsome 2011, pers. comm.). Although fire suppression activities did not take place within the Umtanum desert buckwheat population in response to the 1997 fire, the surrounding area is at high risk of wildfire from human and natural (lightning) ignition sources. The Service's fire program statistics (see Table 2) indicate a recurrence of wildfire events within Monument lands, which would be anticipated to continue.

The 2001 Hanford Reach Wildlife Fire Management Plan prescription for this area states that ''except on existing roads, the use of any equipment (including light engines) within ¼ mile of the escarpment edge of the Umtanum Ridge is prohibited because of surface instability and potential for sloughing at the escarpment. Protection of sensitive resources is an objective unless achieving this objective jeopardizes either firefighter or public safety''

(USFWS 2001, p. 36). Accordingly, if a wildfire were to occur in the surrounding area, protection of the Umtanum desert buckwheat population may not be possible if fire direction and firefighter/public safety considerations were to necessitate establishing fire lines or response equipment staging areas within or near the population. Although the need for wildfire suppression activities near or within the Umtanum desert buckwheat population is unpredictable, this activity is considered a potential threat to this species based on the Monument's wildfire history (see Table 2).

Nonnative Plant Fuel Sources: Another potential consequence of fire and other disturbances that remove native plants from the shrub steppe communities of eastern Washington is the displacement of native vegetation by nonnative weedy species, particularly cheatgrass. As a result of the 1997 fire, a higher percent cover of weedy plant species, including cheatgrass, has become established within and around the Umtanum desert buckwheat population. Wildfire raises the percent cover of weedy species, thereby increasing the availability of ground fuels, which enhances the ability to carry wildfire across the landscape into previously fire-resistant cover types, including habitat for Umtanum desert buckwheat. Accordingly, nonnative weedy species represent an ongoing threat to the species.

Off-road Vehicles and Hikers: There have been incidences of trespassing by off-road vehicles (ORVs) and hikers in the vicinity of and within the Umtanum desert buckwheat population (Caplow 2005, pers. comm.). The open cliff edge where the plants grow is an attractive place for human traffic because of the compact substrate, sparse vegetative cover, and the view overlooking the Columbia River. In 2004 and 2005, the Bonneville Power Administration (BPA) reopened and improved a steep road on the top of the ridge from the substation on China Bar below. The road was then passable to 2-wheel drive vehicles and up until the summer of 2005, was inadequately fenced and gated to prevent trespass (Caplow, pers. com. 2005). The entire known population exists within a narrow corridor where human traffic could be expected to concentrate. Umtanum desert buckwheat plants are easily damaged by trampling or crushing by ORVs, appear to be less resilient following such damage, and are very slow to recover if capable of recovering at all. Within 2 days of being run over by trespassing dirt bikes, portions of damaged plants showed signs of further decline, and some of the damaged plants subsequently died (TNC 1998, p. 62).

This threat appears to have been reduced since direct access to the site has been gradually fenced off over time, the site has been marked with prohibited entry signage, and consistent enforcement is taking place. Although unauthorized access is prohibited, there is a potential for trespass since an open road is located approximately 0.5 km (0.3 mi) (slope distance) below the population through lands commonly used for recreation. However, a fence is present between the road and the Umtanum desert buckwheat population, which should further discourage ORV or hiker trespass incidents. Based on the available evidence, we have no substantive information that would indicate ORV or hiking activities represent ongoing threats to the species, provided current security and boundary integrity efforts are maintained. We will continue to monitor these activities as additional information becomes available.

Livestock: There could be a potential threat of trampling to Umtanum desert buckwheat if livestock were to escape from a pasture area on China Bar, approximately 0.4 km (0.25 mi) (slope distance) below the population, although this has not been observed or documented to date. If it were to occur, it could impact the species by direct means such as crushing and mortality through grazing, and indirect means, including soil disturbance, compaction, and importation of invasive species by seed carried on the body or through feces. In addition, areas disturbed by livestock could increase bare soil areas, making them more suitable for the establishment of invasive plant species. This potential threat has been reduced under the terms of a Department of Energy (DOE) permit issued to the rancher that conducts the seasonal pasturing operations. The DOE permit restricts the seasonal movement of livestock between pastures by way of a paved road directly below the Umtanum desert buckwheat population (Hathaway 2001, pers. comm.). In addition, there is a fence between the paved road and the population. Based on the available evidence regarding permit requirements and boundary integrity, we have no substantive information indicating livestock trespass represents an ongoing threat to the species. However, we will continue to investigate this possibility as additional information becomes available.

Prospecting: Prospecting by rock collectors was initially thought to be a potential threat to Umtanum desert buckwheat. Excavations up to 1.5 m (5 ft) in diameter and 1.2 m (4 ft) deep occur throughout the area occupied by the species (Caplow 2005, pers. comm.), although their age is uncertain. Some may predate 1943, when the DOE acquired the land as part of the Hanford installation, and others may reflect more recent activity. Continuation of this activity could threaten a large portion of the Umtanum desert buckwheat population by trampling, uprooting, or burial of plants during these activities. Although prospecting could be a threat, it has not been observed since the species discovery in 1995, likely because of increased boundary integrity, improved fencing, restrictive signage, and enforcement. We have no information that would indicate there has been any recent prospecting or other unauthorized entry into the site. Therefore, based on the available evidence, we have no substantive information that would indicate prospecting activities represent an ongoing threat to the species. We will continue to investigate this possibility as additional information becomes available.

Based on the information above, we find that specific activities discussed under Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range present a threat to Umtanum desert buckwheat and its habitat. These include wildfire, nonnative plant fuel sources, and potentially wildfire suppression activities. Trespassing by off-road vehicles, hikers, and mineral prospectors are not considered ongoing threats at this time, based on permit requirements, access restrictions, boundary fencing, signage, and enforcement actions that are in effect for the area where this population occurs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The regulations at 50 CFR 27.51 prohibit collecting any plant on any national wildlife refuge without a special use permit. Evidence of overutilization has not been documented since the discovery of Umtanum desert buckwheat in 1996. In order to maintain a secure source for seed and provide some assurance of maintaining the genome of Umtanum desert buckwheat over time, Berry Botanic Garden in Portland, Oregon, has collected and stored several seed accessions for the species. The facility currently has 401 seeds that were collected in 1997, and 1,108 seeds collected in 2001 and 2002 from an unknown number of plants (Gibble 2011, pers. comm.). Based on a thorough

accounting of all activities on the site by researchers and DOE, there is no evidence that commercial, recreational, scientific, or educational use of this species is occurring at a level that would threaten the population. Based on our review of the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not now a threat to Umtanum desert buckwheat or in any portion of its range, or likely to become a significant threat in the future.

C. Disease or Predation

Evidence of disease has not been documented in Umtanum desert buckwheat; however, predation of seeds by ants and removal of flower heads by an unknown species has been observed by researchers during demographic monitoring trips.

Researchers from The Nature Conservancy observed western harvester ants (*Pogonomyrmex occidentalis*), a common native species, gathering mature achenes (seeds) of Umtanum desert buckwheat plants and transporting them to their underground colonies (Dunwiddie *et al.* 2001, p. 66). Ants have also been observed discarding the inedible remains of achenes above ground, near the colony. Evidence of seed predation by ants was commonly observed by different researchers between 1999 and 2004 in numerous locations, although it has not been observed on Umtanum desert buckwheat in recent years (Arnett 2011c, pers. comm.). The percentage of achenes consumed by ants and other insects, and the degree of impact this activity may be having on the available seed bank is unknown, although no Umtanum desert buckwheat seedlings have been observed successfully germinating or becoming established near ant colonies. Ant predation of seeds has been shown to be a significant factor in the viability of at least one other rare *Eriogonum* taxon (*Eriogonum umbellatum* var. *torreyanum* (sulfur flower buckwheat)) (TNC 1998, p. 9).

Because ants have been observed moving on and between flowers, they may also be contributing to the pollination of Umtanum desert buckwheat. Whether seed predation by ants is a significant threat to the species based on its current demographic status, or to what degree the threat is offset by potential benefits of pollination is unclear. During the 2011 census of Umtanum desert buckwheat, numerous flower heads that had been clipped off and were lying on top of or very near the plants were observed. The species responsible is unknown, although there was no evidence of mutilation or consumption of the flower structure (Arnett 2011c, pers. comm.). As stated earlier, no Umtanum desert buckwheat seedlings have been observed successfully germinating or becoming established near ant colonies. Because seed predation and the removal of flowering structures could significantly reduce the reproductive potential of the species, which is already in gradual decline based on the results of the PVA, we consider these activities to be ongoing threats to Umtanum desert buckwheat. We are unaware of any other disease or predation interactions that represent potential threats to this species.

D. The Inadequacy of Existing Regulatory Mechanisms

Umtanum desert buckwheat is designated as endangered under the State of Washington's list of endangered, threatened, and sensitive vascular plants (WDNR 2011a, p. 5). The State of Washington's endangered, threatened, and sensitive plant program is administered through the Washington Natural Heritage Program (WNHP), which was created to provide an objective basis for establishing priorities for a broad array of conservation actions (WDNR 2011b, p. 2). Prioritizing ecosystems and species for conservation offers a means to evaluate proposed natural areas and other conservation activities (WDNR 2011b, p. 3). The WNHP is a participant in the Arid Lands Initiative, which is a public/private partnership attempting to develop strategies to conserve the species and ecosystems found within Washington's arid landscape. The WNHP assists in identifying conservation targets, major threats and potential strategies to address them (WDNR 2011b, p. 4). The DOE does not have a rare plant policy that provides specific protection for the species, and presently retains management responsibility for the lands where Umtanum desert buckwheat occurs. Once contaminant issues are resolved in this area, management responsibility will be conveyed to the Service, as a part of the Hanford Reach National Monument.

Agricultural development and livestock grazing reduced the light fuels that would normally carry a fire, and allowed nonnative invasive species like cheatgrass to increase (USFWS 2008, p. 3–15). The establishment of highly flammable cheatgrass within the Umtanum desert buckwheat population increases competition for space and moisture, and the likelihood that a wildfire could negatively impact the species. As fires become larger, the opportunity for seed dispersal is also increased as nonnative species invade burned areas. Nonnative species like cheatgrass can be dispersed in several ways, including long-distance dispersal facilitated by humans and animals. The barbed florets are ideally adapted to being picked up by clothing, feathers, and fur. Seeds can also be dispersed by machinery or vehicles. Animals may carry cheatgrass seed in their feces and hooves, and seed-caching rodents and harvester ants can disperse seeds intermediate distances through caching activity. Cropland, particularly fields of winter wheat and dryland hay, may also be potential seed sources to nearby natural areas and rangelands, as cheatgrass is a common weed in these crops (*http://www.fs.fed.us/database/feis/plants/graminoid/brotec/all.html*). The threat of nonnative invasive species does not appear to lend itself to abatement through regulatory mechanisms, because of the many ways for cheatgrass and other nonnative species to become established in an area. Accordingly, we do not believe nonnative species represent a threat that is susceptible to elimination by regulatory mechanisms.

The Hanford Fire Department maintains four fire stations on the Hanford Reservation (USFWS 2001, Appendix D, p. 74). The Service and the Hanford Fire Department have entered into a cooperative agreement under which either organization can provide firefighting support (USFWS 2001, Appendix D, p. 75) on lands under the jurisdiction or responsibility of the other party (DOE 2011, p. 84). The concept of closest forces is the guiding principle of initial attack suppression. This agreement does not provide specific conservation measures for the protection of Umtanum desert buckwheat, but does acknowledge the presence of plants unique to the site. The objective for this area states that ''except on existing roads, the use of any equipment (including light engines) within ¼ mile of the escarpment edge of the Umtanum Ridge is prohibited because of surface instability and potential for sloughing at the escarpment. Protection of sensitive resources is an objective unless achieving this objective jeopardizes either firefighter or public safety'' (USFWS 2001, p. 36).

Numerous wildland fires occur annually on lands in and surrounding the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge. Many are human-caused resulting from vehicle ignitions from roads and highways, unattended

campfires, burning of adjacent agricultural lands and irrigation ditches, and arson. Fires of natural origin (lightning caused) also occur on lands within and adjacent to the monument/refuge (USFWS 2001, p. 171). Since wildfires are unpredictable with regard to their location and severity, a fire management plan is necessarily designed to be a response, rather than a regulatory activity.

All collecting is prohibited on the Monument, including antlers, bones, rocks, artifacts, and plant life. Regulations also prohibit fires on Monument lands (Hanford Reach National Monument Hunting Regulations, 2011). The Revised Hanford Site 2011 Wildland Fire Management Plan (DOE 2011, p. 176) addresses Umtanum desert buckwheat briefly in a specific accounting of sensitive resources located on the site. The plan states that ''due to the sensitive nature of the biology of the Hanford Site, an on-call Mission Support Alliance biologist will be requested to assist the command staff in protecting the environment during suppression efforts.'' This requirement does not remove the wildfire threat to the species, but may make a negative incident less probable.

The 1997 wildfire initiated by the U.S. Army Yakima Training Center fire resulted in mortality to 10–20 percent of the population (see Factor A and Table 2). The threat of wildfire originating on the nearby U.S. Army Yakima Training Center and spreading to the Umtanum desert buckwheat site remains, as does the potential for ignition to occur along the BPA transmission line corridor, which crosses the population. Fire could also originate below the Umtanum desert buckwheat site on China Bar and rapidly burn upslope, since this area is commonly used by recreationists. The Hanford Reach National Monument Comprehensive Conservation Plan acknowledges that wildland fire will be suppressed when possible, suppression techniques will be designed to minimize surface disturbance in the vicinity of sensitive resources, and fire control policies will be implemented to reduce the risk of human-caused wildland fire (USFWS 2008, p. 4–8). However, based on the recent wildfire history and acreage affected (see Table 2), fire planning documents are not able to address all possible scenarios. In addition, numerous agencies must coordinate firefighting on this landscape, ignitions from recreationists remain a risk, and timely and effective initial firefighting responses may be difficult. For example, before it was contained, the 24 Command Wildfire (discussed in Factor A above) charred nearly 66,256 ha (164,000 ac) of land both on and off the Hanford site, even though the Hanford Fire Department arrived on scene approximately 20 minutes after the incident was reported. At that time the fire was approximately 4 ha (10 ac) in size (DOE 2000, pp. ES–2–ES–3).

Although the WNHP and Monument CCP are important tools for identifying conservation actions that would benefit Umtanum desert buckwheat, these programs do not appear to have been designed to function as regulatory mechanisms that would eliminate threats to the species. In addition, a fire management plan is necessarily designed to be a response, rather than prescriptive strategy, since wildfires are unpredictable with regard to their location and severity. Accordingly, the impact of wildfire to Umtanum desert buckwheat is not a threat that can be eliminated by regulatory mechanisms, because of the many potential ignition scenarios on the lands within and surrounding the area where the species occurs. Therefore, based on our review of the best available scientific and commercial information, we do not consider the inadequacy of existing regulatory mechanisms to be an ongoing threat to White Bluff's bladderpod.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Umtanum desert buckwheat has a small population size and distribution, and suffers from low recruitment (Kaye 2007, p. 3; Caplow 2005, p. 3). These features make it particularly susceptible to potentially changing climate conditions. For instance, regional climate change models indicate a rise in hotter and drier conditions, which may increase stress on individuals as well as increase wildfire frequency and intensity.

Population structure: The typical size distribution of perennial plants consists of more individuals in smaller and presumably younger size-classes, than in larger or older ones. However, Umtanum desert buckwheat has fewer plants in smaller size-classes than in larger ones. The only known population of this species is dominated by mature plants with little successful establishment of seedlings. The majority of individual plants have a strong tendency to remain in the same size class, and presumably age class, from 1 year to the next. In addition, adult mortality averages 2 percent annually (Kaye 2007, p. 3). Between 1997 and 2006, only five to six seedlings in all demographic monitoring plots were observed to survive longer than 1 year, and in 2005, which was preceded by a dry winter, no germination was observed (Caplow 2005, p. 3).

The lack of establishment and survival of seedlings is a threat, as few plants are becoming established as replacements for plants that die. Several factors may be responsible, such as exposure of young plants to high winds and temperatures and very low spring and summer precipitation. Other possible factors include low seed production, low seed or pollen viability, low seedling vigor and survival, impacts to plant pollinators or dispersal mechanisms, and flowering structure removal/insect predation of seeds (as described under Factor C). There has been some success in germinating and growing Umtanum desert buckwheat in containers, which may indicate that the failure to establish seedlings in the wild may not be due to low fertility, but may be related to conditions necessary for survival after germination (Arnett 2011c, pers. comm.). Long-term monitoring and research may determine the cause of the population's skewed size distribution. A seed bank study has shown that viability of buried seed decreases dramatically after the first year, suggesting a very small and short-lived seed bank for Umtanum desert buckwheat (Caplow 2005, p. 6).

Considered in total, these factors likely combine effects to create negative recruitment for Umtanum desert buckwheat. This theory is supported by the findings of Kaye (2007, p. 5), that the population appears to be in a gradual decline of approximately ⅔ of 1 percent per year. Negative recruitment due to the factors described above combined with a small population size present a significant threat to the species.

Climate change: Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78).

Various types of changes in climate can have direct or indirect effects on

species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change. The potential impacts of a changing global climate to Umtanum desert buckwheat are presently unclear. All regional models of climate change indicate that future climate in the Pacific Northwest will be warmer than the past, and, together, they suggest that rates of warming will be greater in the 21st century than those observed in the 20th century. Projected changes in annual precipitation, averaged over all models, are small (+1 to +2 percent), but some models project an enhanced seasonal precipitation cycle with changes toward wetter autumns and winters and drier summers (Littell, *et al.* 2009a, p. 1).

At a regional scale, two different temperature prediction models are presented in Stockle *et al.* (2009, p. 199) yet show similar results. Outputs from both models predict increases in mean annual temperature for eastern Washington State. Specifically, the Community Climate System Model General Circulation Model projects temperature increase as 1.4, 2.3 and 3.2 °C (2.5, 4.1, and 5.8 °F) at Lind, Washington, which is 64 km (40 mi) northeast of the Umtanum desert buckwheat population; approximately 1.7, 2.7, and 3.5 °C (3.1, 4.9, and 6.3 °F) at Pullman, Washington, which is 169 km (105 mi) east of the population; and Sunnyside, Washington, which is 50 km (31 mi) southwest of the population, for the 2020, 2040 and 2080 modeling scenarios, respectively. For the Parallel Climate Model effort, the temperature change is expected to be 0.8, 1.7, and 2.6 °C (1.4, 3.1, and 4.7 °F) at Lind, Washington; 1.1, 2.0, and 2.9 °C (2.0, 3.6, and 5.2 °F) at Pullman, Washington; and 1.3, 2.2, and 3 °C (2.3, 4.0, and 5.5 °F) at Sunnyside, Washington, in the 2020, 2040, and 2080 scenarios, respectively.

The projected warming trend will increase the length of the frost-free period throughout the State, increasing the available growing season for plants, which will continue to be limited in eastern Washington by water availability, and likely by extreme heat events in some instances. This will continue the trend observed from 1948 to 2002, during which the frost-free period has lengthened by 29 days in the Columbia Valley (Jones, 2005 *in* Stockle *et al.* 2009, p. 199). Weeds and insects will adapt to the longer season with more favorable conditions (Stockle *et al.* 2009, p. 200).

Given the importance of water availability to plants, precipitation change needs to be included in predictions of climate change effects on invasive plants (Bradley 2009, p. 197). Regional climate models suggest that some local changes in temperature and precipitation may be quite different than average regional changes projected by the global models (Littell *et al.* 2009a, p. 6). Precipitation uncertainties are particularly problematic in the western United States, where complex topography coupled with the difficulty of modeling El Niño result in highly variable climate projections (Bradley 2009, p. 197). Cheatgrass, an invasive species, competes with native species by growing early in the spring season and using available water resources. It senesces in late spring, sets seed, and remains dormant through the summer (Rice *et al.,* 1992; Peterson, 2005; in Bradley 2009, p. 197; Bradley 2009, pp. 204–205). If summer precipitation were to increase, native perennial shrubs and grasses could be more competitive because they would be able to use water resources while cheatgrass is dormant (Loik, 2007 in Bradley 2009, pp. 204–205).

Littell *et al.* (2009b, p. 270) were successful in developing statistical models of the area burned by wildfire for six regions in Washington for the period 1980 to 2006. Future projections from these six models project mean-area-burned increases of between 0 and 600 percent, depending on the ecosystem in question, the sensitivity of the fire model, emissions scenario and the timeframe of the projection. By the 2040s, the area burned in nonforested ecosystems (Columbia Basin and Palouse Prairie) increased on average by a factor of 2.2. Notably, the increase in area burned is accompanied by an increase in variability in some of the more arid systems, such as the Palouse Prairie and Columbia Basin (Littell *et al.* 2009b, p. 270).

We do not know what the future holds with regard to climate change, however, this species has a very limited distribution, small population size, and low recruitment. Despite the lack of site-specific data, increased average temperatures and reduced average rainfall may further influence the current decline of the species and result in a loss of habitat. Hotter and drier summer conditions may also increase the frequency and intensity of fires in the area, as cheatgrass and other invasive plants would become better competitors for resources than Umtanum desert buckwheat. Alternatively, warmer and wetter winter conditions could potentially benefit the species by extending the growing season and providing additional moisture to the soil in the spring. However, if the frequency, intensity, and timing of the predicted changes in climate for eastern Washington are not aligned with the phenology of Umtanum desert buckwheat, the survival and reproduction of the species could be threatened over time. Accordingly, although climate change represents a potential ongoing threat based on the best available information, more thorough investigations are needed to better understand the potential impacts of climate change to this species.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Umtanum desert buckwheat (see Table 3). The 1997 fire that escaped from the Yakima Training Center killed 813 plants, or approximately 10–20 percent of the population (Dunwiddie *et al.,* 2001, pp. 61–62). The Revised Hanford Site 2011 Wildland Fire Management Plan (DOE 2011) acknowledges the sensitive nature of the biology of the Hanford Site, and provides for environmental protection during fire suppression activities. This plan may reduce the likelihood of a wildfire event within or near the population, but cannot remove the threat completely since wildfire locations, severity, and response needs are unpredictable. The 2007 unpublished draft Population Viability Analysis (PVA) estimated a 72 percent chance of a decline of 50 percent of the population within the next 100 years (Kaye 2007, p. 5). The PVA, which incorporated observed environmental variability, determined the Umtanum desert buckwheat population was in very gradual decline. The decline is very close to stable, but still suggests an annual decline of about ⅔ of one percent, which will take several decades to accumulate significant impacts (Kaye 2007, p. 5). The steady decline observed through demographic monitoring of numbers and recruitment since 1997 may be directly attributable to several of the known threats, although some have been reduced because of increased boundary integrity and access control. Because the population is small, limited to a single site, at risk of invasive species, and sensitive to fire and disturbance in a high fire-risk location,

the species remains vulnerable to the threats summarized in Table 3.

TABLE 3—SUMMARY OF THREAT FACTORS UNDER THE ESA TO UMTANUM DESERT BUCKWHEAT

Factor	Threat	Imminence *	Magnitude *	Severity *
A	Wildfire	Confirmed	High	High.
	Fire suppression activities	Possible **	Unknown	Unknown.
	Harm by recreational activities and/or ORV use	Possible but unlikely. ***	Low	Low.
	Direct harm and habitat modification by livestock	Possible but unlikely. ***	Low	Low.
	Mineral prospecting	Possible but unlikely. ***	Low	Low.
	Competition, fuels load from nonnative plants	Confirmed	High	High.
C	Seed predation	Confirmed	Unknown	Unknown.
	Flower predation	Confirmed	Unknown	Unknown.
E	Small population size	Confirmed	Moderate	Moderate.
	Limited geographic range	Confirmed	Moderate	Moderate.
	Low recruitment	Confirmed	Moderate	Moderate.
	Climate change	Possible	Unknown	Unknown.

* Imminence: The likelihood of the threat currently affecting the species.
Magnitude: The extent of species numbers or habitat affected by the threat.
Severity: The intensity of effect by the threat on the species or habitat.
** If avoidance is not possible due to fire direction or safety needs.
*** Based on ongoing restricted access, fencing, and enforcement.

As described above, Umtanum desert buckwheat is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), predation (Factor C), and other natural or manmade factors affecting its continued existence (Factor E). Specifically, these factors include the existing degradation or fragmentation of habitat resulting from wildfire, nonnative invasive vegetation that provides fuel for wildfires, predation of seed and flower structures, and potentially changing environmental conditions resulting from global climate change (although its magnitude and intensity are uncertain). Wildfire suppression activities could also threaten the species if they were to occur within the population, since this species appears to be highly sensitive to any physical damage. However, whether this potential threat would actually occur is unknown, given the unpredictable nature of wildfire events. Impacts to Umtanum desert buckwheat from livestock moving through the population, off-road vehicle use, hikers, and prospecting are conceivable, but unlikely, provided DOE livestock movement permit conditions are complied with, access to the site is effectively controlled, boundary integrity is monitored and maintained, and enforcement actions are taken as needed, each of which is presently occurring.

The area where Umtanum desert buckwheat is found is at high risk of frequent fire and is fully exposed to the elements. The population is extremely small, isolated, and in slow but steady decline, notwithstanding the somewhat higher count in the 2011 population census (which may be attributable to the way individual plants were counted as described earlier). These population demographics make the species particularly susceptible to extinction due to threats described in this proposal. The magnitude of the wildfire threat is high; other threats are moderate to low in magnitude. Because of the limited range of Umtanum desert buckwheat, any one of the threats may threaten its continued existence at any time. Since these threats are ongoing, they are also imminent.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Since Umtanum desert buckwheat is highly restricted in its range and the threats occur uniformly throughout its range, we assessed the status of the species throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range, and the number of individuals in the single population is very small and declining. Some threats are more severe than others, but the population is being affected by small population size, limited range, low recruitment, invasive cheatgrass presence that can fuel wildfire, wildfire (Table 2), seed predation, and flower predation.

Our assessment and proposed determination applies to the species throughout its entire range. In this regard, we find that Umtanum desert buckwheat is likely to become in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above (see Table 3). The Hanford Reach National Monument Comprehensive Conservation Plan was developed to protect and conserve the biological, geological, paleontological, and cultural resources described in the Monument Proclamation by creating and maintaining extensive areas within the Monument free of facility development (USFWS 2008, p. v). Several management objectives are identified that could benefit the Umtanum desert buckwheat population; these include treating invasive species and restoring upland habitat (USFWS 2008, pp. 19–22).

As stated earlier, the population is in a very gradual decline, which will take several decades to accumulate significant impacts (Kaye 2007, p. 5). Given the fact that (1) the population is in a very gradual decline; (2) the management objectives of the CCP will be beneficial to the species; (3) access is prohibited without special authorization from the DOE; (4) security fencing surrounds the population; (4) entry prohibited signs are in place; and (5) boundary enforcement is ongoing, the species is not presently in danger of extinction throughout all or a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we propose listing Umtanum desert buckwheat as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Species Information

White Bluffs Bladderpod

White Bluffs bladderpod is a low-growing, herbaceous, perennial plant with a sturdy tap root and a dense rosette of broad gray-green pubescent (having any kind of hairs) leaves (WDNR 2010). The species produces showy yellow flowers on relatively short stems in May, June, and July. The species inhabits dry, steep upper zone and top exposures of the White Bluffs area of the Hanford Reach at the lower edge of the Wahluke Slope. Along these bluffs, a layer of highly alkaline, fossilized cemented calcium carbonate (caliche) soil has been exposed (Rollins *et al.* 1996, pp. 203–205). A detailed description of the identifying physical characteristics of White Bluffs bladderpod is in Rollins *et al.* (1996, pp. 203–205) and Al-Shehbaz and O'Kane (2002, pp. 319–320). White Bluffs bladderpod is State-listed as Threatened, with a G2 (i.e., imperiled world-wide, vulnerable to extinction) global ranking and an S2 (i.e., vulnerable to extirpation) State ranking (WDNR 2011).

Taxonomy

Although specimens of this taxon were originally collected from a population in 1883, the plant material was in poor condition, no definitive identification could be made, and the plant was not recognized as a species at that time. The population was rediscovered in 1994, and was described and published as a species, *Lesquerella tuplashensis,* by Rollins *et al.* (1996, pp. 319–322). A petition requesting that *L. tuplashensis* be listed as threatened under the Act stated that its status as a valid species is uncontroversial (Center for Biological Diversity *et al.* [CBD] 2004, pp. 49,100). However, the nomenclature and taxonomy of the species has been investigated.

In a general paper on the taxonomy of *Physaria* and *Lesquerella,* O'Kane and Al-Shehbaz (2002, p. 321) combined the genera Lesquerella and Physaria and reduced the species *Lesquerella tuplashensis* to *Physaria douglasii* subsp. *tuplashensis* (O'Kane and Al-Shehbaz (2002, p. 322)), providing strong molecular, morphological, distributional, and ecological data to support the union of the two genera.

Rollins and Shaw (1973, entire), took a wide view of the degree of differentiation between species and subspecies (or varieties) of *Lesquerella,* although many species of *Lesquerella* are differentiated by only one or two stable characters. The research of Rollins *et al.* (1996, pp. 205–206) recognized that, although *L. tuplashensis* and *L. douglasii* were quite similar, they differed sufficiently in morphology and phenological traits to warrant recognition as two distinct species. Simmons (2000, p. 75) suggested in a Ph.D. thesis that L. tuplashensis may be an ecotype of the more common *L. douglasii.* Caplow *et al.* (2006, pp. 8–10) later argued that *L. tuplashensis* was sufficiently different from *douglasii* to warrant a species rank because it: (1) Was morphologically distinct, differed in stipe (a supporting stalk or stem-like structure) length and length-to-width ratio of stem leaves, and had statistically significant differences in all other measured characters; (2) was reproductively isolated from *L. douglasii* by non-overlapping habitat and differences in phenology for virtually all *L. tuplashensis* plants; and (3) had clear differences in the ecological niche between the two taxa (Caplow *et al.* 2006, pp. 8–10).

Based on molecular, morphological, phenological, reproductive, and ecological data, the conclusions in Al-Shehbaz and O'Kane (2002, p. 322) and Caplow *et al.* (2006, pp. 8–10) combining the genera Lesquerella and Physaria and reducing the species *Lesquerella tuplashensis* to *Physaria douglasii* subsp. *tuplashensis,* provide the most consistent and compelling information available to date. Therefore, we will consider it a subspecies of the genus *Physaria,* with the scientific name *Physaria douglasii* subsp. *tuplashensis.*

Habitat/Life History

The only known population of White Bluffs bladderpod is found primarily on near-vertical exposures of weathered, cemented, alkaline, calcium carbonate paleosol (ancient, buried soil whose composition may reflect a climate significantly different from the climate now prevalent in the area) (*http://www.alcwin.org/Dictionary_Of_Geology_Description-84-P.htm*). The hardened carbonate paleosol caps several hundred feet of alkaline, easily eroded, lacustrine sediments of the Ringold Formation, a sedimentary formation made up of soft Pliocene lacustrine deposits of clay, sand, and silt (Newcomb 1958, p. 330). The uppermost part of the Ringold Formation is a heavily calcified and silicified cap layer to a depth of at least 4.6 m (15 ft). This layer is commonly called ''caliche'' although in this case, it lacks the nitrate constituents found in true caliche. The ''caliche'' layer is a resistant caprock underlying the approximately 274–304 m (900–1,000 ft) elevation (above sea level) plateau extending north and east from the White Bluffs (Newcomb 1958, p. 330). This species may be an obligate calciphile, as are many of the endemic *Lesquerella* (now *Physaria*) (Caplow 2006, pp. 2–12). The habitat of White Bluffs bladderpod is arid, and vegetative cover is sparse (Rollins *et al.* 1996, p. 206).

Common associated plant species include: *Artemisia tridentata* (big sagebrush), *Poa sandbergii* (Sandberg's bluegrass), *Bromus tectorum* (cheatgrass), *Astragalus carieinus* (buckwheat milk-vetch), *Eriogonum microthecum* (slender buckwheat), *Oryzopsis hymenoides* (Indian ricegrass), and *Cryptantha spiculifera* (Snake River cryptantha). Occasionally White Bluffs bladderpod is numerous enough at some locations to be subdominant.

Because of its recent discovery and limited range, little is known of the species' life-history requirements. In a presentation of preliminary life-history studies, Dunwiddie *et al.* (2002, p. 7) reported that most individuals reach reproductive condition in their first or second year, most adult plants flower every year, and the lifespan of the species is probably 4 to 5 years. The population size appears to vary from year to year (see Table 4), and the survival of seedlings and adults appears to be highly variable (Dunwiddie *et al.* 2002, p. 8), however, more monitoring is needed to determine the magnitude and frequency of high- and low-number years, as well as to obtain an understanding of the causes of these annual fluctuations (Evans *et al.* 2003, p. 64). Monitoring by Monument staff (Newsome 2011, p. 5) suggests the annual population fluctuations are presumably tied to environmental conditions, such as seasonal precipitation and temperature.

Historical Range/Distribution

In 1996, White Bluffs bladderpod was only known from a single population that occurred along the upper edge of the White Bluffs of the Columbia River in Franklin County, Washington. The population was described to occur intermittently in a narrow band (usually less than 10 m (33 ft) wide) along an approximately 17-km (10.6-mi) stretch of the river bluffs (Rollins *et al.* 1996, p. 205).

Current Range/Distribution

White Bluffs bladderpod is still known only from the single population that occurs along the upper edge of the White Bluffs of the Columbia River, Franklin County, Washington, although the full extent of the species' occurrence has now been described. Most of the species distribution (85 percent) is within lands owned by the DOE and

once managed by the Washington Department of Fish and Wildlife as the Wahluke Wildlife Area (USFWS 200, p. 1–3). This land remains under DOE ownership, and is managed by the Monument. The remainder of the species' distribution is on private land (Newsome 2011, pers. comm.).

TABLE 4—ESTIMATED * POPULATION SIZE OF WHITE BLUFFS BLADDERPOD

Year	10-Transect sample	20-Transect sample
1997	14,034	
1998	31,013	32,603
1999	20,354	21,699
2002	11,884	12,038
2007	29,334	28,618
2008	16,928	18,400
2009	16,569	20,028
2010	9,650	9,949
2011	47,593	58,887

* Mean number of plants per transect × total number of transects along permanent 100-m (328-ft) monitoring transects (from Newsome 2011, p. 3). An additional 20-transect sample was added to monitoring after 1997 to increase statistical confidence.

Population Estimates/Status

The size of the population varies considerably between years. Censuses in the late 1990s estimated more than 50,000 flowering plants in high population years (Evans *et al.* 2003, p. 3–2) (see Table 4). Since 1997 to 1998 when the monitoring transects currently used were selected, the population has ranged between an estimated low of 9,650 plants in 2010 and an estimated high of 58,887 plants in 2011 (see Table 4). Following the monitoring period in 2007, a large wildfire burned through the northern portion of the population within the monitoring transects. Annual monitoring was conducted through 2011 to attempt to determine the effects of fire on White Bluffs bladderpod. The monitoring results indicated that when burned and unburned transects were compared, plants in burned transects appear to have rebounded to some extent. However, the burned transects appeared to have a mean of 24 percent fewer plants than in the unburned transects.

The high variability in estimated population numbers was confirmed by the 2011 data, which documented the highest population estimate since monitoring began in 1997, even though it immediately followed the year representing the lowest estimate (2010). May 2011 was identified by the Hanford Meteorological Station (*http://www.hanford.gov/page.cfm/HMS*) as the fifth coolest and seventh wettest month of May recorded on the installation since its establishment in 1944 (Newsome 2011, p. 2). This environment likely provided ideal conditions for germination, growth, and flowering for this year's population following a rather moist fall and mild winter season (Autumn 2010 precipitation was 4.6 cm (21.8 inches) above average: Winter 2011 precipitation was 0.6 cm (0.24 inches) below average (*http://www.hanford.gov/page.cfm/hms/products/seaprcp*).

Summary of Factors: White Bluffs bladderpod

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Caplow and Beck (1996, p. 42) and others state that the threats to White Bluffs bladderpod and its habitat are primarily landslides caused by subsurface water seepage, invasive species, and ORV use (TNC 1998, p. 5; Evans *et al.* 2003, p. 67, Newsome 2007, p. 4). Of these threats, landslides and invasive species competition is of primary concern (Caplow and Beck 1996, p. 42; Newsome 2007, p. 4). Below is a detailed discussion of these threats and their potential effects on survival and recovery of the species.

Landslides: Groundwater movement from adjacent, up-slope agricultural activities has caused mass-failure landslides in portions of the White Bluffs. As a result, the habitat in approximately 6.0 km (3.7 mi), or about 35 percent of the known range of White Bluffs bladderpod has been moderately to severely altered (Brown 1990, pp. 4, 39; Cannon 2005, p. 4.25; Caplow *et al.* 1996, p. 65; Drost *et al.* 1997, pp. 48, 96; Lindsey *et al.* 1997, pp. 4, 10, 11, 12, 14; U.S. Congress (H.R. 1031), 1999, p. 2; USFWS 1996, p. 1). White Bluffs bladderpod plants have not been observed in areas that have undergone recent landslides, regardless of whether the landslide disturbance is moderate or severe. They have not been observed to survive small slumping events, possibly because the mixed soils downslope post-event no longer have the soil horizon that White Bluffs bladderpod plants seem to require. Additionally, these slumped soils are typically more saturated because they end up below the groundwater seep zone. In the arid environment, White Bluffs bladderpod appears to be unable to successfully compete with the host of weedy and invasive drought-intolerant species in the seed bank. Where natural weathering has eroded occupied habitat, White Bluffs bladderpod plants have been observed to occasionally become established on the more gentle slopes. In very large events of rotational slumping or landslides, parts of the original surface horizon may remain somewhat undisturbed on the crest of the slumped block, preserving White Bluffs bladderpod plants, at least for the short term (Caplow *et al.* 1996, p. 42). All mass-failures occurring along the White Bluffs, with one historical exception, are found in association with water seepage (Bjornstad and Fecht 2002, p. 16).

In the 1960s, the Washington State Department of Game (currently known as the Washington Department of Fish and Wildlife) constructed artificial wetlands using irrigation water delivered to unlined wastewater ponds and canals in the vicinity of the White Bluffs for wildlife enhancement (Bjornstad 2006, p. 1). Water entered a preferential pathway for movement along a buried paleochannel, which connected the artificial wetlands with the White Bluffs escarpment near Locke Island only 4.8 km (3 mi) to the southwest. Water percolating from artificial wetlands moved quickly down through highly transmissive flood deposits, and then encountered the low-permeability soils of the Ringold Formation. The water then flowed laterally along the impermeable layer, and discharged through springs along the White Bluffs. Where they were wet, the unstable Ringold Formation sediments have slumped and slid along the steep White Bluffs escarpment (Bjornstad and Fecht 2002, p. 14). Although water flow to the pond has been halted due to concerns about landslides and the artificial wetlands no longer exist, water continues to seep out along the bluffs, apparently due to the large volume that accumulated in the underlying sediments over years of infiltration (Bjornstad and Fecht 2002, p. 15).

The erosional processes at work in the northern White Bluffs vicinity are somewhat different than those of the southern White Bluffs area, where White Bluffs bladderpod occurs. A record of slumping exists along the White Bluffs, beginning with periodic high-recharge, Ice Age flood events. Since the Pleistocene Epoch, landsliding on the southern bluffs where White Bluffs bladderpod is found was dormant until the 1970s, when increased infiltration of moisture from agricultural activities caused a resurgence of slumping (Bjornstad and Peterson 2009b; Cannon *et al.* 2005, p. 4.25; Bjornstad and Fecht 2002, p. 17; Drost *et al.* 1997, p. 76; Brown 1990, pp. 4, 38, 39). Excess irrigation water percolates downward before moving laterally upon lower-permeability Ringold strata. Spring water that

discharges in the vicinity of the bluff face greatly reduces internal soil strength, and leads to slope failure. Heads of landslides characteristically consist of back-rotated slump blocks that transition to debris flows downslope, and the toes of fluidized debris flows often fan out into the Columbia River. Landslides and their damaging effects will likely continue until water that is currently being introduced subsurface through unlined irrigation canals, ponds, and over-irrigation is significantly reduced or eliminated (Bjornstad and Peterson 2009b).

The entire population of White Bluffs bladderpod is down-slope of irrigated agricultural land and is at risk of landslides induced by water-seepage. The threat is greater in the southern portion of the species' distribution where irrigated agriculture is closest in proximity, and in several locations directly adjacent to the bluffs (Bjornstad *et al.,* 2009a, p. 8; Lindsey 1997, p. 12). Wetted soils visible on the cliff faces directly below the private lands indicate that irrigation of the fields above is affecting the bluff. Irrigation water moves a considerable distance laterally across some of the more impermeable beds of the Ringold Formation, as described earlier, and also percolates downward. As the water increases the pore pressure between sediment grains, it reduces the soil material strength. At the steep bluff face, the loss of material strength results in slope failure and formation of landslides (Bjornstad and Fecht 2002, p. 17), which permanently destroy White Bluffs bladderpod habitat. The areas subject to mass-failure landslides are somewhat predictable, and appear as horizontal wetted zones in the cliff face. This threat is imminent and ongoing, potentially affecting most of the population.

Off-road vehicles: ORVs also threaten the species, by crushing plants, destabilizing the soil, increasing erosion, and spreading the seeds of invasive plants. Although ORV activity is prohibited on the Monument (USFWS 2008, p. 1–5), it occurs intermittently on the Federal lands that constitute approximately 85 percent of the species' distribution. Currently, ORV activity is more common within the private portion (approx. 15 percent of the area) at the southern end of the species distribution. The location and extent of this threat has been mapped by Monument staff on the land under their management (Newsome 2011, pers. comm.). Based on the best available information, ORV use is considered to be an ongoing threat to White Bluffs bladderpod, particularly within the southern extent of the species' distribution.

Invasive species: An infestation of *Centaurea solstitialis* (yellow starthistle), a nonnative weed that is known as a rapid invader of arid environments even in the absence of disturbance, was discovered during 2003 within a portion of the range of White Bluffs bladderpod (Evans *et al.* 2003, p. 67). Invasive plants compete with White Bluffs bladderpod for space and moisture and increase the effects of fire. The infestation was mapped, plants were treated using aerial means, and the weeds are currently being controlled. Continued monitoring and timely followup treatment of this ongoing threat is necessary to protect White Bluffs bladderpod habitat. In addition, a portion of the White Bluffs bladderpod population is adjacent to a public access point along the Columbia River. Visitors could potentially transport invasive plant material or seeds into the area, increasing the risk of impacts of establishment of invasive species. Based on the best available information, nonnative invasive species represent an ongoing threat to White Bluffs bladderpod.

Pesticide or Herbicide Use: We initially considered whether White Bluffs bladderpod pollinators could potentially be negatively affected by pesticide or herbicide applications on orchards and other irrigated crops located adjacent to the population along the southern portion of its distribution. However, specific information on whether this is a threat is not available, and we are not identifying this as an ongoing threat at this time. More thorough investigations are necessary, and we will continue to evaluate this as a potential threat as additional information becomes available.

Wildfire: In July 2007, a large wildfire burned through the northern portion of the White Bluffs bladderpod population and within the area of the monitoring transects after monitoring was completed for that year. Fire is considered to be a threat to White Bluffs bladderpod, although the decline in population numbers after the 2007 fire indicated the population estimate was still within the known range of variability. The 2008–2011 monitoring results demonstrated the negative impacts of the fire to be less than expected, as approximately 76 percent of the population remained viable the following year (Newsome and Goldie, 2008). Notwithstanding the species' apparent ability to recover somewhat from the 2007 wildfire event, we believe that wildfire continues to be a threat to the existing population. This is because fire events tend to be large and unpredictable in the Hanford Reach (see Table 2) and can potentially affect large numbers of plants and significant areas of pollinator habitat.

In addition, wildfire also impacts pollinator communities by directly causing mortality, altering habitat, and reducing native plant species diversity. Since an increase in cheatgrass was observed within the White Bluffs bladderpod population and the surrounding areas affected by the 2007 fire, we presume a larger scale fire event would have similar results. Because of its invasive nature (see discussion below), cheatgrass is able to outcompete native species and, once established, increases wildfire fuel availability. White Bluffs bladderpod may be somewhat fire-tolerant based on the post-2007 wildfire response monitoring. However, the establishment and growth of highly flammable cheatgrass increases the likelihood of fire as well as its intensity, potentially elevating the risk of impacting the White Bluffs bladderpod population in the future. Given the invasive nature of cheatgrass, the increased fire frequency and wildfire history within and around the Monument (see Table 2), the increased fuel that becomes available for future wildfire events as cheatgrass proliferates, and observations that cheatgrass presence increased within and around the population after the 2007 wildfire, wildfire is considered to be an ongoing threat to White Bluffs bladderpod.

Nonnative Plant Competition and Fuel Sources: A common consequence of fire is the displacement of native vegetation by nonnative weedy species, particularly cheatgrass. As a result of the 2007 fire, a higher percent cover of weedy plant species, including cheatgrass, has become established within and around the White Bluffs bladderpod population. Cheatgrass is an introduced annual grass that is widely distributed in the western United States, and has been documented in the White Bluffs bladderpod population. The origins are probably southwestern Asia via contaminated grain from Europe in the 1890's. The species was preadapted to the climate and soils in the Great Basin Desert (parts of Idaho, Nevada, Oregon, and Utah) and filled the void left vacant by historic livestock grazing. This opportunistic grass is able to maintain a superiority over native plants in part because it is a prolific seed producer, able to germinate in the autumn or spring, giving it a competitive advantage over native perennials, and is tolerant of increased fire frequency. Cheatgrass can

outcompete native plants for water and nutrients in the early spring, since it is actively growing when native plants are initiating growth. It also completes its reproductive process and becomes senescent before most native plants (Pellant 1996, p. 1–2).

An infestation of yellow starthistle (*Centaurea solstitialis*) discovered during 2003 within a portion of the White Bluffs bladderpod range was mapped and treated aerially (TNC 2003, p. 67). Yellow starthistle infestations can reduce wildlife habitat and forage, displace native plants, and reduce native plant and animal diversity. It significantly depletes soil moisture reserves in both annual and perennial grasslands, and is able to invade and coexist within cheatgrass-dominated annual grasslands (TNC 2003, p. 55). Accordingly, nonnative plants that increase fuel availability for wildfires are considered an ongoing threat to White Bluffs bladderpod.

Fire Suppression Activities: Fire suppression activities, which often damage or remove native plants from the habitat and disturb soils, could potentially be as damaging as the wildfire itself. The Monument Fire Management Plan (USFWS 2001, p. 27) briefly addresses White Bluffs bladderpod by providing guidance for fire suppression activities on the White Bluffs. The plan states: ''Fire Management will protect these sensitive resources by suppressing fires in this area either from existing roads or the use of flappers and water use. The use of hand tools that break the surface will be avoided when possible and the use of any off-road equipment in these areas requires concurrence by the Project Leader.'' In the 2007 fire, damage to habitat from fire suppression activities within the White Bluffs bladderpod population was avoided by limiting soil disturbance to areas outside a 50–100 m (164–228 ft) buffer (Goldie 2012, pers. comm.).

However, the ability to avoid fire suppression impacts to the White Bluffs bladderpod population during future wildfire events would take into account the location, direction, magnitude, and intensity of the event, firefighter safety considerations, and proximity of the fire to the plant population. If a wildfire were to occur in the surrounding area, protection of the White Bluffs bladderpod population may not be possible if wildfire circumstances necessitate establishing fire lines or response equipment staging areas within or near the population. A potential consequence of fire or any soil disturbance during fire suppression activities is the displacement of native vegetation by nonnative weedy species, which increases intraspecific competition for resources and increases the accumulation of fuels. When these conditions occur, they contribute to increases in wildfire frequency and severity in a frequent fire landscape. Accordingly, although the need for wildfire suppression activities near or within the White Bluffs bladderpod population is unpredictable, this activity is considered a potential threat to this species based on the Monument's wildfire history (see Table 2).

Based on the information above, we find that specific activities discussed under Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range present a threat to White Bluffs bladderpod and its habitat. These activities include landslides, invasive species, wildfire, off-road vehicle use, and potentially fire suppression activities.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The regulations at 50 CFR 27.51 prohibit collecting any plant material on any national wildlife refuge. There is no evidence of commercial, recreational, scientific, or educational use of White Bluffs bladderpod, other than occasional collection of relatively few specimens (*e.g.,* dead plants and seed collection). The species is very showy while flowering and may be subject to occasional collection by the public. The University of Washington Rare Care staff collected approximately 2,000 White Bluffs bladderpod seeds from 60 plants on July 29, 2011, and Berry Botanic Garden in Portland, Oregon, currently has 1,800 seeds collected in 1997 from 45 plants (Gibble 2011, pers. comm.). Because the public has access to the species, and it occurs on private land, occasional collection may be expected. Collection for scientific purposes combined with sporadic collection by private individuals remains a possible, but unlikely threat.

Based on our review of the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not now a threat to White Bluffs bladderpod in any portion of its range and is not likely to become a significant threat in the future.

C. Disease or Predation

Evidence of disease has not been documented in White Bluffs bladderpod; however, predation of developing fruits and infestations on flowering buds has been observed.

Seed predation: Since 1966, some predation by larval insects on developing fruits of White Bluffs bladderpod has been observed. Larvae of a species of Cecidomyiid fly have been observed infesting and destroying flowering buds, and an unidentified insect species has been documented boring small holes into young seed capsules and feeding on developing ovules. However, the overall effect of these insect species on the plants or population is not known (TNC 1998, p. 5). Although insect predation may be a potential threat to White Bluffs bladderpod, more thorough investigations are necessary to determine its significance to seed production. Accordingly, we do not consider insect predation to be a threat to White Bluffs bladderpod at this time. We are unaware of any other disease or predation interactions that represent potential threats to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

White Bluffs bladderpod was added to the State of Washington's list of endangered, threatened, and sensitive vascular plants in 1997 (as *Lesquerella tuplashensis*), and is designated as threatened by the Washington Department of Natural Resources (WDNR, 2011). The State of Washington's endangered, threatened, and sensitive plant program is administered through the Washington Natural Heritage Program (WNHP), and was created to provide an objective basis for establishing priorities for a broad array of conservation actions (WDNR 2011, p. 2). Prioritizing ecosystems and species for conservation offers a means to evaluate proposed natural areas and other conservation activities (WDNR p. 3). The WNHP is a participant in the Arid Lands Initiative, which is a public/private partnership attempting to develop strategies to conserve the species and ecosystems found within Washington's arid landscape. The WHNP assists in identifying conservation targets, major threats, and potential strategies to address them (WDNR 2011 p. 4).

The DOE does not have a rare plant policy that provides specific protection for the species, and the Service manages DOE lands where White Bluffs bladderpod is found as a part of the Hanford National Monument. A comprehensive conservation plan (CCP) for the Monument has been completed that provides a strategy and general conservation measures for rare plants that may benefit White Bluffs bladderpod. This strategy includes support for monitoring, invasive species

control, fire prevention, propagation, reintroduction, and GIS support to map the impact area (USFWS 2008, pp. 2–64—2–65), but does not prescribe mandatory conservation elements. Although specific actions to conserve the species are not identified, the plan acknowledges that protection of the population is needed, and that management actions are required to address its protection (USFWS 2008, p. 3–95). The CCP states that fire control policies will be implemented to reduce the risk of human-caused wildland fire (USFWS 2008, p. 4–13). The CCP also identifies strategies to mitigate the potential for increased human-caused wildfire as a result of increased visitation, through informational signing educating visitors on the danger of wildfire, the adverse effects of wildfire on the shrub-steppe habitat, and how visitors can contribute to fire prevention. Seasonal closure of interpretive trails through high-risk areas would be established and enforced to mitigate the potential of visitor-caused wildfire (USFWS 2008, pp. 4–43—4–44). The CCP states that best management practices and current regulations which prohibit campfires, open fires, fireworks, and other sources of fire ignition on the Monument will be adequate to prevent human-caused wildfires that could potentially result from hunting activity (USFWS 2008, p. 4–46).

A Spotlight Species Action Plan has been developed for White Bluffs bladderpod, which briefly describes the species and the major threats and identifies actions to conserve the species (USFWS 2009). These actions include working with adjacent landowners to restore, manage, and reduce threats to the population, installation of fencing to eliminate ORV use, invasive species studies and potential eradication efforts, seed collection for augmentation/restoration purposes, pollinator species studies, wildfire studies, and climate change studies. However, many of these actions have not been implemented as funding sources have not been identified (Newsome 2011, pers. comm.).

Numerous wildland fires occur annually on lands in and surrounding the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge. Many are human-caused, resulting from vehicle ignitions from roads and highways, unattended campfires, burning of adjacent agricultural lands and irrigation ditches, and arson. Fires of natural origin (lightning caused) also occur on lands within and adjacent to the monument/refuge (USFWS 2001, p. 171). Since wildfires are unpredictable with regard to their location and severity, a fire management plan is necessarily designed to be a response, rather than a regulatory strategy. The Wildland Fire Management Plan for the Monument is an operational guide for managing the Monument's wildland and prescribed fire programs. The plan defines levels of protection needed to promote firefighter and public safety, protect facilities and resources, and restore and perpetuate natural processes, given current understanding of the complex relationships in natural ecosystems (USFWS 2001, p. 9). The Monument CCP also has an educational and enforcement program in place that reduces the likelihood of human-caused wildfires.

Although the WHNP, Monument CCP, and Spotlight Species Action plans are important tools to identify conservation actions that would benefit White Bluffs bladderpod, they were not designed to function as regulatory mechanisms that would eliminate threats to the species. In addition, the impact of wildfire is not a threat that is susceptible to elimination by regulatory mechanisms, because of the many potential ignition scenarios on the lands within and surrounding the area where White Bluffs bladderpod occurs.

An invasive plant species inventory and management plan has been developed for the Monument (Evans *et al.* 2003, entire). The plan identifies conservation targets, prevention, detection and response activities, prioritization of species and sites, inventory and monitoring, adaptive management, and several other strategies to address invasive species. Invasive species management presents significant management challenges because of the Monument's large size (78,780 ha) (195,000 ac), and the large number of documented or potential invasive plant species present (Evans *et al.* 2003, p. 5). The introduction and spread of invasive plant species is enhanced by the existence of disturbed lands and corridors; potential introduction pathways include the Columbia River, active irrigation canals, wasteways, and impoundments, state highways, and paved and unpaved secondary roads. In addition, recurrent wildfires, powerline development and maintenance, and slumping of the White Bluffs continually create new habitats for invasive species to colonize (Evans *et al.* 2003, p. 5). The invasive species management plan is not a regulatory mechanism, and given the many invasive plant species pathways within and surrounding the population, the impact of nonnative species is not a threat that is susceptible to elimination by regulatory mechanisms.

Although the Hanford Monument Proclamation prohibits off-road vehicle (ORV) use, ORV use has been documented in the publicly accessible Wahluke Unit (where White Bluffs bladderpod occurs). Some of these violators enter the Monument from long-established access routes from adjacent private lands (USFWS 2002, p. 17), causing physical damage to plants and creating ruts in slopes that increase erosion (USFWS 2008, p. 3–57). Although ORV trespass incidents have been documented on Monument lands, and are affecting some White Bluffs bladderpod individuals, we have no information indicating they are occurring with significant frequency or are affecting a substantial portion of the population. ORV use has also been documented on private property, where the southern extent of the population occurs. We have no information that would indicate ORV trespass incidents on Monument lands are taking place over a large area within the White Bluffs bladderpod population, and there are apparently no constraints on ORV use on private property. Accordingly, we do not believe the ORV threat to White Bluffs bladderpod identified in Factor A is being exacerbated because of existing regulations that are inadequate.

As described under Factor A, groundwater movement from adjacent, up-slope agricultural activities has caused mass-failure landslides caused by subsurface water seepage, which is a threat to White Bluffs bladderpod. This threat is greatest in the southern portion of the species' distribution where irrigated agriculture is close in proximity, and in several locations directly adjacent to the bluffs (Bjornstat *et al.,* 2009a, p. 8; Lindsey 1997, p. 12). There are no existing regulatory mechanisms that address this threat.

Based on our review of the best available scientific and commercial information, we do not consider any of the threats described above under Factor D to be subject to elimination by existing regulatory mechanisms. Therefore, the inadequacy of existing regulatory mechanisms does not represent an ongoing threat to White Bluff's bladderpod.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size: As stated earlier, since 1997 to 1998 when the monitoring transects currently used were selected, the population has ranged between an estimated low of 9,650 plants in 2010 and an estimated high of 58,887 plants in 2011 (see Table

4). Additionally, the species is known from only a single population that occurs intermittently in a narrow band (usually less than 10 m (33 ft) wide) along an approximately 17-km (10.6-mi) stretch of the river bluffs (Rollins *et al.* 1996, p. 205), and approximately 35 percent of the known range has been moderately to severely affected by landslides. Accordingly, the species is susceptible to being negatively impacted by the activities described in Factors A and C above, particularly if those threats are of a magnitude that affects a significant portion of the population. Therefore, based on the best available information, we consider White Bluffs bladderpod's small population size and limited geographic distribution to represent an ongoing threat to the species.

Climate Change: Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Regional climate change modeling indicates a potential threat to White Bluffs bladderpod if hotter and drier conditions increase stress on individual plants, or increase the effects of wildfire frequency and intensity (See discussion under Factor A). As described for Umtanum desert buckwheat above (see Factor E), the potential impacts of a changing global climate to White Bluffs bladderpod are presently unclear. All regional models of climate change indicate that future climate in the Pacific Northwest will be warmer than the past, and, together, they suggest that rates of warming will be greater in the 21st century than those observed in the 20th century. Projected changes in annual precipitation, averaged over all models, are small (+1 to +2 percent), but some models project an enhanced seasonal precipitation cycle with changes toward wetter autumns and winters and drier summers (Littell *et al.* 2009a, p. 1). Regional climate models suggest that some local changes in temperature and precipitation may be quite different than average regional changes projected by the global models (Littell *et al.* 2009a, p. 6). Precipitation uncertainties are particularly problematic in the western United States, where complex topography coupled with the difficulty of modeling El Niño result in highly variable climate projections (Bradley 2009, p. 197).

We do not know what the future holds with regard to climate change. Despite a lack of site-specific data, increased average temperatures and reduced average rainfall may promote a decline of the species and result in a loss of habitat. Hotter and drier summer conditions could increase the frequency and intensity of fires in the area as cheatgrass or other invasive plants compete for resources with White Bluffs bladderpod. However, if summer precipitation were to increase, some native perennial shrubs and grasses could be more competitive if they are able to use water resources when cheatgrass or other nonnative species are dormant (Loik, 2007 in Bradley 2009, pp. 204–205). Nevertheless, if the frequency, intensity, and timing of the predicted changes in climate for eastern Washington are not aligned with the phenology of White Bluffs bladderpod, the survival and reproduction of the species could be threatened over time. Although climate change represents a potential threat based on the available information, more thorough investigations are needed to determine the degree to which climate change may be affecting the species.

TABLE 5—SUMMARY OF THREAT FACTORS UNDER THE ESA TO UMTANUM DESERT BUCKWHEAT AND WHITE BLUFFS BLADDERPOD

Factor	Threat	Magnitude *	Severity *	Imminence *
A	Wildfire	Confirmed	High	Moderate.
	Fire suppression activities	Possible **	Unknown	Unknown.
	Slope failure, landslides	Confirmed	High	High.
	Harm by recreational activities and/or ORV use	Confirmed	Moderate	Low.
	Competition, fuels load from nonnative plants	Confirmed	Moderate	Moderate.
E	Small population size	Confirmed	Low	Low.
	Limited geographic range	Confirmed	Low	Low.
	Climate change	Possible	Unknown	Unknown.

* Magnitude: The extent of species numbers or habitat affected by the threat. Severity: The intensity of effect by the threat on the species or habitat. Imminence: The likelihood of the threat currently affecting the species.

** If avoidance is not possible due to fire direction or safety needs.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to White Bluffs bladderpod (see Table 5). Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. We assessed the status of White Bluffs bladderpod throughout its entire range and found it to be highly restricted within that range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Approximately 35 percent of the known range of the species has been moderately to severely affected by landslides, resulting in an apparently permanent destruction of the habitat. The entire population of the species is down-slope of irrigated agricultural land, the source of the water seepage

causing the mass-failures and landslides, but the southern portion of the population is the closest to the agricultural land and most affected. Other significant threats include use of the habitat by recreational off-road vehicles which destroy plants, and the presence of invasive nonnative plants that compete with White Bluffs bladderpod for limited resources (light, water, nutrients). Additionally, the increasing presence of invasive nonnative plants may alter fire regimes and potentially increase the threat of fire to the White Bluffs bladderpod population.

Fire suppression activities could potentially be as great a threat as the fire itself, given the location of the species on the tops of bluffs where firelines are often constructed. In addition, firefighting equipment and personnel are commonly staged on ridge tops for safety and strategic purposes (Whitehall 2012, pers. comm.), although this has not been necessary within the White Bluffs bladderpod population to date. During a wildfire response effort in 2007, responders were able to avoid damage to White Bluffs bladderpod habitat during suppression activities by limiting soil disturbance to areas outside a 50–100 m (164–228 ft) buffer around the population. The threats to the population from landslides, ORV use, and potentially fire suppression (contingent on location, safety, the ability to avoid, and other particulars) are ongoing, and will continue to occur in the future. In addition, invasion by nonnative plants is a common occurrence post-fire in the Hanford vicinity, and will likely spread or increase throughout the areas that were burned during the 2007 fire that occurred in the area of the existing population or in future events.

As described above, White Bluffs bladderpod is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and other natural or manmade factors affecting its continued existence (Factor E). Specifically, these factors include the existing degradation or fragmentation of habitat resulting from landslides due to water seepage, invasive species establishment, ORV use, wildfire, potential fire suppression activities, and potential global climate change. Most of these threats are ongoing and projected to continue and potentially worsen in the future. The population is small and apparently restricted to a unique geological setting, making it particularly susceptible to extinction due to threats described in the proposed rule. The magnitude of the threat of wildfire is high, while other threats are moderate to low in magnitude (see Table 5). Because of the limited range of the species, any one of the threats could affect its continued existence at any time.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that White Bluffs bladderpod is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, based on the immediacy and scope of the threats described above and, therefore, meets the definition of a threatened species under the Act. There are no portions of the species' range where threats are geographically concentrated such that the species is in danger of extinction within that portion of its range. White Bluffs bladderpod is primarily surrounded by Federal ownership, where the lands are managed as an overlay national wildlife refuge for general conservation purposes.

The Hanford Reach National Monument Comprehensive Conservation Plan was developed to protect and conserve the biological, geological, paleontological, and cultural resources described in the Monument Proclamation by creating and maintaining extensive areas within the Monument free of facility development (USFWS 2008, p. v). Several management objectives are identified that could benefit the White Bluffs bladderpod population, include treating invasive species and restoring upland habitat (USFWS 2008, pp. 19–22). The species is also fairly numerous and continuous where it occurs over 17 km (10.6 mi), and the threats are acting with uniform magnitude, intensity, or severity throughout the species' distribution. Since 85 percent of the species distribution is on Federal lands managed as a national wildlife refuge for conservation purposes, and refuge management plans are in place to help protect and conserve the species, we do not believe White Bluffs bladderpod is presently in danger of extinction throughout all or a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we propose listing White Bluffs bladderpod as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, the development of a recovery plan (including implementation of recovery actions), requirements for Federal protection, and prohibitions against certain practices. Recognition through listing actions results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed wildlife are discussed in Effects of Critical Habitat Designation and are further discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on

our Web site (*http://www.fws.gov/endangered*), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. The Hanford Reach National Monument Comprehensive Conservation Plan (2008, p. 4–31), identifies several strategies that will support recovery efforts, including (1) continuing ongoing partnerships for monitoring Umtanum desert buckwheat and White Bluffs bladderpod populations; (2) inventory and control of nonnative plant species; (3) consideration of rare plant species and locations when planning management, recreational, access, and other actions; (4) wildfire prevention when possible, and limiting their size; and (5) development of propagation techniques for rare species for reintroductions if populations go below thresholds.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Washington would be eligible for Federal funds to implement management actions that promote the protection and recovery of Umtanum desert buckwheat and White Bluffs bladderpod. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although Umtanum desert buckwheat and White Bluffs bladderpod are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Department of Energy, Department of Defense, U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Army Corps of Engineers, and construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of cultivated plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. At this time, there are no existing regulatory mechanisms that provide protection for State-listed plants in Washington, even if endangered. In addition, since Umtanum desert buckwheat occurs entirely on Federal land, and White Bluffs bladderpod occurs predominantly on Federal land, all Hanford Reach National Monument regulations that have protective or conservation relevance to either species would be applicable.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at § 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or to enhance the propagation or survival of the species.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone (503) 231–6158; facsimile (503) 231–6243).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical and biological features

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use, and the use of, all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that when combined compose the features essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its current range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to: (1) Conservation actions we implement under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if certain actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts warrants otherwise.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when

one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation of commercial or private collection of Umtanum desert buckwheat or White Bluffs bladderpod. Although that activity is identified as a possible but unlikely threat to the species, the significance of collection to the viability of the species' populations is not known. In the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. At this time, Umtanum desert buckwheat and White Bluffs bladderpod occur only on Federal, State, and private lands along the Hanford Reach of the Columbia River in Washington State. Lands proposed for designation as critical habitat would be subject to Federal actions that trigger section 7 consultation requirements. These include land management planning, Federal agency actions, and permitting by the Saddle Mountain National Wildlife Refuge/Hanford Reach National Monument. There may also be educational or outreach benefits to the designation of critical habitat. These benefits include the notification of lessees and the general public of the importance of protecting the habitats of both of these rare species.

In the case of Umtanum desert buckwheat and White Bluffs bladderpod, these aspects of critical habitat designation would potentially benefit the conservation of both species. Therefore, if the threat of commercial or private collection exists for either species, it is outweighed by the conservation benefits derived from the designation of critical habitat. We therefore find that designation of critical habitat is prudent for Umtanum desert buckwheat and White Bluffs bladderpod.

We also reviewed the available information pertaining to the biological needs of these species and habitat characteristics where they occur. This and other information represent the best scientific data available, and the available information is sufficient for us to identify areas to propose as critical habitat. Therefore, we conclude that the designation of critical habitat is determinable for both species.

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features (PBF's) essential to the conservation of the species that may require special management considerations or protection. These may include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PBF's required for Umtanum desert buckwheat and White Bluffs bladderpod from studies of each species' habitat, ecology, and life history as described above in the proposed listing rule. We have determined that the PBFs described below are essential for these species. The criteria used to identify the geographical location of the proposed critical habitat areas for both species is described following the *Proposed Critical Habitat Designation* sections below (see *Criteria Used To Identify Critical Habitat*).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, in developing this proposed rule we used the best scientific data available to propose critical habitat for both Umtanum desert buckwheat and White Bluffs bladderpod. We reviewed available information that pertains to the habitat requirements of these species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we also consider whether designating additional areas outside those currently occupied as well as those occupied at the time of listing is necessary to ensure the conservation of the species. These sources of information included, but were not limited to:

1. Data used to prepare the proposed rule to list the species;
2. Information from biological surveys;
3. Peer-reviewed articles, various agency reports and databases from the Washington Department of Natural Resources Natural Heritage Program and the Hanford National Monument/Saddle Mountain National Wildlife Refuge;
4. Information from the U.S. Department of Energy and other governmental cooperators;
5. Information from species experts;
6. Data and information presented in academic research theses; and
7. Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

The long-term survival and recovery of Umtanum desert buckwheat and White Bluffs bladderpod is dependent upon protecting existing populations by maintaining ecological function within these sites, including preserving the integrity of the unique soils and connectivity between occurrences to facilitate pollinator activity. It is also dependent on maintaining these areas free of habitat-disturbing activities, including trampling, the exclusion of invasive, nonnative plant species, and managing the risk of wildfire. Because the areas of unique soils cover a relatively small area within the larger shrub steppe matrix, we did not restrict the designation to individual occupied patches, but included adequate adjacent shrub steppe habitat to provide for ecosystem function. This contiguous habitat provides the requisite physical or biological features for both Umtanum desert buckwheat and White Bluffs bladderpod, including diverse native flowering plants and habitat to support pollinators, and provides the essential feature of habitat free from disturbances, such as invasive species and recreational trampling. We used the following criteria to select areas for inclusion in critical habitat: (a) The geographical areas containing the entire distribution of habitat occupied by Umtanum desert buckwheat and White Bluffs bladderpod at the time of the

proposed listing, because they are each found in only single populations and our goal is to maintain the current species extent and genetic variability; (b) areas that provide the physical and biological features necessary to support the species' life-history requirements; and (c) areas that provide connectivity within and between habitat for each species, and adjacent shrub steppe habitat that provides for pollinator life-history needs.

The first step in delineating proposed critical habitat units was to identify all areas that contained Umtanum desert buckwheat or White Bluffs bladderpod populations, which was accomplished during the summer of 2011. We are proposing to designate critical habitat within and around all occurrences of both populations to conserve genetic variability. These areas are representative of the entire known historical geographic distribution of the species. We then analyzed areas outside the population to identify unoccupied habitat areas essential for the conservation of the species. The proposed designations take into account those features that are essential to Umtanum desert buckwheat or White Bluffs bladderpod, including the presence of unique soils, unique habitat conditions within the area, and the condition of the surrounding landscape features necessary to support pollination, and possibly other life-history requirements.

We do not know if the lack of pollinators is a limiting factor, but in the absence of other information and knowing that both species are largely insect-pollinated, we believe it is prudent to identify an area adjacent to the occupied areas as unoccupied critical habitat to support pollinator species. The outer boundary of the proposed critical habitat designation was primarily determined based on the flight distances of insect pollinators, which are essential to the conservation of both species. Using Geographical Information Systems (GIS), we included an area of native shrub steppe vegetation approximately 300 m (980 ft) around the population to provide habitat of sufficient quantity and quality to support Umtanum desert buckwheat and White Bluffs bladderpod. This boundary was selected because we believe it provides the minimum area needed to sustain an active pollinator community for both species, based on the best available scientific information (see Arnett 2011b; Evans pers. comm., 2001, discussed below). This distance does not include all surrounding habitat potentially used by pollinators, but provides sufficient habitat for those pollinators that nest, feed, and reproduce in areas adjacent to the occupied critical habitat areas.

Although Umtanum desert buckwheat and White Bluffs bladderpod are visited by a variety of likely pollinators, only one insect pollinator species has been verified to date; the bumblebee (*Bombus centralis*) has been confirmed as a pollinator for Umtanum desert buckwheat (Arnett 2011b, pers. comm.). As stated earlier, Bombus did not appear to be an appropriate surrogate to determine pollinator distance for either Umtanum desert buckwheat or White Bluffs bladderpod because of their relatively long-distance foraging capabilities. Instead, we delineated an effective pollinator use area based on the flight distances of solitary bees, a group of important noncolonial pollinators with a relatively limited flight distance. Research literature on flight distances was available for this group (Gathmann and Tscharntke (2002, p. 758)), of which numerous representatives of the genera *Chelostoma, Megachile,* and *Osmia* are found in shrub steppe habitat in the Hanford Reach area. Species within other solitary bee genera such as *Andrena, Anthophora, Habropoda, Hoplitis,* and *Lasioglossum* have also been identified on the Hanford Installation (Evans 2011, pers. comm.). This methodology assumes that potential pollinators with long-range flight capabilities would be able to use this proximal habitat as well (see *Physical and Biological Features* section).

Because the population occurrences of Umtanum desert buckwheat and White Bluffs bladderpod are linear in arrangement, we established the occupied critical habitat areas by connecting the known coordinates for occurrences, using GIS. The mean width for the occupied areas was estimated based on monitoring and transect data compiled by species experts. The estimated mean width for Umtanum desert buckwheat was determined to be 30 m (100 ft), and 50 m (165 ft) for White Bluffs bladderpod. We then established a 300-m (980-ft) unoccupied critical habitat polygon surrounding the mean occupied habitat width to identify insect pollinator habitat that is essential for the conservation of both species. We then mapped the critical habitat unit boundaries for each of the two species based on the above criteria, using aerial imagery, 7.5 minute topographic maps, contour data, WDNR Natural Heritage and Washington Department of Transportation data to depict the critical habitat designation, gather ownership, and acreage information.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, other structures, tilled farm lands and orchards on private property, because such lands lack physical or biological features for Umtanum desert buckwheat and White Bluffs bladderpod. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Therefore, if the critical habitat is finalized as proposed, a Federal action involving such developed lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would affect the physical and biological features in the adjacent critical habitat.

Umtanum Desert Buckwheat

Space for Individual Population Growth and for Normal Behavior

Umtanum desert buckwheat is highly restricted in its distribution. The only known population occurs at elevations ranging between 340–400 m (1,115–1,310 ft) on flat to gently sloping substrate at the top edge of a steep, north-facing basalt cliff of Umtanum Ridge overlooking the Columbia River. Approximately 5,000 plants occur in a narrow band 1.6 km (1 mi) in length and generally less than 30 m (100 ft) wide (Reveal *et al.* 1995, p. 353). However, individual plants have been found up to 150 m (490 ft) above the cliff breaks (Arnett 2011b, pers. comm.), and scattered plants occur on the steep cliff-face below the breaks (Dunwiddie *et al.* 2001, p. 60).

Umtanum desert buckwheat is found exclusively on soils over exposed basalt from the Lolo Flow of the Wanapum Basalt Formation at the far southeastern end of Umtanum Ridge in Benton County, Washington. This type of landform in the lower Columbia Basin is determined by the underlying basalts, which may be exposed above the soil on ridge tops or where wind and water erode the fine soils away (Sackschewski and Downs 2001, p. 2.1.1). The Lolo flow surface material commonly has a high porosity and permeability. The cliff area has weathered to pebble- and gravel-sized pieces of vesicular basalt (basalt that contains tiny holes formed due to gas bubbles in lava or magma) and is sparsely vegetated where the species is found. It is unknown if the close association of Umtanum desert buckwheat with the lithosols of the Lolo Flow is related to the chemical

composition or physical characteristics of the particular parent bedrock on which it is found, or other factors (Reveal *et al.* 1995, p. 354); however, that particular mineralogy is not known from any other location.

Therefore, based on the information above, we identify weathered Wanapum basalt cliffs, and adjacent outcrops, cliff breaks, and flat or gently sloping cliff tops with exposed pebble and gravel soils as a physical or biological feature essential to the conservation for Umtanum desert buckwheat.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The presence of unique soil structure and/or chemistry may determine where a rare plant species exists. Umtanum desert buckwheat is found exclusively on pebbly lithosol soils over exposed basalt from the Lolo Flow of the Priest Rapids Member of the Wanapum Basalt Formation. The flow surface material commonly has a high porosity and permeability and typically contains small (< 5 mm, (0.2 in)) crystals of the mineral olivine and rare (occasional) clusters of plagioclase crystals, and differs from the other members of the Wanapum Formation. Basalts of the Lolo Flow contain higher titanium dioxide and lower iron oxide than the neighboring Rosalia Flow, also of the Priest Rapids Member (Reidel and Fecht 1981, p. 3–13).

It is unknown if the distribution of Umtanum desert buckwheat prior to European settlement was different from the species' current distribution, but it is likely that the species has been confined to this location during at least the last 150 years, which indicates an isolated soil exposure, unique within the broader Columbia Basin landscape. The physiological and soil nutritional needs of Umtanum desert buckwheat are not known at this time. Other locations containing apparently suitable habitat have been intensively searched since the species' discovery in 1995, and no additional individuals or populations have been found. The factors limiting the species' distribution are unknown, but could be related to microsite differences (such as nutrient availability, soil microflora, soil texture, or moisture). Additional research is needed to determine the specific nutritional and physiological requirements for Umtanum desert buckwheat.

Therefore, based on the information above, we identify the pebbly lithosol talus soils derived from surface weathering of the Lolo Flow of the Priest Rapids Member of the Wanapum Basalt Formation as a physical and biological feature essential to the conservation for Umtanum desert buckwheat. These areas are sparsely vegetated, with less than 10 percent estimated total cover (including Umtanum desert buckwheat) within the population and less than 5 percent cover by species other than Umtanum desert buckwheat, and less than 1 percent nonnative or invasive plants (Arnett 2001, pers. comm.). Areas of sparse vegetation are required to minimize nonnative plant competition, minimize conditions that promote the accumulation of fuels, and provide for the recovery of the species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The availability of insect pollinators is essential to conserve Umtanum desert buckwheat. Based on the results of a pollinator exclusion study, the species is probably capable of at least limited amounts of self-pollination, although the percentage of seedset in the absence of pollinators appears to be low (TNC 1998, p. 8; Reveal *et al.* 1995, p. 355). A variety of potential insect pollinators has been observed on Umtanum desert buckwheat flowers, including ants, beetles, flies, spiders, moths, and butterflies (TNC 1998, p. 8). Wasps from the families *Vespidae* and *Typhiidae* and from the species *Criosciolia* have been observed near, but not on, the species. A bumble bee species, *Bombus centralis* (no common name), has also been observed utilizing the flowers of Umtanum desert buckwheat (Arnett 2011b, pers. comm.). Insect collection and identification efforts by Washington State University on the Hanford Reach documented approximately 2,500 different species of invertebrates, 42 of which were new to science (WNPS 2004, p. 3).

Since pollination is essential to the conservation of Umtanum desert buckwheat, we evaluated alternatives for determining the effective pollinator distance for this species. Since specific known pollinators are mostly unknown for the species and the species is likely frequented by several pollinators, we investigated delineating an effective pollinator distance based on foraging distances of the species' only known pollinator, the bumble bee (*Bombus* spp.). Bumble bee species are internally guided to use a plant species as long as flowers are rewarding and nearby, but will otherwise change to different species (Chittka *et al.* 1997, p. 248). Foraging ranges for Bombus are greater and consistent within species; however, there are substantial differences between species in foraging ranges and the size of the areas they utilize. Knight *et al.* (2005, p. 1,816) observed a maximum foraging distance between 450–760 m (1,475–2,500 ft), and foraging ranges between 62–180 ha (150–450 ac), based on studies of four species of *Bombus* species. Because of these conspecific differences, we concluded that bumble bee foraging distances may not be representative of the suite of pollinators that may be available to Umtanum desert buckwheat. Based on the limited distribution of Umtanum desert buckwheat and the lack of foraging data for *Bombus centralis,* we determined that generalized *Bombus* foraging range data may not be an appropriate surrogate for determining Umtanum desert buckwheat pollinator distance requirements.

We next considered using the flight distances of solitary bees (individual, noncolonial bees) to determine the effective pollinator distance for the species. Numerous Families of this Order (Hymenoptera) have been observed in shrub steppe habitats within the Hanford Reach, including the Genera *Andrena, Anthophora, Chelostoma, Habropoda, Hoplitis, Lasioglossum, Megachile,* and *Osmia,* among others (Evans 2011, pers. comm.) and are likely to be among the pollinators of Umtanum desert buckwheat.

Solitary bees have fairly short foraging distances within similar habitat types, which is suggested as being between 150–600 m (495–1,970 ft) (Gathmann and Tscharntke (2002, pp. 760–762)). Three genera are found in common with those studied in Gathmann and Tscharntke (2002) in the Hanford Reach; *Chelostoma, Megachile,* and *Osmia.* Although the specific insect pollinator species and their foraging distances are not known, we believe 300 m (980 ft) represents a reasonable mid-range estimate of the area needed around the Umtanum desert buckwheat population to provide sufficient habitat for the pollinator community. As noted above, many other insects likely contribute to the pollination of this species, and some may travel greater distances than solitary bees. However, these pollinators may also forage, nest, overwinter, or reproduce within 300 m (980 ft) of Umtanum desert buckwheat plants. As a result, we limited the Umtanum desert buckwheat pollinator support area to 300 m (980 ft) around the population, based on the rationale that pollinators using habitat farther away may not be as likely to contribute to the conservation and recovery of this species.

Vegetation cover in the vicinity of Umtanum desert buckwheat is low

when compared with other shrub steppe sites, which may be related to substrate chemistry. Common perennial associates and habitat for the pollinators listed above include *Artemisia tridentata* (Wyoming big sagebrush), *Grayia spinosa* (spiny hopsage), *Krascheninnikovia lanata* (winterfat), *Eriogonum sphaerocephalum* (round-headed desert buckwheat), *Salvia dorrii* (purple sage), *Hesperostipa comata* (needle and thread grass), *Pseudoroegneria spicata* (bluebunch wheatgrass), *Poa sandbergii* (Sandberg bluegrass), *Sphaeralcea munroana* (Munro's globemallow), *Astragalus caricinus* (buckwheat milkvetch), and *Balsamorhiza careyana* (Carey's balsamroot). Common annual associates include *Bromus tectorum* (cheatgrass), *Phacelia linearis* (threadleaf phacelia), *Gilia leptomeria* (great basin gilia), *G. inconspicua* sweetvar. *Sinuata* (rosy gilia), *Camissonia minor* (small evening primrose), *Mentzelia albicaulis* (whitestem blazingstar), and *Cryptantha pterocarya* (wing-nut cryptantha) (Reveal *et al.* 1995, p. 354; Caplow and Beck 1996, p. 40). Although percent vegetative cover is low in close proximity to *E. codium,* species diversity within the adjacent plant community is fairly high. Nearby vegetative patches with more dense vegetative cover offer increased vertical habitat structure and plant species diversity within the foraging distances of potential pollinators.

In order for Umtanum desert buckwheat genetic exchange to occur, pollinators must be able to move freely between plants. Additional pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are also needed to support pollinators when the species is not flowering. This surrounding and adjacent habitat will protect soils and pollinators from disturbance, slow the invasion of the site by nonnative species, and provide a diversity of habitats needed by Umtanum desert buckwheat and its pollinators. Therefore, based on the information above, we identify the presence of insect pollinators as a physical and biological feature essential to the conservation for Umtanum desert buckwheat. Insect pollinators require a diversity of native plants, whose blooming times overlap to provide sufficient flowers for foraging throughout the seasons, nesting and egg-laying sites, appropriate nesting materials, and sheltered, undisturbed places for hibernation and overwintering.

Habitats Protected From Disturbance or Representing Historical, Geographical, and Ecological Distributions

The Umtanum desert buckwheat population has a discontinuous distribution along a narrow, 1.6-km (1-mi) long portion of Umtanum Ridge (Dunwiddie *et al.* 2001, p. 59). The entire known population exists within a narrow corridor at the top edge of the steep, north-facing basalt cliffs where human traffic could be expected to concentrate. The plants respond negatively to trampling or crushing and are extremely sensitive following such damage. In one instance, within 2 days of being run over by trespassing dirt bikes, portions of damaged plants showed signs of further decline, and in some cases mortality, as evidenced by damaged plants that later died (TNC 1998, p. 62).

Fire appears to readily kill the slow-growing Umtanum desert buckwheat plants, especially in areas with higher fuel levels. Because of the rocky talus soils and a relatively low fire frequency, the species is confined to a few meters of upper cliff slope, cliff breaks, and tops. Fires increase the risk of invasion of nonnative or invasive species, particularly cheatgrass, which competes with Umtanum desert buckwheat for space and moisture. In turn, the establishment and growth of highly flammable and often continuous cheatgrass increases the likelihood of fire, potentially elevating the risk of impacting the Umtanum desert buckwheat population in the future. The substrate that supports Umtanum desert buckwheat likely had a lower vegetation cover prior to the introduction of cheatgrass in the 1800s. Fire is a primary threat to Umtanum desert buckwheat, and will likely become a greater threat if the frequency or severity of fires increases (TNC 1998 p. 9; Dunwiddie *et al.* 2001, pp. 59, 62, 66).

Therefore, based on the information above, we identify the stable cliff and soil structure that is protected from human-caused trampling and at a low risk of wildfire as a physical and biological feature essential to the conservation for Umtanum desert buckwheat. This habitat contains little or no surface disturbance and is surrounded by diverse native pollinator habitat.

Primary Constituent Elements for Umtanum Desert Buckwheat

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Umtanum desert buckwheat, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific compositional elements of physical and biological features that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and the habitat characteristics required to sustain the species' life-history process, we have determined that the primary constituent elements specific to Umtanum desert buckwheat are:

1. Primary Constituent Element 1—North to northeast facing, weathered basalt cliffs of the Wanapum Formation at the far eastern end of Umtanum Ridge in Benton County that contain outcrops, cliff breaks, slopes, and flat or gently sloping cliff tops with exposed pebble and gravel soils;
2. Primary Constituent Element 2—Pebbly lithosol talus soils derived from surface weathering of the top of the Lolo Flow of the Priest Rapids Member of the Wanapum Formation;
3. Primary Constituent Element 3—Sparsely vegetated habitat (less than 10 percent total cover), containing low amounts of nonnative or invasive plant species (less than 1 percent cover);
4. Primary Constituent Element 4—The presence of insect pollinator species; and
5. Primary Constituent Element 5—The presence of native shrub steppe habitat within the effective pollinator distance (300 m (approximately 980 ft)) around the population.

Umtanum desert buckwheat occurs only as a single population located within a single site. With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. All areas proposed for designation as critical habitat as described below may require some level of management to address the current and future threats to the physical and biological features essential to the conservation of Umtanum desert buckwheat. In all of the described units, special management

may be required to ensure that the habitat is able to provide for the biological needs of the species.

Public access without security clearance is currently prohibited at the Umtanum desert buckwheat site, reducing the risk of trampling or crushing the plants by ORV use. Special management to protect the proposed critical habitat areas and the features essential to the conservation of Umtanum desert buckwheat from the effects of the current wildfire regime may include preventing or restricting the establishment of invasive, nonnative plant species, post-wildfire restoration with native plant species, and reducing the likelihood of wildfires affecting the population and nearby plant community components. These actions may be achieved by detailed fire management planning by the DOE (the landowner), including rapid response and mutual support agreements between the DOE, the Monument, the U.S. Department of the Army, Bureau of Land Management, and the Washington Department of Fish and Wildlife for wildfire control. These agreements should contain sufficient detail to identify actions by all partners necessary to protect habitat for Umtanum desert buckwheat from fire escaping from other ownerships.

Further studies leading to an enhancement or reintroduction plan may be necessary to increase population size and prepare for recovery post-wildfire. More research is needed to determine habitats most suitable for expansion of the current population. In summary, special management considerations or protections should address activities that would be most likely to result in the loss of Umtanum desert buckwheat plants or the disturbance, compaction, or other negative impacts to the species' habitat. These activities could include, but are not limited to, recreational activities and associated infrastructure, off-road vehicle activity, dispersed recreation, wildfire, and wildfire suppression activities.

Existing Conservation Measures

A fire management plan has been completed for the Hanford installation (DOE 2011, p. 93) and recently revised to incorporate more detailed management objectives and standards. Though not intended to specifically address Umtanum desert buckwheat, implementation of this plan will contribute to the protection of the primary constituent elements (and physical or biological features) by: (1) Using a map of ''sensitive resources'' on the site during implementation, including the location of Umtanum desert buckwheat habitat; (2) requiring a biologist to assist the command staff in protecting these environments during wildfire suppression efforts; and (3) restricting public access to the entire Umtanum desert buckwheat site, including the proposed pollinator use area.

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat for the Umtanum desert buckwheat population. The critical habitat area described below constitutes our best assessment of areas that meet the definition of critical habitat for Umtanum desert buckwheat. Within this unit, no subunits have been identified.

The approximate size and ownership of the proposed Umtanum Ridge critical habitat unit is identified in Table 6 below. The single unit contains currently occupied critical habitat and unoccupied habitat surrounding it.

TABLE 6—PROPOSED CRITICAL HABITAT UNIT FOR UMTANUM DESERT BUCKWHEAT

[Area estimates reflect all land within the critical habitat unit boundaries; values are rounded to the nearest tenth]

Unit name	Land ownership	Occupied critical habitat in hectares (acres)	Unoccupied critical habitat in hectares (acres)	Percent by ownership	Total hectares (acres)
Umtanum Ridge, WA	Federal	5.7 (14.2)	133.5 (329.9)	100	139.3 (344.1)
	State				
	Private				
	Unit Total	5.7 (14.2)	133.5 (329.9)	100	139.3 (344.1)

White Bluffs Bladderpod

Physical and Biological Features

Space for Individual and Population Growth and for Normal Behavior

White Bluffs bladderpod is only known from a single population that occurs in a narrow band approximately 10 m (33 ft) wide by 17 km (10.6 mi) long, at the upper edge of the White Bluffs of the Hanford Reach. The species only occurs at the upper surface areas of a near-vertical exposure of paleosol (ancient, buried soil whose composition may reflect a climate significantly different from the climate now prevalent in an area). This surface material overlays several hundred feet of easily eroded sediments of the Ringold Geologic Formation, a sedimentary formation made up of soft Pliocene lacustrine deposits of clay, sand, and silt (Newcomb 1958, p. 330).

The upper part of the Ringold Formation is a heavily calcified and silicified cap layer that exists to a depth of at least 4.6 m (15 ft). This layer is geologically referred to as ''caliche,'' although it lacks the nitrate constituents found in true caliche. The caliche-like layer is a resistant caprock underlying a 275–305 m (900–1,000 ft) plateau extending north and east from the White Bluffs (Newcomb 1958, p. 330).

The entire population of White Bluffs bladderpod is down-slope of irrigated agricultural land, and is being impacted to differing degrees by landslides induced by water-seepage (see Factor A). The potential for landslide is greatest in the southern portion of the species distribution where irrigated lands are closer to, or directly adjacent to, the bluffs (Lindsey 1997, p. 12). In addition, field investigations have determined that *Lesquerella* (now *Physaria*) plants can be outcompeted by nonnative, weedy plant species associated with irrigation projects and other disturbance (TNC 1998, p. 5).

Therefore, based on the information above, we identify the weathered cliffs at approximately 210–275 m (700–900 ft) above sea level of the White Bluffs of the Ringold Formation exposed by natural erosion as a physical and biological feature essential to the conservation for White Bluffs bladderpod. The habitat includes the adjacent cliff breaks, moderate to gentle slopes (<100 percent slope) to the toe of slope, and flat or gently sloping cliff tops with exposed alkaline paleosols. This habitat is stable with a minimal amount of landslide occurrence.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The White Bluffs area was submerged during the larger ice-age floods until about 3 million years ago and was protected from high flow events by the Saddle Mountains to the north. As a result, the area experienced little or no erosion. A thin layer of ancient slackwater flood deposits overlay the older paleosols and resistant cap deposits (Bjornstad and Fecht 2002, p. 15). White Bluffs bladderpod occurs only on or near exposed, weathered, highly alkaline, calcium carbonate cap deposits and may be an obligate calciphile (a plant which grows well on chalky or alkaline soils), as are many of the endemic *Lesquerella* (now *Physaria*) species (Caplow 2006, p. 3).

White Bluffs bladderpod plants are found on several different types of soil substrates, (e.g., paleosol, volcanic tuff, caliche, and ancient flood deposits), each of which presumably have a relatively high percentage of calcium carbonate (TNC 1998, p. 5). The species is occasionally observed on the lower slopes of the White Bluffs, which may be related to ancient landslide zones or weathering and disturbance factors that deposit alkaline soils down slope (Caplow and Beck 1996, p. 42). Although there are scattered small exposures of similar caliche substrate in coulees (i.e., deep ravines or gulches that are usually dry, although formed by water) to the north, surveys have failed to detect the species in those areas (Rollins *et al.* 1996, p. 206). The physiological relationship between White Bluffs bladderpod and the high-calcium carbonate soils of the White Bluffs is uncertain; however, the particular combination of exposed soil types where the species occurs is not known from any other location.

Therefore, based on the information above, we identify the weathered alkaline paleosols and mixed soils of the Ringold Formation that occur in a narrow band within and around the exposed caliche-like cap containing a high percentage of calcium carbonate as a physical and biological feature essential to the conservation of White Bluffs bladderpod. This habitat is associated with the White Bluffs, and occurs between 210–275 m (700–900 ft) in elevation.

Sites for Reproduction

Washington State University researchers on the Hanford Reach have identified approximately 2,500 different species of invertebrates, 42 of which are new to science (WNPS 2004, p. 3). Larvae of a species of Cecidomyiid fly have been observed infesting and destroying flowering buds, and another unidentified insect species has been observed boring small holes in young seed capsules and feeding on developing ovules, although the overall positive or negative effects of these insect species to the plant are unknown. White Bluffs bladderpod appears to be served by several pollinators, including butterflies, flies, wasps, bumblebees, moths, beetles, and ant species. The presence of nearby habitat for pollinators is essential to conserving White Bluffs bladderpod, although little is currently known about the reproductive biology of the species. The effective pollinator distance for this species was determined by applying research on known flight distances of solitary bees (individual, noncolonial bees), which are known to pollinate native species and commonly observed in shrub steppe habitat within the Hanford Reach. Research suggests that different species of solitary bees have fairly short foraging distances within similar habitat types (Gathmann and Tscharntke 2002, p. 762); we assume other pollinating insects with longer-range flight capabilities would also utilize this habitat.

Solitary bees foraging distances within similar habitat types is suggested as being between 150–600 m (495–1,970 ft) (Gathmann and Tscharntke (2002, pp. 760–762)). Absent specific data, we believe 300 m (980 ft) represents a reasonable mid-range estimate of the area needed around the White Bluffs bladderpod population to provide sufficient habitat for solitary bees and other pollinators. As noted above, many other insects likely contribute to the pollination of White Bluffs bladderpod, some may travel greater distances than solitary bees, and some likely use habitat within the 300-m (980-ft) pollinator area described above. However, we limited the White Bluffs bladderpod pollinator support habitat to 300 m (980 ft) around the population, based on the rationale that pollinators using habitat farther away may not be as likely to contribute to the conservation/recovery of this species.

Common plant species associated with White Bluffs bladderpod include: *Artemisia tridentata* (big sagebrush), *Poa sandbergii* (Sandberg's bluegrass), *Astragalus carieinus* (buckwheat milk-vetch), *Eriogonum microthecum* (slender buckwheat), and *Oryzopsis hymenoides* (Indian ricegrass). Occasionally White Bluffs bladderpod is numerous enough at some locations to be subdominant.

Species diversity within the surrounding plant community is quite high, and the presence of increased vegetative cover nearby offers more habitat structure and plant species diversity within the presumed effective flight distances of potential pollinators. In order for genetic exchange to occur between White Bluffs bladderpod individuals, pollinators must be able to move freely between plants. Additional pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are also needed to support pollinators during times when White Bluffs bladderpod is not flowering. This surrounding and adjacent habitat will protect soils and pollinators from disturbance, slow the invasion of the site by nonnative species, and provide a diversity of habitats needed by White Bluffs bladderpod and its pollinators.

Therefore, based on the information above, we identify insect pollinators as a physical and biological feature essential to the conservation for White Bluffs bladderpod. Insect pollinators require a diversity of native plants, surrounding and adjacent to White Bluffs bladderpod, whose blooming times overlap to provide them with sufficient flowers for foraging throughout the seasons and to provide nesting and egg-laying sites, appropriate nesting materials, and sheltered, undisturbed places for hibernation and overwintering of pollinator species.

Habitats Protected From Disturbance or Representing Historical, Geographical, and Ecological Distributions

White Bluffs bladderpod grows exclusively on the upper edge and upper face of the White Bluffs adjacent to the Columbia River, where human use can be high. The majority of the population occurs within the Wahluke Unit of the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge. The Wahluke Unit is open for public access in some form in its entirety (USFWS 2008, p. 2–4). The habitat is arid, and vegetation is sparse within the population (Rollins *et al.* 1996, p. 206). The area supporting the population has approximately 10–15 percent total vegetative cover. Species other than White Bluffs bladderpod comprise less than 5 percent cover, and nonnative or invasive plant species comprise less than 1 percent cover (Arnett 2011c, pers. comm.). Much of this area (85 percent) is on public land that is managed as an overlay national wildlife refuge on the Monument, and accessible by vehicle from a nearby State highway. Off-road vehicle (ORV) use can impact the species by crushing

plants, destabilizing the soil, and spreading seeds of invasive plants. Within White Bluffs bladderpod habitat, ORV activity is prohibited on the Hanford Reach National Monument lands, intermittent on other Federal lands, and is most common on private lands. ORV use increases soil disturbance and erosion, and has been observed to destroy White Bluffs bladderpod individuals since this activity more often takes place on the more moderate slopes where the species occurs (Caplow and Beck 1996, p. 42).

Fire threatens White Bluffs bladderpod by directly burning plants and opening new areas to the establishment of invasive species. A large wildfire burned through the northern portion of the population in July 2007. The observed decline in the number of plants counted after the 2007 fire was within a natural range of variability (between highest and lowest counts) determined during survey transects. The 2008–2011 monitoring indicated the negative impacts of the burn were less than expected, since 76 percent of the previous population numbers were observed the following year. However, large-scale wildfires continue to be a threat to the existing population (Newsome pers. comm. 2008; Goldie pers. comm. 2008) by destroying pollinator habitat and facilitating competition with nonnative and invasive plant species that become established in openings created by wildfires.

Therefore, based on the information above, we identify stable bluff formations and caliche-like alkaline soils as a physical and biological feature essential to the conservation for White Bluffs bladderpod. These areas (1) are at a low risk of wildfire, (2) are not open to motorized recreational use, (3) are protected from human-caused trampling, (4) have little or no surface disturbance, (5) are sparsely vegetated (i.e., have 10 to 15 percent total vegetation cover), and (6) are surrounded by native pollinator habitat.

Primary Constituent Elements for White Bluffs Bladderpod

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of White Bluffs bladderpod in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific compositional elements of physical and biological features that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and the habitat characteristics required to sustain the species' life-history process, we have determined that the primary constituent elements specific to White Bluffs bladderpod are:

1. Primary Constituent Element 1—Weathered alkaline paleosols and mixed soils overlying the Ringold Formation. These soils occur within and around the exposed caliche-like cap deposits associated with the White Bluffs of the Ringold Formation, which contain a high percentage of calcium carbonate. These features occur between 210–275 m (700–900 ft) in elevation.
2. Primary Constituent Element 2—Sparsely vegetated habitat (less than 10–15 percent total cover), containing low amounts of nonnative or invasive plant species (less than 1 percent cover).
3. Primary Constituent Element 3—The presence of insect pollinator species.
4. Primary Constituent Element 4—The presence of native shrub steppe habitat within the effective pollinator distance (300 m (approximately 980 ft)).
5. Primary Constituent Element 5—The presence of stable bluff formations with minimal landslide occurrence.

White Bluffs bladderpod occurs only as a single population found within a single location. With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. Because the public can access the White Bluffs bladderpod population, there is increased risk for plants being trampled and the spread of nonnative or invasive plants. To address this concern, the Hanford National Monument may develop a management plan on lands within its jurisdiction to protect the areas proposed as critical habitat for White Bluffs bladderpod, while continuing to allow the public to enjoy the area. Recreational access may be managed and controlled by directing foot traffic away from the species, installing fencing, and establishing appropriate signage for pedestrians and ORV traffic across unprotected boundaries with private and State land.

Special management to protect the proposed critical habitat areas from irrigation-induced landslides could include working with landowners through the U.S. Department of Agriculture (Natural Resources Conservation Service) to support water conservation practices to reduce excessive groundwater charging. This program could be designed to increase water efficiency as a savings and benefit to agricultural producers as well. Management considerations could include coordination with the Bureau of Reclamation to make water delivery to its customers more efficient and route wastewater return such that it reduces groundwater infiltration. Special management to protect the proposed critical habitat area from the effects of wildfire may include preventing or restricting the establishment of invasive, nonnative plant species, post-wildfire restoration with native plant species, and reducing the likelihood of wildfires affecting the nearby plant community components. Many of these actions are already in place, and need only refinement through detailed fire management planning to protect proposed critical habitat by the Monument.

In summary, special management considerations or protections should address activities that would be most likely to result in the loss of White Bluffs bladderpod plants or the disturbance, compaction, or other negative impacts to the species' habitat through landslides or other means. These activities could include, but are not limited to, dispersed recreation, off-road vehicle activity, wildfire, and wildfire suppression activities.

Existing Conservation Measures

The Service has completed a comprehensive conservation plan for the Hanford National Monument that provides a strategy and general conservation measures for rare plants that may benefit White Bluffs bladderpod. This strategy includes support for monitoring, invasive species control, fire prevention, propagation, reintroduction and GIS support (USFWS 2008, pp. 2–64–2–65). The conservation of White Bluffs bladderpod is addressed by acknowledging that protection is needed, and that the plant is required to be addressed in any management action (USFWS 2008, p. 3–95).

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat for the White Bluffs bladderpod

population. The critical habitat area described below constitutes our best assessment of that portion of the landscape that meets the definition of critical habitat for this population. Within this unit, no subunits have been identified. The approximate size and ownership of the proposed White Bluffs critical habitat unit is identified in Table 7. The unit includes both occupied and unoccupied habitat.

TABLE 7—PROPOSED CRITICAL HABITAT AREA FOR WHITE BLUFFS BLADDERPOD

[Area estimates reflect all land within critical habitat unit boundaries; values are rounded to the nearest tenth]

Unit name	Land ownership	Occupied critical habitat in hectares (acres)	Unoccupied critical habitat in hectares (acres)	Percent by ownership	Total hectares (acres)
White Bluffs	Federal	87 (216)	884 (2,184)	84	971 (2,400)
	State	2 (6)	14 (36)	2	17 (42)
	Private	19 (47)	151 (372)	15	170 (419)
	Total	109 (269)	1,049 (2,592)	100	1,158 (2,861)

Effects of Critical Habitat Designation

Section 7 Consultation

Umtanum Desert Buckwheat and White Bluffs Bladderpod

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, the key factor in determining whether an action will destroy or adversely modify critical habitat is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Natural Resources Conservation Service or the Bureau of Reclamation). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the Jeopardy and Adverse Modification Standards

Jeopardy Standard

If either species were listed under the Act, the Service would apply an analytical framework for jeopardy analyses relying heavily on the importance of habitat parameters at known population sites essential to the species' survival and recovery. The Service would focus its section 7(a)(2) analysis not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery.

Generally, the jeopardy analysis would focus on the rangewide status of Umtanum desert buckwheat or White Bluffs bladderpod, the factors responsible for those conditions, and what is necessary for the species to survive and recover. An emphasis would also be placed on characterizing the conditions of these species and their habitat in the area that would be affected by a proposed Federal action, and the role of affected populations in the survival and recovery of either Umtanum desert buckwheat or White Bluffs bladderpod. That context would then be used to determine the significance of the adverse and beneficial effects of the proposed Federal action, and any cumulative effects for purposes of making the jeopardy determination.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of the critical habitat for Umtanum desert buckwheat or White Bluffs bladderpod. As discussed above, the role of critical habitat is to support the various life-history needs and provide for the conservation of both species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for Umtanum desert buckwheat or White Bluffs bladderpod include, but are not limited to:

(1) Actions within or near designated critical habitat areas that would result in the loss, disturbance, or compaction of unique soils at cliff breaks, slopes, and flat to gently sloping upper surface areas. Such activities could include, but are not limited to:

- Recreational activities and associated infrastructure;
- Off-road vehicle activity;
- Dispersed recreation;
- New road construction or widening or existing road maintenance;
- New energy transmission lines, or expansion of existing energy transmission lines;
- Maintenance of existing energy transmission line corridors;
- Wildfire suppression and post-wildfire rehabilitation activities;
- Activities that result in the burial of seeds such that germinants do not successfully reach the soil surface to flower and set seed;
- Activities that result in compaction that smoothes the surface, causing seeds to be carried away by wind or water due to the lack of rough surface textures to capture seed;
- Activities that result in changes in soil composition leading to changes in the vegetation composition, such as an increase in invasive, nonnative plant cover within and adjacent to cliff break microsites, resulting in decreased density or vigor of individual Umtanum desert buckwheat or White Bluffs bladderpod plants; and
- Activities that result in changes in soil permeability and increased runoff that degrades, reduces, or eliminates habitat necessary for growth and reproduction of either species.

(2) Actions within or near designated critical habitat areas that would result in the significant alteration of intact, native, sagebrush-steppe habitat within the range of Umtanum desert buckwheat or White Bluffs bladderpod. Such activities could include:

- ORV activities and dispersed recreation;
- New road construction or widening or existing road maintenance;
- New energy transmission lines or expansion of existing energy transmission lines;
- Maintenance of existing energy transmission line corridors;
- Fuels management projects such as prescribed burning; and
- Rehabilitation or restoration activities using plant species that may compete with Umtanum desert buckwheat or White Bluffs bladderpod, or not adequately address habitat requirements for insect pollinators.

These activities could result in the replacement or fragmentation of sagebrush-steppe habitat through the degradation or loss of native shrubs, grasses, and forbs in a manner that promotes increased wildfire frequency and intensity, and an increase in the cover of invasive, nonnative plant species that would compete for soil matrix components and moisture necessary to support the growth and reproduction of either species.

(3) Actions within or near designated critical habitat that would significantly reduce pollination or seed set (reproduction). Such activities could include, but are not limited to:

- Recreational development and associated infrastructure; and
- Use of pesticides, mowing, fuels management projects such as prescribed burning, and post-wildfire rehabilitation activities using plant species that may compete with Umtanum desert buckwheat or White Bluffs bladderpod.

These activities could prevent or reduce successful reproduction by removal or destruction of reproductive plant parts and could impact the habitat needs of generalist insect pollinators through habitat degradation and fragmentation, reducing the availability of insect pollinators for either species.

The occupied areas proposed as critical habitat contain the physical and biological features essential to the conservation of Umtanum desert buckwheat and White Bluffs bladderpod, and are within the historical geographic range of the species. The unoccupied areas are essential to the conservation of the species because they provide areas needed by insect pollinators. Federal agencies would need to consult with us to ensure that their actions do not jeopardize the continued existence of the species, or adversely affect designated critical habitat, if the species are listed under the Act.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat

enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no DOD lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider all relevant impacts, including economic impacts. In compliance with section 4(b)(2) of the Act, we have prepared a draft analysis of the economic impacts of this proposed designation of critical habitat (DEA), which is available as supporting information for the proposed critical habitat designation. This document is available for downloading from the Internet at *http://www.regulations.gov,* or from the Washington Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). The DEA evaluates potential economic impacts of the designation, considering land ownership, reasonably foreseeable land use activities, potential Federal agency actions within the area and section 7 consultation requirements, baseline conservation measures (i.e., measures that would be implemented regardless of the critical habitat designation), and incremental conservation measures (i.e., measures that would be attributed exclusively to the critical habitat designation).

The DEA concludes that incremental economic impacts are unlikely, given the species' narrow geographic range and the fact that any economic impacts related to conservation efforts to avoid adverse modification or destruction of critical habitat would be, for the most part, indistinguishable from those that would be required because of the listing of the species under the Act. Although unoccupied critical habitat areas are typically where incremental effects would be expected, in this case unoccupied critical habitat areas that support insect pollinators are immediately adjacent to occupied critical habitat. The effects of an action in occupied critical habitat would be analyzed concurrently with regard to its effects to unoccupied critical habitat. We anticipate that, in most cases, conservation recommendations or conservation recommendations would be identical, regardless of the critical habitat type. The DEA concludes that any incremental costs would be limited to additional administrative costs that would be borne by Federal agencies associated with section 7 consultations. During the development of the final designation, we will consider economic impacts, public comments, and other new information. Certain areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and or implementing regulations at 50 CFR 424.19.

At this time, we are not proposing any exclusions of areas from critical habitat under section 4(b)(2) of the Act for Umtanum desert buckwheat or White Bluffs bladderpod. During the comment period for the proposed designation of critical habitat, we will consider any available information about areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act, including whether the benefits of exclusion would outweigh the benefits of their inclusion and whether exclusion would or would not result in the extinction of the species. We are specifically asking for public comment on the benefits of exclusion versus inclusion of private lands in the designation of critical habitat, and will determine whether any such lands may merit exclusion from the designation under section 4(b)(2) of the Act. Furthermore, we will evaluate all comments provided during the public comment period of this proposed rule on whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for either of the species are not owned or managed by the DOD and, therefore, we anticipate no impact to national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any Habitat Conservation Plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans that specifically address management needs for either of the species, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy published in the **Federal Register** on

July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment, during this public comment period, on the specific assumptions and conclusions regarding the proposal to list Umtanum desert buckwheat and White Bluffs bladderpod as threatened, and our proposed determinations regarding critical habitat for these species.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

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. OIRA 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.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

To determine if the proposed designation of critical habitat for Umtanum desert buckwheat or White Bluffs bladderpod would affect a substantial number of small entities, we considered the potential number of small entities potentially affected within the particular types of economic activities most likely to be affected. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Since the predominant private land use that could be impacted by the proposed critical habitat designation for White Bluffs bladderpod appears to be irrigated agriculture, we focused our RFA and SBREFA analyses to that particular activity. The proposed designation is focused on Federal, State, and private lands that contain occupied habitat and the adjacent areas with native shrub steppe vegetation that provides nearby habitat for insect pollinators. Lands that are under agricultural use are not included in the proposed critical habitat designation.

In 2007, Franklin County, Washington, had 891 farms, which encompassed 246,664 ha (609,046 ac) and had an average farm size of 277 ha (684 ac, (*http://www.co.franklin.wa.us/assessor/demo_countywide.html*). The Franklin County data indicates that 393,025 acres were in irrigated agriculture. The market value of agricultural products sold was $467 million, and the net cash return from agricultural sales was $116.8 million. For purposes of this analysis, we assumed the entire critical habitat designation proposed on private lands (170 ha (419 ac)) could be used for irrigated agriculture, to determine the scope of maximum impact for the proposed designation on small entities (i.e., the worst-case scenario). Although the DEA does not differentiate between the acreage most likely suitable for agricultural use and the acreage not suitable for such use, much of the 170 ha (419 ac) is steep, and contains numerous cliffs, high gradient draws, and areas of active and dormant soil fracturing and sloughing. Accordingly, the DEA represents an upper bound, and likely overstates the potential economic impacts to small entities.

Based on Franklin County, Washington 2007 data, the proposed designation would overlay approximately 1/10 of 1 percent of the total irrigated acres (159,175 ha (393,025 ac)) in the county. Approximately 65 percent of the total land in farms (609,046 acres) consists of irrigated acreage (393,025 acres). The 2007 irrigated-acres value would proportionally represent approximately $304 million of the total market value of all agricultural products sold ($467 million). Each irrigated acre, therefore, proportionally represents approximately $724 in value/year, based on the 2007 data. Based on this calculation, the maximum economic impact for the entire 419 acres of private land proposed as critical habitat would be $303,559 if all acreage were conducive to and planned for irrigation agricultural use. However, since much of this acreage is not suitable for agriculture based on topography, the actual economic impact would likely be considerably less. Based on this analysis (see Table 6), the proposed designation of critical habitat within the 419 acres of private property would not have a significant economic impact on a substantial number of small entities. Since the average size of a farm in Franklin County, Washington, is 277 ha (684 ac), 170 ha (419 ac) represents approximately 61 percent of the size of one average farm; there are 891 farms in the County. Each private property acre within the proposed critical habitat designation potentially represents approximately $724 in annual value based on 2007 data, although a substantial percentage of this acreage is

not conducive to agricultural use because of steep topography and erosion potential. In addition, the designation of critical habitat would not affect private property unless a proposed development activity required Federal authorization or involved Federal funding, which is uncertain.

TABLE 8—POTENTIAL UPPER BOUND ECONOMIC IMPACT TO PRIVATE LAND OF THE PROPOSED CRITICAL HABITAT DESIGNATION FOR WHITE BLUFFS BLADDERPOD *

Description	Variable	Value
1. Total land in farms (acres)	(a)	609,046
2. Lands in irrigated farms (acres)	(b)	393,025
3. Market value agricultural products sold	(c)	$467,014,000
4. Net cash return from agricultural sales	(d)	$116,803,000
5. Proposed critical habitat acres	(e)	419
6. Percent of (a) represented by (b): [(b) ÷ (a)]	(f)	65%
7. Proportional (d) represented by (b): [(b) × 0.65]	(g)	$303,559,100
8. Percentage of (b) represented by (e): [(e) ÷ (b)]	(h)	0.001%
9. Proportional value of (g) represented by (e): [(g) × (h)]	(i)	$303,559
10. Proportional value (i) per acre (e): [(i) ÷ (e)]	(j)	$724

* Based on 2007 Franklin County tax assessor data.

Other than the above 170 ha (419 ac), the remainder of the areas proposed as critical habitat for White Bluffs bladderpod are either on State or Federal lands, and the proposed critical habitat designation for Umtanum desert buckwheat is entirely on Federal land. Federal and State governments are not considered small entities for purposes of our RFA analysis.

Based on the best available scientific and commercial data, we have not identified a significant number of small entities that may be impacted by the proposed critical habitat designation, based on land ownership information. Small entities are consequently anticipated to bear a relatively low cost impact as a result of the designation of critical habitat for Umtanum desert buckwheat or White Bluffs bladderpod. Accordingly, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Seventeen high-voltage transmission lines cross the Monument boundaries, 11 of which cross the Hanford Reach. There are also two electric substations and several microwave towers located within the Monument boundaries. Periodic patrols and 24-hour access for emergency replacement of failed equipment are required for these facilities, and lines are patrolled by helicopter usually three times each year to assess potential problem areas. Helicopters may also be used in lieu of ground vehicles for maintenance or repairs (FWS 2008, p. 3–168). Other than an existing Bonneville Power Administration (BPA) overhead transmission line near the Umtanum desert buckwheat population on lands administered by the Department of Energy (DOE), there are no energy facilities within the footprint of the proposed critical habitat boundaries. The BPA has existing agreements with the DOE (the agency managing the land where the Umtanum desert buckwheat population occurs) for management of transmission line rights-of-way, access roads, microwave tower lines-of-sight, electric power substations, and other sites. The BPA will likely need to expand its existing transmission system in the vicinity of the Monument to meet future needs for moving electricity from generation sources in Montana, northern Idaho, and northeastern Washington to load centers in the Pacific Northwest.

Any activities related to transmission system expansion would first require study and analysis under the National Environmental Policy Act and coordination with the DOE and FWS to ensure protection of the Monument's natural and cultural resources (USFWS 2008, p. 3–169). This analysis would be required regardless of the designation of critical habitat for Umtanum desert buckwheat or White Bluffs bladderpod. However, we have no information indicating that new energy projects are planned for areas within the boundaries of the proposed critical habitat units, or that any of the maintenance activities described above would affect either the Umtanum desert buckwheat or White Bluffs bladderpod populations. Accordingly, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. Any comments received addressing energy supply will be fully considered and addressed in the final rule. The DOE Richland Operations Office is supportive of the Service's efforts to list Umtanum desert buckwheat under the Act (DOE 2011).

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were:

Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat designation are predominantly owned by the Department of Energy and the Department of the Interior. These government entities do not fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. We do not anticipate that property values will be affected by the critical habitat designation, but will fully consider all comments in this regard. We will revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment, based on those comments, if needed.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with the appropriate State resource agencies in Washington. The designation of critical habitat in areas currently occupied by Umtanum desert buckwheat and White Bluffs bladderpod may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of both Umtanum desert buckwheat and White Bluffs bladderpod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

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 us comments by one of the methods listed in the **ADDRESSES** section above. To better help us revise the rule, your comments 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'', we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Native American Indian culture, and to make information available to Tribes. Neither Umtanum desert buckwheat nor White Bluffs bladderpod occurs on Tribal lands, and there are no unoccupied areas essential to the conservation of either species on Tribal lands. Therefore, we are not proposing any Tribal lands as critical habitat for either Umtanum desert buckwheat or White Bluffs bladderpod. The Confederated Tribes and Bands of the Yakima Nation indicated they have interest in protecting and managing resources occurring in the Ceded Territories designated under the Treaty of 1855. The Tribe submitted a letter stating they are supportive of the proposed ''Federal special status listing'' of Umtanum desert buckwheat and White Bluffs bladderpod.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov,* or upon request from the Manager, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this proposed rule are the staff members of the Central Washington Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding entries for ''*Eriogonum codium''* (Umtanum desert buckwheat) and ''*Physaria douglasii* subsp. *tuplashensis*'' (White Bluffs bladderpod) to the List of Endangered and Threatened Plants in alphabetical order under Flowering Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Eriogonum codium	Umtanum desert buckwheat.	U.S.A. (WA)	Polygonaceae	T		17.96(a)	NA
*	*	*	*	*	*		*
Physaria douglasii subsp. *Tuplashensis*.	White Bluffs bladderpod.	U.S.A. (WA)	Brassicaceae	T		17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, amend paragraph (a) by adding an entry for ''*Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod)'' in alphabetical order under Family Brassicaceae and an entry for ''*Eriogonum codium* (Umtanum desert buckwheat)'' in alphabetical order under Family Polygonaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Physaria douglasii* subsp. *tuplahensis* (White Bluffs bladderpod)

(1) The critical habitat unit is depicted for Franklin County, Washington, on the map at paragraph (5) of this entry.

(2) The primary constituent elements of the physical and biological features essential to the conservation of critical habitat for *Physaria douglasii* subsp. *tuplashensis* are the following:

(i) Weathered alkaline paleosols and mixed soils overlying the Ringold Formation. These soils occur within and around the exposed caliche-like cap deposits associated with the White Bluffs of the Ringold Formation, which contain a high percentage of calcium carbonate. These features occur between 210–275 m (700–900 ft) in elevation.

(ii) Sparsely vegetated habitat (less than 10–15 percent total cover), containing low amounts of nonnative or invasive plant species (less than 1 percent cover).

(iii) The presence of insect pollinator species.

(iv) The presence of native shrub steppe habitat within the effective pollinator distance (300 m (approximately 980 ft)).

(v) The presence of stable bluff formations with minimal landslide occurrence.

(3) Critical habitat does not include irrigated private lands or manmade structures (such as buildings, pavement, or other structures) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) This critical habitat unit was mapped using Universal Transverse Mercator, Zone 11, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices of the unit boundaries.

(5) **Note:** Map of critical habitat for *Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod) follows:

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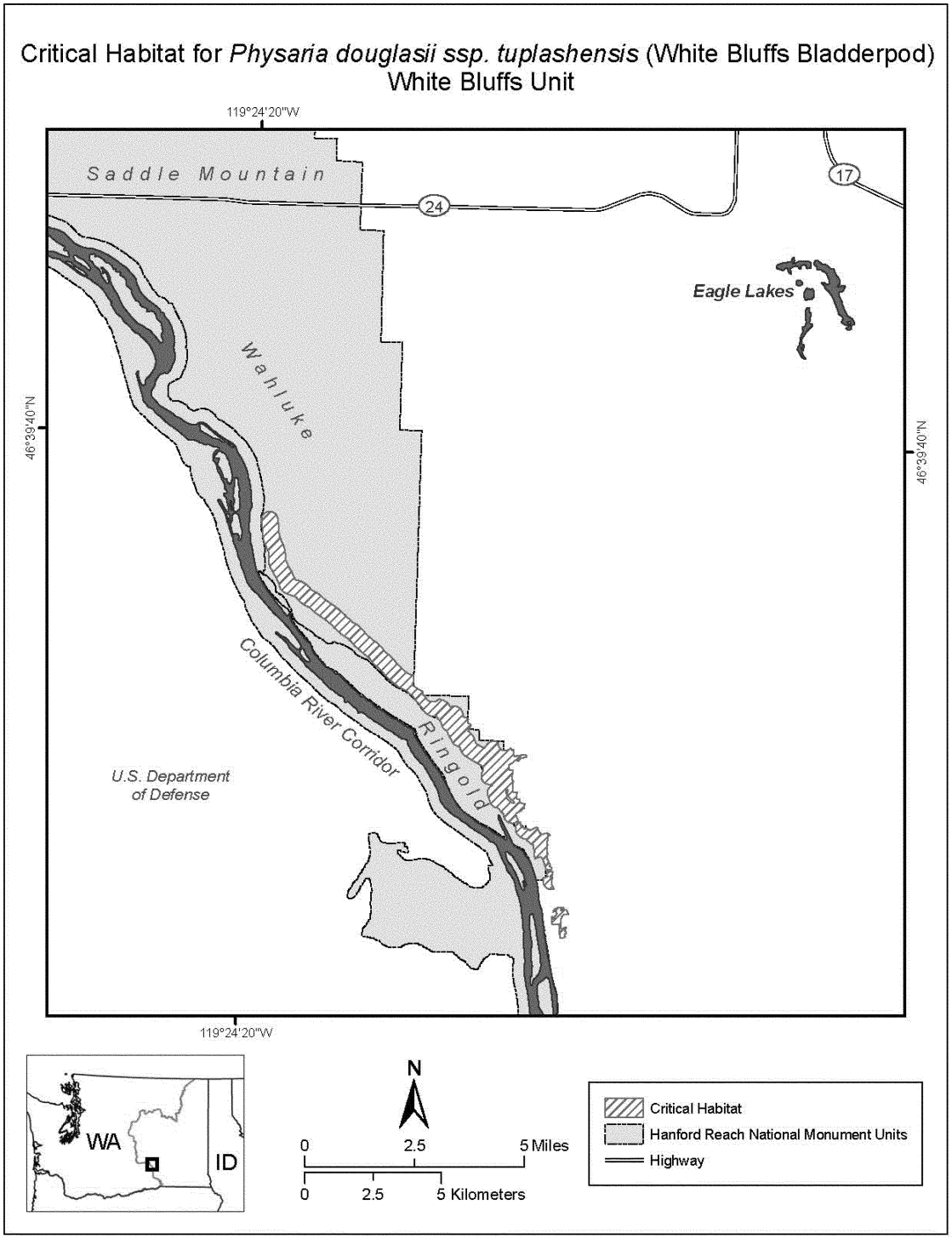


* * * * *

Family Polygonaceae: *Eriogonum codium* (Umtanum desert buckwheat)

(1) The critical habitat unit is depicted for Benton County, Washington, on the map at paragraph (5) of this entry.

(2) The primary constituent elements of the physical and biological features essential to the conservation of *Eriogonum codium* are the following:

(i) North- to northeast-facing, weathered basalt cliffs of the Wanapum Formation at the far eastern end of Umtanum Ridge in Benton County that contain outcrops, cliff breaks, slopes, and flat or gently sloping cliff tops with exposed pebble and gravel soils.

(ii) Pebbly lithosol talus soils derived from surface weathering of the top of the Lolo Flow of the Priest Rapids Member of the Wanapum Formation.

(iii) Sparsely vegetated habitat (less than 10 percent total cover), containing low amounts of nonnative or invasive plant species (less than 1 percent cover).

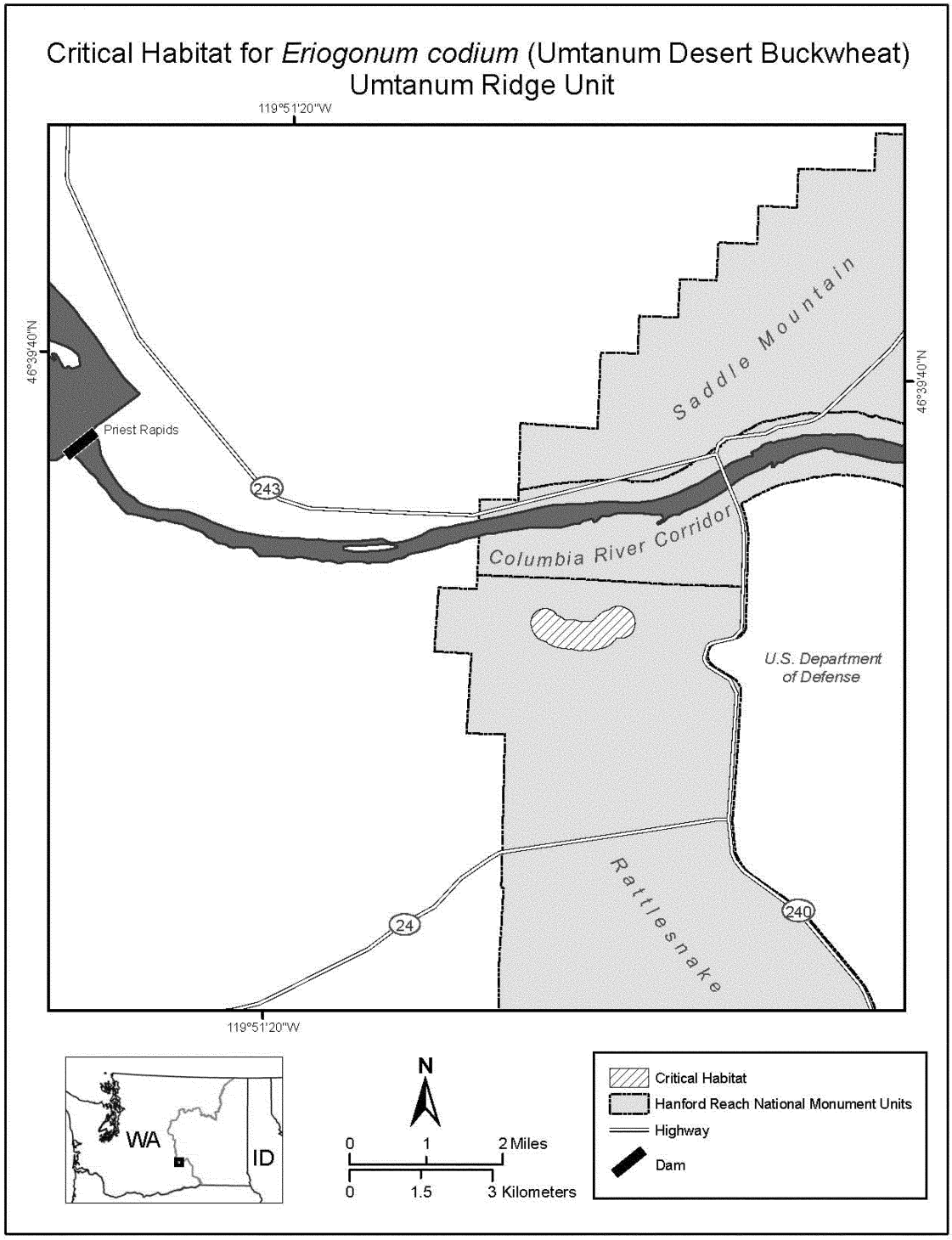
(iv) The presence of insect pollinator species.

(v) The presence of native shrub steppe habitat within the effective pollinator distance (300 m (approximately 980 ft)) around the population.

(3) Critical habitat does not include manmade structures (such as buildings, pavement, or other structures) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) This critical habitat unit was mapped using Universal Transverse Mercator, Zone 11, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices of the unit boundaries.

(5) **Note:** Map of critical habitat for *Eriogonum codium* (Umtanum desert buckwheat) follows:



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Dated: April 24, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–11100 Filed 5–14–12; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Parts 5, 982, and 983

The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 982, and 983

[Docket No. FR–5242–P–01]

The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HERA, enacted into law on July 30, 2008, made comprehensive and significant reforms to several HUD programs, including HUD's Public Housing, Section 8 Tenant-Based Voucher, and Project-Based Voucher programs. On November 24, 2008, HUD published a notice that provided information about the applicability of certain HERA provisions to these programs. The notice identified: (1) Those statutory provisions that are self-executing and required no action on the part of HUD for the program changes made by HERA to be implemented; and (2) those statutory provisions that require new regulations or regulatory changes by HUD for the HERA provisions to be implemented. The notice also offered the opportunity for public comment on the guidance provided.

This proposed rule follows the November 24, 2008, notice for the purpose of establishing, in regulation, the reforms made to HERA as discussed in that notice, and to make other related regulatory changes. This proposed rule would make conforming changes to the regulations of the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs to reflect the self-executing provisions of HERA, and would also amend the regulations required to implement those statutory provisions of HERA that are not self-implementing. Additionally, this rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. While the conforming and clarifying changes are not implementing new policy, HUD nevertheless welcomes comment on the clarity and comprehensibility of the language proposed to be codified. This rule also takes into consideration the two public comments received in response to issuance of the November 2008 notice, and solicits additional public comment.

HERA changes affecting the public housing program are being addressed by separate rulemaking.

DATES: *Comment Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing and Voucher programs, contact Danielle Bastarache, Director, Office of Voucher Programs, Office of Public and Indian Housing, Room 4226, telephone number 202–401–3882. The address is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HERA (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) made several changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that affect programs administered by HUD's Office of Public and Indian Housing (PIH), including, but not limited to, changes to the definition of income, which also affect the Office of Housing's project-based assistance programs; the public housing agency (PHA) plan; the voucher program; and the capital and operating funds with respect to emergency funds.

HUD published a notice in the **Federal Register** on November 24, 2008, at 72 FR 71037, that provided information about the applicability of the 1937 Act provisions amended by HERA to HUD's Public Housing, Section 8 Tenant-Based Voucher, and Section 8 Project-Based Voucher programs. To assist PHAs and assisted housing providers, the notice identified those provisions that are self-executing and required no action on the part of HUD for the program changes to be implemented, and those provisions that require new regulations or regulatory changes by HUD to be implemented. The notice also solicited public comment. This proposed rule follows the November 24, 2008, notice for the purpose of: (1) Establishing, in regulation, the reforms made by HERA to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs as discussed in the notice, taking into consideration public comment received on the notice, and (2) making other related regulatory changes, as discussed below.

Whether the HERA program changes are self-executing or not self-executing, a rule is necessary to ensure that the

codified regulations for the programs affected reflect the HERA changes. In some cases, the regulatory change is simply a conforming change; that is, the regulatory revisions conform the language of the regulation to the language of the 1937 Act, as amended by HERA. In other cases, however, HUD was required to exercise some discretionary authority to determine how the statutory change should be implemented.

With respect to the conforming regulatory changes, a conforming change does not necessarily mean that HUD is adopting in regulation the statutory language verbatim. For purposes of clarity or to give precision to the statutory language or statutory intent, the conforming regulatory change may be worded differently than the statutory language. However, any regulatory change to the statutory language should not be interpreted as any reversal in HUD's position that the statutory language is self-executing. Nevertheless, once promulgated in final, the regulatory language, with any precision given to the statutory language, will govern implementation of these statutory provisions by PHAs.

In discussing the regulatory changes proposed to be made by this rule, the preamble to this rule follows the HERA overview provided in the November 24, 2008, notice, which, as noted earlier, identified the HERA provisions that would require conforming rule changes and those that would require implementing regulations.

II. This Proposed Rule

Income Regulations in 24 CFR Part 5

Annual Income (24 CFR 5.609(c)(14))—Conforming Change. Section 2608 of Title VI of Division B of HERA amends the definition of ''annual income'' in section 3(b)(4) of the 1937 Act to exclude, from the definition of income, any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump-sum amount or in prospective monthly amounts. The November 24, 2008, notice advised that this provision was self-executing; that is, as of the effective date of HERA, July 30, 2008, such benefits are not to be included for purposes of determining the annual income of an applicant for or recipient of benefits under the 1937 Act.

This income exclusion made by HERA is similar to the existing exclusion for deferred periodic amounts from Supplemental Security Income and Social Security benefits under 24 CFR 5.609(c)(14). Although the full amount of periodic Social Security payments is included in the amounts that constitute annual income in 24 CFR 5.609(b)(4), the deferred amount resulting from the delayed start of the periodic payment is not included in annual income. Accordingly, the full amount of periodic VA disability benefit payments continues to be included in amounts that constitute annual income in 24 CFR 5.609(b)(4), but the deferred amount resulting from the delayed start of the disability payments will not be included in annual income.

The November 24, 2008, notice advised that a payment qualifies as a VA disability benefit if it is identified as a disability benefit in the VA benefit award letter, regardless of whether or not the family member who is the beneficiary of the award would qualify as a person with disabilities under HUD's regulations. The November 24, 2008, notice also advised that for existing residents or tenants, including those residing in project-based assisted housing administered by HUD's Office of Housing, the new exclusion for deferred payments will be made applicable at the time of annual reexamination of income, or at the time of interim reexamination of income.

This rule makes a conforming change to 24 CFR 5.609 to include the VA disability benefits with the exclusion from income for deferred Social Security benefits in § 5.609(c)(14).

Section 8 Tenant-Based Assistance: Housing Choice Voucher Program Regulations

Rent to Owner: Reasonable Rent (24 CFR 982.507)—Conforming and Correcting Change. Subtitle B of Title VIII of HERA (sections 2831 through 2835) makes several changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. As one of these changes, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) or assistance under the HOME Investments Partnerships (HOME) program is streamlined by section 2835(a)(2) of HERA, which adds section 8(o)(10)(F) to the 1937 Act.

Under this new section of the 1937 Act, a rent comparison with unassisted local market units is not required for such dwelling units, if the rent does not exceed the rent for other LIHTC or HOME-assisted units in the project, that are not occupied by families with tenant-based assistance. The rent is to be considered reasonable if it does not exceed the greater of: (1) The rent for other LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance, and (2) the payment standard established by a PHA for a unit of the size involved.

Because HUD is undertaking separate rulemaking for the HOME program, § 982.507 makes only a conforming change to the regulations with respect to LIHTC-assisted units. Following the addressing of this issue through a HOME program rulemaking, namely, HOME rents for nonvoucher families in the HOME program regulations, § 982.507(c) will be amended accordingly. With this rule, § 982.507(c) provides that if the rent requested by the owner exceeds the LIHTC rents for nonvoucher families, the PHA must perform a rent comparability study in accordance with program regulations, and the rent shall not exceed the lesser of the: (1) Reasonable rent as determined pursuant to a rent comparability study, and (2) the payment standard established by the PHA for the unit size involved.

Section 8 Project-Based Voucher Program Regulations

Section 2835(a)(1) of HERA makes several changes to the section 8 project-based voucher (PBV) program established by section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f(o)(13)) and for which the regulations are found at 24 CFR part 983. The changes are as follows:

Applicability of the Tenant-Based Voucher Rule (24 CFR 983.2)—Conforming Change. This proposed rule would remove the reference to cooperative housing from § 983.2. Section 983.2(b) lists regulatory provisions under the tenant-based rule at 24 CFR part 982 that do not apply to the PBV program, including special housing types. Since, pursuant to section 2835(a)(1)(F) of HERA, cooperative housing is an eligible housing type under the PBV program, the inclusion of cooperative housing under § 983.2(b) and § 983.2(c)(7)(ii) is outdated. Additionally, this proposed rule would correct a citation error in § 983.2(c)(2)(i): The reference to owner termination of tenancy, should be § 982.310, not § 982.10. The proposed rule would include additional references to regulations in 24 CFR part 982, subpart M, that are not applicable to PBV assistance in § 983.2(c)(7)(i).

PBV Definitions (24 CFR 983.3)—Proposed New Definitions and Clarifying Changes. This proposed rule would add definitions for the following terms: ''housing credit agency'', ''project'', ''project-based certificate program'', and ''release of funds''. The proposed rule would revise the

definitions of ''excepted units (units in a multifamily building not counted against the 25 percent cap)'', ''existing housing'', ''partially assisted building'', ''premises'', and ''qualifying families (for purposes of exception to the 25 percent per building cap)''. The reasons for revising the definition of ''existing housing'' are discussed below. The other terms are revised in order to reflect HERA's amendment to section 8(o) of the 1937 Act to substitute the term ''project'' for ''building''. The definition of ''special housing type'' is also proposed to be revised, for the same reasons provided concerning the conforming change made to § 983.2; namely, in order to remove reference to cooperative housing from the applicability of the regulations of 24 CFR part 982, subpart M.

The definition of ''existing housing'' is proposed to be revised for the purpose of establishing clear and measurable standards in determining whether a proposed project is eligible for selection as existing housing. The definition is intended to address the potential circumvention of rehabilitation program requirements by selecting a project as existing housing when rehabilitation will be performed on the project shortly after execution of the housing assistance payment (HAP) contract. This rule proposes to revise the definition of ''existing housing'' to read as follows:

Existing housing. A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the unit:

(1) Will comply with HQS within 60 days of the date of such selection, and the total amount of work that must be performed to cause the unit to comply with HQS does not exceed $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems); and

(2) There is no plan to perform rehabilitation work on the unit within one year after HAP contract execution that would cause the unit to be in noncompliance with HQS and that would total more than $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems).

This rule proposes to remove the definition of ''state-certified appraiser''. As discussed later in this preamble under the discussion of proposed changes to § 983.59, HUD determined that a formal appraisal of the property is no longer necessary.

Description of the PBV Program (24 CFR 983.5)—Transparency and Information Collection Change. This rule amends § 983.5(c) to provide that although a PHA has the discretion to decide whether to operate a PBV program (and this rule does not remove that authority), the PHA must notify HUD of its intent to project-base its vouchers. The notification requirement is added to § 983.6, as discussed immediately below. The advance notification is consistent with the transparency/notification requirements found in § 983.6(c) and § 983.51 (Owner Proposal Selections Procedures).

Maximum Amount of PBV Assistance (24 CFR 983.6)—Transparency and Information Collection Change. As noted above, § 983.6 is amended to require the PHA to provide advance notification to HUD of the PHA's intent to project-base its vouchers. The purposes of this proposed amendment is to ensure that PHAs do not exceed the 20 percent limitation on project-basing vouchers that is imposed by statute.

Special Housing Types (24 CFR 983.9)—Conforming Change. Consistent with the regulatory changes to § 983.3 described above, the proposed rule makes a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program in accordance with 24 CFR part 982, subpart M. Section 983.9 is also amended to clarify which regulatory provisions in part 982, subpart M, are not applicable to cooperative housing under the PBV program.

Project-Based Certificate (PBC) Program (24 CFR 983.10)—Conforming Change. Section 6904 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, approved May 7, 2007) provides that a PHA may renew or extend (hereafter, collectively referred to as renew) PBC HAP contracts as PBV HAP contracts, under certain conditions. Specifically, such renewals are permitted provided that the initial PBV HAP contract is for a term of up to 15 years [1] and that the rents for the renewed contract are calculated in accordance with section 8(o)(13)(H) of the 1937 Act and HUD's regulations at 24 CFR 983.301 through 983.305. In addition, section 8(o)(13(C) of the 1937 Act (entitled ''Consistency with PHA Plan and Other Goals) and section 8(o)(13)(D) of the 1937 Act (entitled ''Income Mixing Requirements'') do not apply to renewal of PBC contracts as PBV contracts, and this proposed rule would make this conforming change.[2]

Owner Proposal Selection Procedures (24 CFR 983.51)—Conforming Change. This proposed rule would revise paragraph (a) of this section to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA to section 8(o) of the 1937 Act. Additionally, the proposed rule slightly rewords paragraph (b)(2) of this section to further clarify that a PHA may select, without competition, a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that required a competition for the selection of proposals; that is, the PHA need not conduct another competition.

HUD notes that § 983.51(e) provides, in relevant part, that ''under no circumstances may PBV assistance be used with a public housing unit.'' HUD makes no changes to this section but finds that it is important to reiterate the basis for this requirement as provided by HUD in the PBV program final rule published on October 13, 2005, at 70 FR 59892. HUD stated in relevant part as follows:

> The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is not permissible by law to combine voucher funds with public housing funds. * * * If Capital Funds (including Replacement Housing Factor Fund Grants) or Section 24 funds are used in the development of affordable housing, pro-ration must occur. For example, if a project receives $2,000 in non-public housing HOPE VI funds and $1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program. (See 70 FR 59900.)

Housing Type (24 CFR 983.52)—Proposed Change. This regulatory section provides standards by which a unit will be considered an existing unit for purposes of the PBV program. This section, as proposed to be revised, would provide that a unit must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA. This section would also limit the total amount of work that must be performed to

[1] Section 8(o)(13)(F), entitled ''Contract Term,'' was amended by section 2835(a)(1)(B) of HERA, which extended the contract term eligible for renewal from up to 10 years to up to 15 years. (See 42 U.S.C. 1473(o)(13)(F).)

[2] HUD issued PIH Notices 2008–14 and 2010–08 implementing the provisions of Public Law 110–28. PHAs are currently renewing PBC HAP contracts in accordance with the HUD directives. Therefore, the regulatory change is conforming in nature, reflecting practices already in effect.

facilitate compliance with HQS to $1,000 per assisted unit. Additionally, the proposed rule provides that to be considered an existing unit for purposes of the PBV program, the owner must not plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than $1,000 per assisted unit. The reason for the proposed change to § 983.52 is to provide a clear and measurable standard as to what constitutes ''existing housing'' as discussed above under the changes to the PBV Definitions (24 CFR 983.3).

Prohibition of Assistance for Ineligible Units (24 CFR 983.53)—Conforming Change. Section 2835(a)(1)(F) of HERA added a new section 8(o)(13)(L) to the 1937 Act to allow PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects. The authority for units in high-rise elevator projects specifically states it may be exercised without review and approval by HUD. The November 24, 2008, notice advised that the provision is self-implementing. This proposed rule would make conforming changes to § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

Prohibition of Excess Public Assistance (24 CFR 983.55)—Conforming Change. Section 2835(a)(1)(F) of HERA provides relief from certain review requirements by adding section 8(o)(13)(M) to the 1937 Act. New section 8(o)(13)(M)(i) removes the requirement to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if such a review has been conducted by the applicable state or local agency. The November 24, 2008, notice advised that the provision is self-implementing for existing housing, but not for newly constructed or rehabilitated housing.

This proposed rule would make a conforming change to § 983.55 to clarify that the subsidy layering requirements are not applicable to existing housing. The November 24, 2008, notice further advised that HUD would be issuing guidance on how such reviews must be conducted for newly constructed or rehabilitated housing. The Office of Public and Indian Housing (PIH) has issued guidelines on subsidy layering requirements for the PBV program. (See HUD's notice published in the **Federal Register** on July 9, 2010, at 75 FR 39561.)

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56)—Conforming Change. Prior to amendment by section 2835(a)(1)(A) of HERA, PBV assistance was limited to 25 percent of the units in a building. This cap in section 8(o)(13)(D)(i) of the 1937 Act is amended by replacing the term ''building'' with the term ''project,'' which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The November 24, 2008, notice advised that this substitution in terminology was self-implementing and that HUD would make a conforming change to its regulations at 24 CFR 983.56 to reflect the new terminology.

This proposed rule would make a conforming change to § 983.56, and HUD is also adding the statutory definition of ''project'' to the definitions in 24 CFR 983.3, as discussed earlier in this preamble. Additionally, this proposed rule would clarify that the exception to the 25 percent cap on the number of PBV units in a project includes units for the elderly and/or persons with disabilities; that is, a project for the elderly, a project for persons with disabilities, or a project that serves both categories of tenants.

With respect to the definition of ''project'', HUD specifically requested comment in the November 24, 2008, notice on the impact on deconcentration efforts concerning the change in terms from ''building'' to ''project''. One of the commenters requested that HUD's conforming rule clarify that a PHA has the discretion to apply the definition of ''project'' to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. HUD interprets ''project'' to apply to all of these structures, and a PHA must consider the entire definition and apply this definition to the proposed PBV units. HUD also interprets the term ''contiguous'' in the statutory definition of ''project'' to include ''adjacent to'', as well as touching along a boundary or a point.

Another commenter expressed concern that the change in definition to ''project'' would allow PBV owners to set aside separate floors of mixed-occupancy buildings solely for PBV residents with disabilities. The commenter noted that the civil rights authorities prohibit unlawful segregation, not only of race but of disability as well. The commenter requested that HUD issue regulations directing PHAs to adopt written policies to forbid segregation in PBV projects.

It is HUD's view that nothing in HERA or in this proposed rule would alter a PHA's responsibility to adhere to nondiscrimination requirements. Given that PHAs already have the responsibility to adhere to civil rights and nondiscrimination requirements, including, but not limited to, the express integration mandate set forth at 24 CFR 8.4(d), HUD determined that further regulation is not necessary in this area. However, HUD will remain diligent in its oversight responsibilities regarding compliance with civil rights requirements.

In addition to the foregoing changes, the proposed rule would add a new paragraph (b)(3) to make explicit that exception categories in a multifamily housing project may be combined. The exception categories in a multifamily housing project refers to those units that are occupied by elderly families and/or families with disabilities and/or families receiving supportive services and that are exempt from the overall 25 percent cap. New paragraph (b)(3) is intended to remove any ambiguity that the exception categories can be combined in determining the number of units that are exempt from the 25 percent cap.

Environmental Review (24 CFR 983.58)—Informational Change. As stated in the November 24, 2008, notice, in addition to removal of the requirement for a subsidy layering review for existing housing, section 8(o)(13)(M)(ii) of the 1937 Act relieves a PHA from undertaking an environmental review for an existing structure, except to the extent that such a review is otherwise required by law or regulation. HUD specifically solicited comment on this HERA amendment in the November 2008 notice, but did not receive any public comment on this issue.

HUD notes that any federally required environmental review is ''required by law or regulation.'' Given this, there do not appear to be any federally required environmental reviews that would be eliminated by this provision. HUD also notes that under its regulations in 24 CFR part 58, federal environmental reviews are undertaken by responsible entities (usually units of general local governments), and not by PHAs.

Accordingly, no changes are proposed to § 983.58, except to make a minor change to paragraph (d) of § 983.58 to note that the term ''release of funds'' is defined in the definition section, § 983.3, as discussed earlier in this preamble.

PHA-Owned Units (24 CFR 983.59)—Clarifying Change. In this regulatory section, a paragraph is proposed to be added to clarify the term of the initial and renewal HAP contract. This proposed revision is consistent with

section 8(o)(13)(F) of the 1937 Act, which provides that the PHA and the independent HUD-approved entity must agree on the term of the HAP contract and any HAP contract renewal for PHA-owned units.

Additionally, this rule proposes to remove the requirement that the independent entity approved by HUD to determine initial contract rents to owner must be based on an appraisal by a licensed, state-certified appraiser. This requirement was not statutory but has been administratively imposed by HUD. HUD has now determined that the requirement is no longer practical or necessary. Rent reasonableness is based on rent comparability and, given the method by which rent reasonableness is now determined, such determination does not require a state-certified appraiser. Additionally, in practice, HUD has determined that the state-certified appraiser requirement has resulted in increased delays in the execution of ''agreements to enter into a housing assistance payment'' (AHAPs), due to lack of availability of state-certified appraisers. PHAs have also experienced significant increased expense in order to acquire state-certified appraisers. The 1937 Act requires that an independent entity establish rents based on program requirements, and the independence of such entity, which is an entity approved by HUD, sufficiently ensure that rents are set appropriately.

Housing Quality Standards (24 CFR 983.101)—Conforming and Clarifying Change. This proposed rule would revise the regulatory section to exclude cooperative housing from the list of special housing types that are inapplicable to the PBV program, for the reasons previously discussed in this preamble.

Purpose and Content of the Agreement to Enter into a HAP Contract (24 CFR 983.152)—Clarifying Change. The preamble to the proposed rule for the Section 8 Project-Based Voucher program published on March 18, 2004 (69 FR 12949), states, at 69 FR 12951, that an ''agreement is executed for units to be constructed or rehabilitated before the beginning of construction or rehabilitation.'' The fact that the existing regulation speaks in terms of the owner agreeing, in the agreement, to ''develop'' (defined as construction or rehabilitation of project-based voucher housing after the proposal selection date) ''the contract units'' supports the fact that execution of the agreement is required prior to the start of construction or rehabilitation. This proposed rule would clarify the existing regulation by striving to establish a bright-line definition of ''commencement of construction'' to ensure there is no confusion concerning the requirement that a PHA must enter into an agreement with the owner prior to the start of construction or rehabilitation on a project. This section, as proposed to be revised, would provide that construction commences when excavation or site preparation (including clearing of the land) begins for the housing. The preamble to the March 18, 2004, proposed rule also describes construction in this manner. Therefore, the new rule would simply clarify HUD's policy regarding when construction commences. In addition, this proposed rule would clarify that rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

This proposed rule seeks comment on the applicability of this requirement to projects receiving other federal funds, including LIHTCs, on which construction has already started. Other federal programs may require commencement of construction before the AHAP can be formalized by HUD. HUD is exploring other means of establishing compliance with AHAP requirements through other federal programs.

When Agreement Is Executed (24 CFR 983.153)—Clarifying Change. Similar to the change made to § 983.152, the proposed change to § 983.153 would clarify when the Agreement, referenced in § 983.153, must be executed.

Purpose of HAP contract (24 CFR 983.202)—Clarifying Change. The proposed revision to this section would make explicit the existing practice authorized by regulation, which is that a HAP contract covers a single project, with the exception of single-family scattered site projects. If an owner has multiple projects, then each project must be covered by a separate HAP contract under the proposed clarification.

HAP Contract Information (24 CFR 983.203)—Conforming Change. This proposed rule would revise § 983.203 to substitute the term ''project'' for ''building'', consistent with the statutory change.

Extension of Term of Initial Housing Assistance Payment (HAP) Contract (24 CFR 983.205(a))—Conforming Change. The maximum term of the initial HAP contract provided in section 8(o)(13)(F) of the 1937 Act is extended from 10 to 15 years as a result of the amendment to the 1937 Act made by section 2835(a)(1)(B) of HERA. In the November 24, 2008, notice, HUD advised that the provision could be implemented, commencing with the date of enactment of HERA, July 30, 2008. This proposed rule would make a conforming change to 24 CFR 983.205 to reflect the new HAP term.

Extension of Initial Term (24 CFR 983.205)—Conforming Change. This proposed rule would make a conforming change to 24 CFR 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by section 2835(a)(1)(C) of HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. A PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively. The November 24, 2008, notice advised that this provision was self-implementing and could be utilized, commencing with the date of enactment of HERA, July 30, 2008, but also advised that a contract extension may not exceed 15 years cumulatively. Additionally, the November 2008 notice advised that a PHA must still determine that the extension of the contract is appropriate to achieve long-term affordability of the housing or to expand housing opportunities. One of the commenters found HUD's direction that the contract extension ''may not exceed 15 years cumulatively'' to be ambiguous and requested that the conforming rule clarify that the initial contract may be up to 15 years and that one or more extensions may be up to 15 years. The proposed rule makes the additional clarifying change requested by the commenter. For further clarity, HUD adds a cross-reference to § 983.59 to address the initial term of the HAP for PHA-owned housing.

This proposed rule would make a clarifying change to 24 CFR 983.205(d) to require HUD approval when an owner seeks to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level.

Proposed Statutory Notice Requirements: Contract Termination or Expiration (Adding a New 24 CFR 983.206). This proposed rule would add a new § 983.206 to assist PHAs in addressing the notification requirements established by section 8(c)(8)(A) of the 1937 Act that the owner must meet. Accordingly, the regulatory sections following § 983.206 are redesignated accordingly.

HAP Contract Amendments (To Add or Substitute Units) (Redesignated 24 CFR 983.207)—Conforming Change. Section 983.207 (formerly § 983.206) is proposed to be revised to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA.

Owner Certification (Redesignated 24 CFR 983.210)—Conforming Change. Consistent with the change to § 983.53 (Prohibition of Assistance for Ineligible Units), discussed earlier, the proposed change to paragraph (i) in § 983.210 (formerly § 983.209) would clarify that the owner's certification does not apply in the case of an assisted family's membership in a cooperative.

This proposed rule would add a new paragraph (j) to § 983.210, consistent with the revised definition of ''existing housing'', to reflect what constitutes existing PBV housing. This revision requires the owner of PBV property to certify that there are no plans to perform rehabilitation work on the existing units within one year after execution of the HAP contract.

Removal of Unit from HAP Contract (24 CFR 983.211)—Clarifying Change. This proposed rule would add a new section, § 983.211, to clarify for PHAs when units are to be removed from the HAP contract. This requirement has always existed, but it was referenced only in the owner certification section of the regulations in part 983. The inclusion of this requirement in 24 CFR 983.211 will eliminate any possible ambiguity about the application of this requirement.

How Participants Are Selected (983.251(a) and (d))—Clarifying Change. In § 983.251(a), this proposed rule would clarify the pre-existing policy that restricts owners from leasing to family members or relatives. Specifically, this section is proposed to be revised to remove any ambiguity that a PHA may not approve the tenancy of a family if the owner (including a principal or other interested party) of the unit to be leased is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with a disability. In this regard, this proposed rule would also provide that the owner certification, already required under § 983.209, would include language that makes explicit that the unit will not be rented to the enumerated list of relatives.

With respect to accommodating a family member who is a person with disability, this rule proposes to amend § 983.251(d) by removing the third preference limit, which restricted the preference to individuals with disabilities interfering with daily activities so severely that adequate services were available only in a segregated setting. The amendment is intended to give, to persons qualifying for a preference for services, the option of receiving community-based services that may be offered outside of the particular project.

The Lease: Provisions Governing Term of Lease and Governing Absence From Unit (24 CFR 983.256)—Clarifying Change. The proposed rule would revise § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease, and not simply the initial term. For example, revised paragraph (f) provides that the lease must allow for automatic renewal after the initial term of the lease and the conditions under which the lease terminates. The effect of this change is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease.

In § 983.256, this proposed rule would substitute the term ''family'' for ''tenant'' in § 983.256(g). The substitution of ''family'' for ''tenant'' is for consistency purposes, since the regulation more frequently refers to ''family'' rather than tenant. The proposed rule would also clarify that it is the HAP contract ''for the unit'' that is being referred to in the parenthetical sentence in paragraph (g).

Owner Termination of Tenancy and Eviction (24 CFR 983.257)—Conforming Change and Proposed Change. With respect to the conforming change, this proposed rule would revise § 983.257 to substitute the term ''project'' for ''building'', consistent with the statutory change. With respect to the proposed change, this rule proposes to remove paragraph (b)(3) from § 983.257, which allows an owner to refuse to renew a lease without good cause upon lease expiration. This change is made for the same reasons the change is made in § 983.256(f), which is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease. This change is consistent with the purposes of the PBV program. In the project-based context, the owner, in executing the project-based voucher HAP contract, makes a long-term commitment to providing affordable housing. This provision will preclude an owner from effectively reneging on this commitment for the term of the contract by terminating tenant leases at the end of the initial term without good cause.

Continuation of Housing Assistance Payments (24 CFR 983.258)—Clarifying Change. This proposed rule would add a new § 983.258 that would clarify that housing assistance payments will continue until the tenant rent equals the rent to owner. After 180 days of no subsidy payments being made on behalf of the family, the unit will be removed from the HAP contract pursuant to § 983.211.

Redesignated Regulatory Sections. With the addition of a new § 983.258, existing § 983.258 (Security deposit; amounts owed by tenant) would be redesignated as § 983.259, and no changes are proposed to be made to § 983.258 as redesignated. Existing §§ 983.259, 983.260, and 983.261 would be redesignated, respectively, as §§ 983.260, 983.261, and 983.262.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260)—Conforming Change. This proposed rule would revise § 983.260 (formerly § 983.259) to include the term ''project'' in paragraph (b)(2)(i) of this section.

Clarifying Change. This proposed rule would revise § 983.260 to clarify that, if a PHA offers the family tenant-based rental assistance under the PBV program, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262)—Conforming Change. Section 983.262 (formerly § 983.261) would revise paragraph (d) to substitute the term ''project'' for ''building'', consistent with the HERA change in terminology, and to correct an incorrect regulatory reference. Section 983.262 allows for the HAP contract to be amended to substitute a different unit in the project, in accordance with § 983.206(a). The correct reference is § 983.207(a). Paragraph (b) of this section would also be revised to clarify existing policy that a PHA, in giving a preference to excepted units, need not choose between the elderly or disabled families, but may give a preference to both.

Determination of Rent to Owner (24 CFR 983.301)—Clarifying Changes. Section 2835(a)(1)(D) of HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The amendment made to § 983.301(d) reflects this discretion granted to PHAs. The November 24, 2008, notice advised that this statutory provision could be utilized commencing with the date of enactment of HERA, July 30, 2008. The

statute, however, did not alter the rent reasonableness requirements of section 8(o)(10)(A). These requirements must continue to be met. In addition, this proposed rule would revise § 983.301(e) to provide that the rent to owner shall not be reduced below the initial rent, with certain limitations, in accordance with § 983.302(c)(2).

Redetermination of Rent to Owner (24 CFR 983.302)—Implementing Change. This proposed rule would add a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except in the following situations: (1) To correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to a subsidy layering review; or (3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

Reasonable Rent (24 CFR 983.303)—Conforming Changes. Paragraph (a) of this section would be revised to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision will provide that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2). Paragraph (b)(2) of this section would be revised to include the term ''project''. Also, in paragraph (f), an incorrect reference to § 983.58 is corrected to refer to § 983.59.

Other Subsidy: Effect on Rent to Owner (24 CFR 983.304)—Clarifying Change. This proposed rule would revise paragraph (e) of this section to clarify that rent reduction is mandatory when the results of a subsidy layering review disclose the need for rent reduction.

III. Regulatory Review

Executive Order 13563—Improving Regulations and Regulatory Review

The President's Executive Order (EO) 13563, entitled ''Improving Regulation and Regulatory Review,'' was signed by the President on January 18, 2011, and published on January 21, 2011 (76 FR 3821). This EO requires executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Section 4 of the EO, entitled ''Flexible Approaches,'' provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As noted earlier in this preamble, this proposed rule would make conforming changes to the regulations of the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs to reflect the self-executing provisions of HERA, and would also amend the regulations required to implement those statutory provisions of HERA that are not self-implementing. Additionally, the rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. The amendments to be made by this rule bring the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs up-to-date with statutory requirements and existing policies and practices.

IV. Findings and Certifications

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and the rule is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule largely makes conforming amendments to HUD regulations that govern the public and assisted housing programs, for which changes were recently made by the Housing and Economic Recovery Act of 2008. As advised in the November 24, 2008, notice that preceded this rule, the statutory changes made to these programs were largely self-executing, and required only conforming regulatory amendments. This proposed rule makes those conforming amendments. The statutory changes to the programs, as reflected in the conforming amendments, impose no significant economic impact on a substantial number of small entities.

This proposed rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office

of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
24 CFR 983.6(d)—the requirement that a PHA must notify HUD of intent to project-base its vouchers	218	1	218	0.5	109
24 CFR 983.205(d)—requirement that HUD approval must be obtained when an owner seeks to terminate a HAP contract when rent is adjusted below the initial rent	15	1	15	1.0	15
24 CFR 983.206(b)—the requirement that not less than one year before termination of a PBV or PBC contact, the owner must notify the PHA and assisted tenants of the termination	20	30	600	0.25	150
Total					274

Total estimated burden hours:

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5242–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947,

and

Collette Pollard, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Room 4160, 451 Seventh Street SW., Washington, DC 20410–4000.

As an alternative to the above, interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD propose to amend 24 CFR parts 5, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Public Law 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

2. In § 5.609, paragraph (c)(14) is revised to read as follows:

§ 5.609 Annual income.

* * * * *

(c) * * *

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

* * * * *

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

3. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

4. In § 982.507, paragraph (a)(1) and the introductory text to paragraph (b) are revised, a new paragraph (c) is added, and existing paragraph (c) is redesignated as paragraph (d).

§ 982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) Except as provided in paragraph (c) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

* * * * *

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

* * * * *

(c) *Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.* (1) For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in 24 CFR part 92), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) If the rent requested by the owner exceeds the LIHTC rents for nonvoucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the: (i) Reasonable rent as determined pursuant to a rent comparability study and (ii) the payment standard established by the PHA for the unit size involved.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

5. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

6. In § 983.2, paragraphs (b)(3), (c)(2)(i), and (c)(7) are revised to read as follows:

§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.

* * * * *

(b) * * *

(3) Provisions on the following special housing types: shared housing, manufactured home space rental, and the homeownership option.

(c) * * *

(2) * * *

(i) Section 982.310 (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

* * * * *

(7) In subpart M of part 982: (i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

7. In § 983.3(b):

a. Definitions for ''housing credit agency'', ''project'', ''project-based certificate (PBC) program'', and ''release of funds (for purposes of environmental review)'' are added; and

b. The following definitions are revised: ''excepted units (units in a multifamily building not counted against the 25 percent cap),'' ''existing housing'', ''partially assisted building,'' ''premises,'' ''qualifying families (for purposes of exception to 25 percent building cap),'' ''special housing type,'' and ''wrong-size unit''.

c. The definition for ''state certified appraiser'' is removed.

§ 983.3 PBV definitions.

* * * * *

(b) * * *

Excepted units (units in a multifamily project not counted against the 25 percent per-project cap). See § 983.56(b)(2)(i).

Existing housing. A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the units:

(1) Will comply with HQS within 60 days of the date of such selection, and the total amount of work that must be performed to cause the units to comply with HQS does not exceed $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems); and

(2) There is no plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems).

Housing credit agency. For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of ''housing credit agency'' as defined by section 42 of the Internal Revenue Code of 1986.

* * * * *

Partially assisted project. A project in which there are fewer contract units than residential units.

* * * * *

Premises. The project in which the contract unit is located, including common areas and grounds.

Project. A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. Contiguous in this definition includes ''adjacent to'', as well as touching along a boundary or a point.

Project-based certificate (PBC) program. The program in which project-based assistance is attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001 (see § 983.10).

* * * * *

Qualifying families (for purpose of exception to 25 percent per-project cap). See § 983.56(b)(2)(ii).

Release of Funds (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and § 983.58, means that HUD approves the local PHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD–7015.16) that authorizes the PHA to execute an ''agreement to enter into housing assistance payment'' (AHAP) contract or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

* * * * *

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being either too large or too small compared to the guideline.

8. In § 983.5, paragraph (c) is revised to read as follows:

§ 983.5 Description of the PBV program.

* * * * *

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the

PHA must notify HUD of its intent to project-base its vouchers, in accordance with § 983.6(d).

9. In § 983.6, a new paragraph (d) is added to read as follows:

§ 983.6 Maximum amount of PBV assistance.

* * * * *

(d) Before implementing a PBV program, the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base under this part and the number of units that such budget authority will support.

10. In § 983.9, paragraph (a)(2) is revised and a new paragraph (c) is added to read as follows:

§ 983.9 Special housing types.

(a) * * *

(2) In the PBV program, the PHA may not provide assistance for shared housing, manufactured home space rental, or the homeownership option.

* * * * *

(c) *Cooperative housing.* (1) *Applicability of part 983.* Assistance under this housing type is subject to the requirements of part 983, except that following, §§ 983.256(b) and (c) 983.258, and 983.259 of part 983, subpart F, do not apply.

(2) *Applicability of part 982.* (i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) *Assistance in cooperative housing.* The regulations under 24 CFR 982.619 that are applicable to rental assistance for a family that leases a cooperative housing unit under the PBV program from the cooperative. All requirements of 24 CFR 983, subpart F, apply where a family leases a cooperative unit under the PBV program from a cooperative.

(4) *Rent to owner.* The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with § 983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) *Other fees and charges.* Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

11. In § 983.10, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 983.10 Project-based certificate (PBC) program.

* * * * *

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983, codified as of May 1, 2001, with the following exceptions:

(1) *PBC renewals.* (i) *General.* Consistent with the PBC HAP contract, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

(ii) *Renewal of PBC as PBV.* At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205 of this PBV regulation.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605. 982.609 and 982.614).

(ii) *Lead-based paint requirements.* (A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBV program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 48214846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 48514856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 of this part applies to the PBC program.

12. In § 983.51:

a. Paragraph (a) is revised by substituting the term ''project'' for ''building'' in the last sentence; and

b. Paragraph (b)(2) is revised to read as follows:

§ 983.51 Owner proposal selection procedures.

* * * * *

(b) * * *

(2) *Selection based on previous competition.* The PHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

* * * * *

13. In § 983.52, paragraph (a) is revised to read as follows.

§ 983.52 Housing type.

* * * * *

(a) *Existing housing.* (1) A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the units:

(i) Will comply with HQS within 60 days of such selection, and the total amount of work that must be performed to cause the units to comply with HQS does not exceed $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems); and

(ii) There is no plan to perform rehabilitation work on the units within

one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems).

(2) Units for which rehabilitation or new construction was started, prior to the PHA's notice of selection, in accordance with subpart D of this part, do not qualify as existing housing.

* * * * *

14. In § 983.53:

a. The word ''and'' is inserted after paragraph (a)(5);

b. Paragraph (a)(6) is removed;

c. Paragraph (a)(7) is redesignated as paragraph (a)(6);

d. Paragraph (b) is removed;

e. Paragraph (c) is redesignated as paragraph (b), and is revised to read as follows; and

f. Paragraph (d) is redesignated as paragraph (c).

§ 983.53 Prohibition of assistance for ineligible units.

* * * * *

(b) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

* * * * *

15. In § 983.55, paragraphs (a) and (b) are revised to read as follows:

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing, nor applicable to housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, including a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

(b) *When subsidy layering review is conducted.* The PHA may not enter into an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

* * * * *

16. In § 983.56:

a. In the heading of § 983.56, the word ''project'' is substituted for ''building.''

b. The word ''project'' is substituted for ''building'' everywhere ''building'' appears in paragraph (a), including the heading of paragraph (a), and in paragraph (b), including the heading of paragraph (b);

c. Paragraph (b)(2)(A) is revised to read as follows;

d. The reference to § 983.261(d) in paragraph (b)(2)(B) is changed to § 962.262(d);

e. A new paragraph (b)(3) is added to read as follows, and existing paragraph (b)(3) becomes paragraph (b)(4);

f. The word ''projects'' is substituted for the word ''building'' in the introductory text to paragraph (c), including the heading of paragraph (c); and

g. The word ''project'' is substituted for the word ''building'' everywhere ''building'' appears in paragraphs (c)(1) and (c)(3).

§ 983.56 Cap on number of PBV units in each project.

* * * * *

(b)(2)

* * * * *

Elderly and/or disabled families; and/or

* * * * *

(3) *Combining exception categories.* Exception categories in a multifamily housing project may be combined.

* * * * *

17. In § 983.58, paragraph (d)(1)(i) is revised to read as follows:

§ 983.58 Environmental review.

* * * * *

(d)(1) * * *

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds, as defined in § 983.3(b);

* * * * *

18. In § 983.59:

a. Paragraph (b)(1) is revised;

b. Paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added; and

c. The heading of paragraph (d) and paragraph (d) are revised to read as follows:

§ 983.59 PHA-owned units.

* * * * *

(b) * * *

(1) *Determination of rent to owner for the PHA-owned units.* Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on PBV program requirements;

(2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

(3) Inspection of PHA-owned units as required by § 983.103(f).

* * * * *

(d) *Payment to independent entity.* (1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

19. In § 983.101, paragraph (b) is revised to read as follows:

§ 983.101 Housing quality standards.

* * * * *

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to § 983.2 are also inapplicable to special housing types under the PBV program.

* * * * *

20. In § 983.152, paragraph (a) is revised, a new paragraph (b) is added, and existing paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively:

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Requirement.* The PHA must enter into an Agreement with the owner prior to the start of construction or rehabilitation. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(b) *Commencement of construction or rehabilitation.*

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

* * * * *

21. In § 983.153, paragraph (c) is revised to read as follows:

§ 983.153 When Agreement is executed.

* * * * *

(c) *Prompt execution of Agreement.* The Agreement must be executed as promptly as possible after the subsidy layering review is completed (see § 983.55) and the environmental review has been completed and the PHA has received the environmental approval (see § 983.58).

22. In § 983.202, paragraph (a) is revised to read as follows:

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

* * * * *

23. In § 983.203, paragraph (h) is revised to read as follows:

§ 983.203 HAP contract information.

* * * * *

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

* * * * *

24. In § 983.205, paragraphs (a), (b), and (d) are revised to read as follows:

§ 983.205 Term of HAP contract.

(a) *15-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with § 983.59.

(b) *Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Subsequent extensions are subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.

* * * * *

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA and HUD and approval by HUD, if the amount of the rent to owner for any contract unit, as adjusted in accordance with § 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

25. A new § 983.206 is added to read as follows, and §§ 983.206, 983.207, 983.208, and 983.209 are redesignated, respectively, as §§ 983.207, 983.208, 983.209, and 983.210.

§ 983.206 Statutory notice requirements: Contract termination or expiration.

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term ''termination'' means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

(d)(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

§ 983.207 HAP contract amendments (to add or substitute contract units).

26. In redesignated § 983.207, paragraph (b) is revised by substituting the word ''project'' for ''building'' everywhere the word ''building'' appears:

27. In redesignated § 983.210, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

§ 983.210 Owner certification.

* * * * *

(i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.

(j) The owner of a PBV project selected as an existing project does not plan to perform rehabilitation work on the units, within one year after HAP contract execution, that would cause the units to be in noncompliance with HQS and that would total more than $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems).

28. A new § 983.211 is added to read as follows:

§ 983.211 Removal of unit from HAP contract.

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last HAP. If the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project, the PHA may substitute a different unit for the unit removed from the Contract, in accordance with § 983.207.

29. In § 983.251, a new paragraph (a)(4) is added, paragraph (d)(1)(iii) is removed and the introductory text of paragraph (d) is revised to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

* * * * *

(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who

qualify for services offered at a particular project or in conjunction with specific unit(s), in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

* * * * *

30. In § 983.256, paragraphs (f) and (g) are revised to read as follows:

§ 983.256 Lease.

* * * * *

(f) *Term of lease.* (1) The initial lease term must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

(g) *Lease provisions governing absence from the unit.* The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction.

31. In § 983.257, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and revised by substituting the word ''project'' for ''building''.

32. A new § 983.258 is added, and existing §§ 983.258, 983.259, 983.260, and 983.261 are redesignated as §§ 983.259, 983.260, 983.261, and 983.262, respectively.

§ 983.258 Continuation of housing assistance payments.

HAPs shall continue until the tenant rent equals the rent to owner. The cessation of HAPs at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last HAP by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to § 983.211.

33. In redesignated § 983.260:

a. The word ''project'' is substituted for ''building'' everywhere the word ''building'' appears in paragraph (b)(2)(i), and paragraph (c) is revised to read as follows:

§ 983.260 Overcrowded, under-occupied, and accessible units.

* * * * *

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the HAP contract for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

* * * * *

34. In redesignated § 983.262, paragraph (b) is revised to read as follows, and the word ''project'' is substituted for ''building'' everywhere the word ''building'' appears in paragraph (d), and the reference to § 983.206(a) in paragraph (d) is changed to § 983.207(a).

§ 983.262 When occupancy may exceed 25 percent cap on the number of PBV units in each project.

* * * * *

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

* * * * *

35. In § 983.301, paragraphs (d) and (e) are revised to read as follows:

§ 983.301 Determining the rent to owner.

* * * * *

(d) *Rent to owner for other tax credit units.* Except in the case of a tax-credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units may be determined by the PHA pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine the reasonable rent in accordance with § 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent.

* * * * *

36. In § 983.302, paragraph (c) is revised to read as follows, and the reference to § 983.206(c) is changed to§ 983.207(c):

§ 983.302 Redetermination of rent to owner.

* * * * *

(c) *Rent decrease.* (1) If there is a decrease in the rent to owner, as established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(2) The rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

* * * * *

37. In § 983.303, paragraphs (a), (b)(3), and (f)(1) are revised to read as follows:

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

(b) * * *

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.59, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

* * * * *

38. In § 983.304, paragraph (e) is revised to read as follows:

§ 983.304 Other subsidy: effect on rent to owner.

* * * * *

(e) *Other subsidy: rent reduction.* To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent

to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

Dated: April 12, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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